



This document is scheduled to be published in the Federal Register on 06/27/2013 and available online at <http://federalregister.gov/a/2013-15254>, and on [FDsys.gov](http://FDsys.gov)

[Billing Code: 4810–31–U]

## **DEPARTMENT OF THE TREASURY**

### **Alcohol and Tobacco Tax and Trade Bureau**

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

**[Docket No. TTB–2013–0006; T.D. TTB–115; Re: Notice No. 137; T.D. ATF–421; T.D. ATF–422; ATF Notice Nos. 887 and 888]**

**RIN 1513–AB37**

### **Importer Permit Requirements for Tobacco Products and Processed Tobacco, and Other Requirements for Tobacco Products, Processed Tobacco, and Cigarette Papers and Tubes**

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

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

**SUMMARY:** This temporary rule amends the regulations of the Alcohol and Tobacco Tax and Trade Bureau (TTB) pertaining to permits for importers of tobacco products and processed tobacco by extending the duration of new permits from three years to five years. Based on its experience in the administration and enforcement of importer permits over the past decade, TTB believes that it can gain administrative efficiencies and reduce the burden on industry members, while still meeting the purposes of the limited-duration permit, by extending the permit duration to five years. This temporary rule also makes several technical corrections by amending the definition of “Manufacturer of tobacco products” to reflect a recent statutory change, and by amending a reference to the sale price of large cigars to incorporate a clarification published

in a prior TTB temporary rule. Finally, this temporary rule incorporates and reissues TTB regulations pertaining to importer permit requirements for tobacco products, and minimum manufacturing and marking requirements for tobacco products and cigarette papers and tubes, and, as a result, these temporary regulations replace temporary regulations originally published in 1999. TTB is soliciting comments from all interested parties on these regulatory provisions through a notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

**DATES:** This temporary rule is effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER] through August 26, 2016.

**FOR FURTHER INFORMATION CONTACT:** David Berenbaum, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC, 20005; telephone (202) 453-1039, ext. 100 or email [David.Berenbaum@ttb.gov](mailto:David.Berenbaum@ttb.gov).

**SUPPLEMENTARY INFORMATION:**

**Authority**

Chapter 52 of the Internal Revenue Code of 1986 (IRC) contains excise tax and related provisions pertaining to tobacco products and cigarette papers and tubes. Section 5701 of the IRC (26 U.S.C. 5701) imposes various rates of tax on such products manufactured in, or imported into, the United States.

Section 5704 of the IRC (26 U.S.C. 5704) provides for certain exemptions from those taxes. Sections 5712 and 5713 of the IRC (26 U.S.C. 5712 and 5713) provide that manufacturers and importers of tobacco products or processed

tobacco and export warehouse proprietors must apply for and possess a permit in order to engage in such businesses. Section 5712 also allows for the promulgation of regulations prescribing minimum manufacturing and activity requirements for such permittees, and section 5713 also sets forth standards regarding the suspension and revocation of permits. Section 5754 of the IRC (26 U.S.C. 5754) sets forth restrictions on the importation of previously exported tobacco products. Section 5761 of the IRC (26 U.S.C 5761) sets forth civil penalties for, among other things, selling, relanding, or receiving any tobacco products or cigarette papers or tubes that were labeled or shipped for exportation.

Regulations implementing the Chapter 52 provisions are contained in chapter I of title 27 of the Code of Federal Regulations (27 CFR). Those regulations include: Part 40 (Manufacture of tobacco products, cigarette papers and tubes, and processed tobacco); part 41 (Importation of tobacco products, cigarette papers and tubes, and processed tobacco); and part 44 (Exportation of tobacco products and cigarette papers and tubes, without payment of tax, or with drawback of tax).

Prior to January 24, 2003, the former Bureau of Alcohol, Tobacco and Firearms (ATF) administered these statutory and regulatory provisions. These provisions are now administered by the Alcohol and Tobacco Tax and Trade Bureau (TTB) (see section 1111 of the Homeland Security Act of 2002, Public Law 107-296, 116 Stat. 2274).

## **Balanced Budget Act of 1997**

Section 9302 of the Balanced Budget Act of 1997 (BBA), Public Law 105–33, 111 Stat. 251, 671-676, enacted on August 5, 1997, amended sections 5704(b), 5712, and 5713 of the IRC and added IRC sections 5754 and 5761(c).

These statutory changes, among other things:

- Placed new restrictions on the importation of previously exported tobacco products;
- Required that importers of tobacco products apply for and obtain a permit before commencing business as an importer, with a transitional rule to allow existing importers of tobacco products, who filed an application for a permit with ATF before January 1, 2000, to continue in such business pending final action on their applications;
- Required markings, as prescribed by regulations, on tobacco products and cigarette papers and tubes removed or transferred without payment of Federal excise tax;
- Provided penalties for selling, relanding, or receiving, within the jurisdiction of the United States, tobacco products or cigarette papers and tubes that were labeled or shipped for exportation and that were removed on or after the effective date of the section 9302 amendments, that is, January 1, 2000; and
- Authorized the Secretary of the Treasury (the Secretary) to prescribe minimum capacity or activity requirements as a criterion for issuance of a permit.

The above statutory changes are discussed in more detail below.

### Import Restrictions on Previously Exported Tobacco Products

Section 9302(h)(1)(E)(i) of the BBA added section 5754 to the IRC, which at that time provided that previously exported tobacco products and cigarette papers and tubes may be imported or brought into the United States only as provided in section 5704(d). At that time, section 5704(d) provided that tobacco products and cigarette papers and tubes previously exported and returned could be released from customs custody, without payment of internal revenue tax, for delivery to a manufacturer of tobacco products or cigarette papers and tubes or to the proprietor of an export warehouse, in accordance with such regulations and under such bond as the Secretary shall prescribe.

### Permit Requirement and Transitional Rule

Section 9302(h)(2) of the BBA amended sections 5712 and 5713 of the IRC to require, in part, that importers of tobacco products apply for and obtain a permit before commencing business as such importers. The BBA also provided a transitional rule to allow existing importers of tobacco products, who filed applications for a permit with ATF before January 1, 2000, to continue in such businesses pending final action on their applications.

### Required Markings on Tobacco Products and Cigarette Papers and Tubes Removed or Transferred without Payment of the Federal Excise Tax

Prior to the BBA's being enacted, section 5704(b) of the IRC provided that, in accordance with regulations promulgated by the Secretary:

“(1) A manufacturer or export warehouse proprietor may transfer tobacco products and cigarette papers and tubes, without payment of tax, to the bonded premises of another manufacturer or export warehouse proprietor, or remove

such articles, without payment of tax, for shipment to a foreign country, Puerto Rico, the U.S. Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the U.S. internal revenue laws; and

(2) A manufacturer may similarly remove such articles for use of the United States.”

Section 9302(h)(1)(A) of the BBA added a sentence at the end of section 5704(b) of the IRC to provide that tobacco products and cigarette papers and tubes may not be transferred or removed under 5704(b) unless they bear such marks, labels, or notices as the Secretary shall prescribe by regulation. The authority of the Secretary to prescribe regulations regarding the marks, labels, and notices that must appear on packages of tobacco products and cigarette papers and tubes, before removal, is also contained in section 5723(b) of the IRC (26 U.S.C. 5723(b)).

#### Penalty and Forfeiture Provisions

Section 9302(h)(1)(B) of the BBA added a new subsection (c) to section 5761 of the IRC to impose a civil penalty on persons, other than manufacturers or export warehouse proprietors operating in accordance with sections 5704(b) and (d) of the IRC, who sell, reland, or receive within the jurisdiction of the United States tobacco products or cigarette papers or tubes that have been labeled or shipped for exportation under chapter 52 of the IRC. The civil penalty is the greater of \$1,000 or five times the amount of tax imposed on the product.

Section 9302(h)(2)(A) of the BBA amended sections 5762(a)(1) and 5763(b)

and (c) to apply criminal penalties and forfeiture provisions to importers of tobacco products.

#### Minimum Manufacturing Activity Requirements

Section 9302(h)(5) of the BBA amended section 5712 of the IRC by adding an additional factor for rejecting an application and denying a permit. The new provision stated that the application may be rejected and the permit denied if “the activity proposed to be carried out at such premises does not meet such minimum capacity or activity requirements as the Secretary may prescribe.”

#### **Temporary Rule T.D. ATF-421**

On December 22, 1999, ATF published in the **Federal Register** (64 FR 71918) a temporary rule, T.D. ATF-421, amending or adding various provisions within 27 CFR parts 200 (now part 71), 270 (now part 40), 275 (now part 41), and 290 (now part 44) to implement the statutory amendments made by section 9302 of the BBA other than the new importer permit requirements which were addressed in a separate temporary rule, T.D. ATF-422, described later in this document. When earlier rulemaking documents are discussed in this preamble, any references to section numbers and regulatory texts are as they existed when that earlier rulemaking document was published. Specifically, T.D. ATF-421 adopted regulatory amendments pertaining to:

- Marks, labels, and notices;
- Minimum manufacturing activity requirements;
- Import restrictions on previously exported tobacco products, and cigarette papers, and tubes;

- Penalty and forfeiture provisions;
- Repackaging, and
- Form numbers, manufacturer and export warehouse proprietor

records, and definitions.

#### Marks, Labels, and Notices

As noted above, the Secretary is authorized to prescribe the type of marks, labels, and notices that must appear on packages of tobacco products and cigarette papers and tubes, including on products that are exempt from Federal excise taxation under 5704(b) of the IRC. In the preamble of T.D. ATF-421, ATF noted that Congress, by adopting section 9302(h)(1)(A) of the BBA, wanted to:

- Specifically authorize ATF to determine required marks, labels, and notices for products exempt from taxation under section 5704(b) to ensure protection of the Federal excise tax revenue;
- Ensure that non-taxpaid products intended for exportation bear the proper markings; and
- Require that taxpaid products that are ultimately sold on the domestic market not bear export markings. ATF noted in this regard that allowing products with export markings on the domestic U.S. market would hinder the enforcement of lawfully due taxes and cause confusion as to whether the product had been taxpaid.

Accordingly, in T.D. ATF-421, ATF amended 27 CFR 270.233, 290.61, and 290.181 to require that tobacco products and cigarette papers and tubes

bear the required marks, labels, and notices in order to qualify for transfer or removal of the product without payment of tax.

- Section 270.233 was amended to provide that tobacco products may not be transferred in bond unless they bear all required marks, labels, and notices.

- Section 290.61 was amended to provide that tobacco products and cigarette papers and tubes may not be removed for exportation without payment of tax unless they bear all required marks, labels, and notices.

- Section 290.181 was amended to provide that all tobacco products and cigarette papers and tubes must, before removal or transfer, bear the required marks, labels, or notices. Under the authority of the Secretary in section 5723(a) of the IRC to prescribe rules for the packages in which tobacco products and cigarette papers and tubes must be put up before removal, § 290.181 was further amended to clarify that the “package” upon which the marking, labeling, and notice requirements are to appear, does not include any cellophane wrapping material that may enclose a package. A package, thus, is only intended to include the actual material that holds and encloses the tobacco products and cigarette papers or tubes. This amended definition clarified placement requirements of marks, labels, and notices. In keeping with Congressional intent to prevent diversion of tobacco products, ATF wanted to ensure that marks, labels, and notices on products destined for export were clear and not easily destroyed.

### Minimum Manufacturing Activity Requirements

Based on the language that section 9302 of the BBA added to section 5712 of the IRC, ATF concluded that it was authorized to establish minimum capacity or activity requirements and to deny a permit application based on an applicant's failure to meet such minimum capacity or activity requirements. ATF noted in T.D. ATF-421 that Congress enacted the provisions in question to ensure that those who apply for a permit actually intend to engage in the bona fide business of manufacturing tobacco products in a manner that would adequately protect the revenue and comply with the law and regulations.

In promulgating regulations that establish minimum capacity or activity requirements, ATF considered several issues. ATF did not want to establish criteria that would effectively exclude small tobacco products manufacturers from obtaining a permit. In addition, ATF wanted to establish criteria that would ensure that only those actually engaged in the business of manufacturing tobacco products would be able to obtain a permit. Accordingly, ATF established criteria that effectively excluded any person who is not a legitimate manufacturer and whose primary interest in obtaining a manufacturer's permit is to obtain the tax deferral benefits that a permit might facilitate (those tax deferral benefits are otherwise referred to as "downstreaming of taxes") by setting up premises covered by a permit where the only business purpose of the premises was to store non-taxpaid products that were transferred in bond to such premises.

### *Small Manufacturers*

ATF noted that section 5712 of the IRC requires that prior to engaging in the business of manufacturing tobacco products, a person must obtain a permit from ATF. ATF believed that any applicant who proposes to engage in the business of manufacturing of tobacco products, regardless of size, should be eligible to receive a permit, so long as the applicant meets the definition of manufacturer in section 5702(d) and has fulfilled the other conditions in the law and regulations. ATF noted that it had issued permits to some small manufacturers of tobacco products, such as those who manufacture hand-rolled cigars, and for this reason ATF did not want to establish minimum capacity or activity criteria that would exclude small tobacco products manufacturers.

### *Downstreaming of Taxes*

As noted above, ATF wanted to ensure that permits were not issued to persons who intended to use the permit to delay tax payment. Prior to the publication of T.D. ATF-421, ATF had received inquiries from persons who wanted to obtain a permit and establish bonded premises for the primary purpose of receiving tobacco products in bond and delaying payment of Federal excise taxes.

ATF noted that the Federal excise tax on tobacco products attaches to the products as soon as they are manufactured, and that the manufacturer is liable for the tax on tobacco products held in bond. Under section 5703 of the IRC the manufacturer is required to pay the tax when the tobacco product is removed from bond. ATF noted that tobacco products generally are distributed under a

three-tier distribution system: at the first level, the manufacturer pays Federal excise tax after removal of the products from bonded premises; then the products are transferred to a wholesaler, which is the second level in the distribution system; and finally to the retailer, who is the customer of the wholesaler and the third level in this three-tier system.

However, as noted above, section 5704 of the IRC provides that tobacco products may be transferred from one manufacturer or export warehouse proprietor to another manufacturer or export warehouse proprietor without payment of tax. ATF noted that because of this exemption from taxation, a business could attempt to set up one or more wholesale warehouses with some de minimis production capability, and obtain a manufacturer's permit for each wholesale warehouse. Using the in bond transfer provision provided by section 5704, each warehouse would then be eligible to receive tobacco products in bond at each wholesale warehouse, without payment of the excise tax. The taxes on the product would not be due until the product was distributed from the wholesale level to the retail level. This downstreaming of taxes moves the collection point for the excise tax from the production level to the wholesale level. ATF noted that while this is potentially beneficial for manufacturers since they can effectively delay taxpayment until the product is removed from the wholesale level, it has an adverse effect on Federal tax receipts since it delays payment of the Federal excise tax.

ATF stated that it wanted to prevent the downstreaming of taxes because it undermines the effect and purpose of obtaining a permit to engage in the

business of manufacturing tobacco products and because it also contravenes the safeguards in obtaining a permit, that is, to protect and collect Federal excise tax revenues. Additionally, ATF was concerned with the potential number of new taxpayers (that is, wholesalers qualifying as manufacturers), and the proliferation of tax payment points, if this approach became widely used. ATF stated that it had found that the collection of excise taxes is best achieved at the highest level within the three-tier distribution chain (that is, the manufacturer's level). ATF noted in this regard that when the Federal excise tax is collected at the manufacturer's level, the agency has fewer taxpayers to monitor and thus has more efficient tax collections and fewer administrative costs.

Recognizing these concerns, ATF wanted to ensure that the new minimum manufacturing criteria would prevent issuance of permits to businesses that principally want to receive tobacco products in bond and delay Federal excise tax payments. Thus, ATF stated that it amended the regulations whereby it would continue to issue permits to small manufacturers of tobacco products, despite limited production capacity, and would deny permits to persons who seek a permit for the principal purposes of receiving in bond untaxed tobacco products.

The following summarizes ATF's explanation of the regulatory changes.

Regulations Implementing the Minimum Manufacturing Activity Criteria for Tobacco Products Manufacturers

In T.D. ATF-421, ATF amended the regulations at 27 CFR 270.61 to provide that a permit would only be granted to those persons whose principal business activity under such permit would be the original manufacture of tobacco

products. A permit would not be granted to any person whose proposed principal activity under such permit would be the receipt or transfer of non-taxpaid tobacco products in bond. Furthermore, to qualify for a permit, the amount of tobacco products manufactured under a permit must exceed the amount transferred or received in bond under such permit. For example, a person who only manufactures 1,000 cigarettes per month may receive a maximum of 999 cigarettes in bond during the month under that permit. Likewise, a person who manufactures 10,000,000 cigarettes a month could receive up to 9,999,999 cigarettes in bond during the month under that permit.

ATF noted that it believed that these changes to the regulations effectively accommodated small manufacturers while protecting the timely assessment and collection of the Federal excise tax revenue. T.D. ATF-421 also amended 27 CFR 200.49b to include this activity criterion as a basis for rejecting an application for a permit. ATF stated that it did not amend 27 CFR 200.46, regarding revocation or suspension of tobacco permits, because compliance with regulations issued under the IRC was already required.

#### Importers and Export Warehouse Proprietors

ATF noted that it did not require a minimum capacity or activity criterion for importers or export warehouse proprietors. ATF did not believe that either an importer or export warehouse permittee would or could engage in misuse of its permit for downstreaming of taxes in a manner similar to the way that a manufacturer might misuse its permit. However, ATF did state that it would

consider imposing minimum manufacturing or activity criteria on importers and export warehouse proprietors if the need should arise.

Import Restrictions on Previously Exported Tobacco Products and Cigarette Papers and Tubes

ATF noted that when the BBA was enacted section 5704(d) of the IRC allowed previously exported tobacco products to be lawfully transferred to any manufacturer of tobacco products or cigarette papers and tubes, or to any export warehouse proprietor; and section 5704(d) did not mandate that the previously exported products return to the original manufacturer or export warehouse proprietor. Also, ATF noted that, under new IRC section 5754 as described above, previously exported tobacco products and cigarette papers and tubes could only be imported or brought into the United States by release from customs custody to a manufacturer or an export warehouse proprietor as an in bond transfer. ATF further noted that section 5754 precluded the importation and tax payment of such products by an importer since the law was very clear and left no discretion to ATF in that regard. Section 5754 at that time clearly stated that such products could only be imported or brought into the United States by the method provided in section 5704(d) of the IRC (26 U.S.C. 5704(d)), that is, a transfer, without payment of tax, to a manufacturer or export warehouse.

Based on the above, T.D. ATF-421 amended the following sections in 27 CFR part 275:

- 27 CFR 275.1: Section 275.1 was revised to include a general discussion of importation of tobacco products and cigarette papers and tubes.

- 27 CFR 275.81: Paragraph (a) of § 275.81 was revised to distinguish between tobacco products and cigarette papers and tubes that were imported, and those that had been previously exported from the United States and returned.
- 27 CFR 275.82: Section 275.82 was added to discuss the new restrictions on the return of exported products.

#### Penalty and Forfeiture Provisions

Except for a qualified manufacturer of tobacco products or cigarette papers and tubes or an export warehouse proprietor, new section 5761(c) imposed civil penalties on persons who sell, reland, or receive within the jurisdiction of the United States any tobacco products that are labeled or shipped for export.

In T.D. ATF-421, ATF noted that it had considered ways to enforce new section 5761(c) of the IRC, since the domestic market would contain tobacco products that had been lawfully removed on or before December 31, 1999, as well as products marked for export that had been unlawfully introduced into the domestic market (that is, unlawfully removed) after December 31, 1999, and thus subject to the new civil penalty. To differentiate between the products that had been lawfully removed and those that had been unlawfully removed, ATF considered whether or not to change the export marking requirements under 27 CFR 290.185 for products manufactured after December 31, 1999. In T.D. ATF-421, ATF discussed this alternative, but declined to make these changes since it would impose major burdens on tobacco manufacturers. ATF decided that

voluntary commercial marks already placed on packages by the tobacco industry would enable ATF to distinguish between these products. Further, ATF stated that if future investigations disclosed the need to do so, it would consider changing the export marking requirements on products manufactured after December 31, 1999, to differentiate between products removed.

### Repackaging

With reference to new sections 5754 and 5761(c) of the IRC discussed above, ATF in T.D. ATF-421 noted that although manufacturers and export warehouse proprietors were authorized to receive related tobacco products or cigarette papers or tubes from customs custody without payment of the Federal excise tax, there were limitations on what manufacturers and export warehouse proprietors could do with such products. After noting that such products could be destroyed or re-exported, or (in the case of a manufacturer) repackaged and removed for sale in the domestic market, ATF noted the following in regard to these requirements, as they existed at that time:

Export warehouse: Section 5702 of the IRC defines “export warehouse” to mean “a bonded internal revenue warehouse for the storage of tobacco products and cigarette papers and tubes, upon which the internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States.” An export warehouse proprietor is defined in section 5702 as any person who operates an export warehouse. Export warehouse proprietors are only

authorized to store non-taxpaid tobacco products and cigarette papers and tubes for subsequent exportation. Export warehouses are specifically established under the law to facilitate the exportation of tobacco products without payment of the excise tax. There is no authority for an export warehouse proprietor to pay the excise tax and distribute tobacco products into the domestic U.S. market. An export warehouse proprietor may only lawfully receive re-landed tobacco products, transfer them to a qualified manufacturer, re-export them or destroy them.

Manufacturers: In accordance with section 5703, manufacturers are authorized under the IRC to pay excise tax on and distribute tobacco products into the domestic market. However, the IRC also requires that, before removal from a manufacturer's factory, tobacco products must be put up in packages and bear the marks, labels, and notices required by the Secretary.

As noted above, the Secretary has the general authority to prescribe packaging and marking requirements for tobacco products under section 5723(a) and (b) of the IRC. Under this authority, prior to the issuance of T.D. ATF-421, ATF had prescribed regulations under 27 CFR 290.185 which require that products removed for exportation exempt from taxation must bear export markings. Such markings include the words, "Tax-exempt. For use outside U.S." or "U.S. Tax-exempt. For use outside U.S." These export markings signify that the product is not subject to Federal taxes and that it is not intended for distribution within the United States. ATF stated in T.D. ATF-421 that it relied on these markings to identify these products as a tax-exempt export for enforcement

purposes. In addition, ATF had prescribed regulations under 27 CFR 290.222 which require that tobacco products and cigarette papers and tubes on which tax has been paid and a drawback claim has been made must have a label affixed reading "For Export With Drawback of Tax."

ATF further noted in T.D. ATF-421 that previously exported products that are relanded in the United States also bear the export markings required under §§ 290.185 and 290.222 and may be intended for distribution in the domestic market. Because ATF could not tell if a particular product on the market had been lawfully taxpaid and removed from customs custody, or if it was smuggled into the U.S., the efficacy of the export marking requirements was severely reduced if these products were allowed in the domestic market. ATF concluded that since relanded tobacco products were marked in accordance with the tobacco export regulations at 27 CFR 290.185 and bore a statement that said "Tax-exempt. For use outside U.S." or "U.S. Tax-exempt. For use outside U.S." or in accordance with § 290.222 bore a statement that said "For Export With Drawback of Tax," they were not properly marked for distribution in the domestic U.S. market. Further, if products with export markings were allowed in the domestic market, this practice would hinder enforcement of the IRC and jeopardize the revenue. ATF stated that its goal was to protect the revenue, and to determine whether the Federal excise tax on a relanded product had been paid. ATF considered various options for removing these export markings and bringing relanded products into compliance with the domestic marking and labeling requirements. In particular, ATF considered:

- Allowing such products to be over stamped;
- Allowing the obliteration of the tax-exempt marking; or
- Allowing stickers to be placed over the markings.

However, ATF concluded in T.D. ATF-421 that the options of over stamping, obliteration, or use of stickers would negate the value of these markings as a tax enforcement tool. Over stamping, obliteration, or placing stickers over the tax-exempt notice would not necessarily mean that the Federal excise tax had been paid on the re landed product because any person could obtain product that had not been federally tax paid, place stickers over the “tax exempt” notice on packages, and distribute them in the domestic market.

After careful consideration of the issue, ATF concluded that a manufacturer who distributes re landed tobacco products into the domestic market must remove the product from its original packages (bearing export markings) and re package them into new packages with the proper mark and notice requirements for domestic U.S. distribution as prescribed in 27 CFR part 270. ATF determined that in order to protect the Federal excise tax revenue, it is essential to require the re packaging of these re imported products before they are introduced in domestic commerce.

Thus, ATF concluded that, under 26 U.S.C. 5761(c), products labeled for export may not be sold in the domestic U.S. market. However, manufacturers were eligible to receive re landed tobacco products and cigarette papers and tubes and sell them in the domestic market if such products were completely re packaged under the laws and regulations for products not intended for

exportation. Accordingly, 27 CFR 275.82(b) was added and prescribed requirements for repackaging under these circumstances. Also, T.D. ATF-421 added 27 CFR 270.213, which notified manufacturers that tobacco products marked for export are not eligible for distribution in the domestic market, and of the need to repackage such products.

Finally, ATF noted in T.D. ATF-421 that, like an export warehouse proprietor, a manufacturer was allowed to transfer tobacco products to another manufacturer or to an export warehouse proprietor, re-export the reloaded tobacco products, or destroy the reloaded tobacco products.

#### Form Numbers, Manufacturer and Export Warehouse Proprietor Records, and Definitions

In addition to the changes discussed above that were necessitated by the BBA statutory amendments, T.D. ATF-421 made several administrative changes to the ATF tobacco regulations:

Form numbers: The texts of 27 CFR 290.61a, 290.142, 290.198 through 290.208, 290.210, 290.213, and 290.256 through 290.267 were amended to change references from obsolete form number ATF F 2149/2150, to the new form number ATF F 5200.14. The regulations in 27 CFR 290.152 through 290.154 were amended to change all references from the obsolete form number ATF F 2635 to the new form number ATF F 5620.8. Also, 27 CFR 290.62 was amended to delete obsolete references to a customs form and regulatory citation.

Record retention of ATF forms: Minor changes were made in the regulations to reflect the correct number of years that ATF form numbers 5700.14 and 5620.8 must be retained. The regulations were amended to change the records retention period from 2 years to 3 years.

Manufacturer's records: The recordkeeping requirement for a manufacturer of tobacco products prescribed in 27 CFR 270.183 was amended to include the term "roll-your-own tobacco" and to include records of transfers to, and receipts from, foreign trade zones.

Export warehouse records: The recordkeeping requirements in 27 CFR 290.142 were amended to require that records include information regarding the manufacturer and brand name of products that were received, removed, transferred, destroyed, lost, or returned to manufacturers or customs bonded warehouses. In addition, the records must include the number of containers and unit type (e.g., cartons, cases).

Definitions: To clarify the regulations, T.D. ATF-421 added several definitions to the "meaning of terms" sections in 27 CFR 275.11 and 290.11. Section 275.11 was amended by adding definitions for the terms "Export warehouse," "Export warehouse proprietor," "Manufacturer of tobacco products," "Manufacturer of cigarette papers and tubes," and "Relanding". Section 290.11 was amended by adding a definition for "Zone restricted status."

### **Subsequent Court Action, Statutory Changes, and Regulatory Amendments**

On April 18, 2000, the United States District Court for the District of Columbia in the civil action World Duty Free Americas, Inc. v. Treasury (D.D.C.

No. 00–00404 (RCL); 94 F. Supp. 2d 61 (D.D.C. 2000) issued a temporary injunction enjoining the Treasury Department from enforcing the temporary regulations in T.D. ATF–421 at 27 CFR 275.11 and 275.83, to the extent that they prohibited the importation of cigarettes purchased in U.S. duty free stores up to the limit allowed by the personal use exemption provided by 19 U.S.C. 1555 and subheadings 9804.00.65, 9804.00.70, and 9804.00.72 of the Harmonized Tariff Schedule of the United States (HTSUS), 19 U.S.C. 1202.

On November 9, 2000, the President signed into law the Tariff Suspension and Trade Act of 2000, Public Law 106–476, 114 Stat. 2101, which included the Imported Cigarette Compliance Act of 2000 (ICCA). Sections 5704, 5754, and 5761(c) of the IRC, which had been added or amended by section 9302 of the BBA as discussed above, were amended by the ICCA to:

- Provide in section 5704(d) that tobacco products and cigarette papers and tubes manufactured in the United States and previously exported and returned may be released from customs custody without payment of tax only to the original manufacturer or to an export warehouse proprietor authorized to receive them by the original manufacturer;
- Provide in section 5754(a)(1)(C) that tobacco products and cigarette papers and tubes labeled for exportation may not be sold or held for sale for domestic consumption in the United States unless they are removed from their export packaging and repackaged by the original manufacturer into new packaging that does not contain an export label; and

- Require in section 5761(c) the forfeiture and destruction of all reloaded tobacco products and cigarette papers and tubes, except as provided under sections 5704(b) and (d).

On December 21, 2000, the President signed into law the Consolidated Appropriations Act, 2001 (CAA), Public Law 106–554, 114 Stat. 2763, which further amended section 5761(c) to allow travelers entering the United States to claim a personal use tax exemption for tobacco products manufactured within United States and labeled for export that are brought back into the United States. Under the CAA amendment, travelers may bring U.S. manufactured and export labeled tobacco products back into the United States under a personal use exemption free of Federal excise tax up to the limit allowed under Chapter 98 of the HTSUS. In addition, travelers entering the United States and claiming a personal use exemption for U.S. manufactured and export labeled tobacco products may voluntarily relinquish any articles in excess of the quantity allowed without incurring the penalty prescribed under section 5761(c).

Notwithstanding the view of ATF that the described above changes made by the ICCA and the CAA were clear and left no discretion in implementation, in view of the pendency of the World Duty Free Americas, Inc. case, ATF decided to issue a notice of proposed rulemaking prior to issuance of a final rule to implement those statutory changes. Accordingly, on March 26, 2001, ATF published in the **Federal Register** (66 FR 16425) Notice No. 913 to solicit comments on proposed implementing regulations. In response to that comment solicitation ATF received one comment, which urged prompt adoption of the

proposed regulations without change. Subsequently, on August 29, 2001, ATF published in the **Federal Register** (66 FR 45613) a final rule, T.D. ATF-465, adopting the proposed regulatory amendments to implement the changes made to the IRC by the ICCA and the CAA. In addition to some changes not relevant to the present rulemaking, these regulatory amendments included a complete revision of the texts of §§ 275.82 and 275.83, which had been added by T.D. ATF-421. In addition, T.D. ATF-465 amended the definition of “Relanding,” which had been added by T.D. ATF-421, by removing the second sentence. On November 27, 2001, United States District Court for the District of Columbia vacated the injunction that prohibited the Treasury Department from enforcing the temporary regulations in T.D. ATF-421 referred to above.

The regulations contained in 27 CFR part 275 were later amended by T.D. ATF-444, a temporary rule published in the **Federal Register** (66 FR 13849) on March 8, 2001. These regulations eliminated ATF onsite supervision of tobacco products and cigarette papers and tubes of Puerto Rican manufacture that are shipped from Puerto Rico to the United States. This Treasury decision also amended the definition of “Records” added to § 275.11 by T.D. ATF-422 (discussed in greater detail below) and revised in their entirety, and thus superseded, the changes made by T.D. ATF-422 to §§ 275.106, 275.110, and 275.111. The definition of “Records” set forth in this new temporary rule incorporates the amendment made by T.D. ATF-444. The temporary rule in T.D. ATF-444 was finalized by T.D. TTB-68, which was published in the **Federal Register** (73 FR 16757) on March 31, 2008.

### **Discussion of Comments Received in Response to T.D. ATF-421**

On the same day that T.D. ATF-421 was published, December 22, 1999, ATF also published in the **Federal Register** (64 FR 71927), a notice of proposed rulemaking, Notice No. 887, soliciting comments on the temporary regulatory amendments contained in T.D. ATF-421. The original comment period for Notice No. 887 lasted 60 days and closed on February 22, 2000.

During the comment period, ATF received several requests to extend the comment period on T.D. ATF-421 to provide interested parties with sufficient time to submit their comments. On March 21, 2000, ATF published Notice No. 893 (65 FR 15115) which reopened the comment period for an additional 30 days until April 20, 2000.

During the comment period, ATF also received a request to hold a public hearing regarding the temporary regulations but declined to do so. ATF determined that the two notices requesting public comment, totaling 90 days, provided sufficient time for interested parties to submit written comments and that any oral comments that could be made during a public hearing could be provided in writing within the 90 day comment period.

ATF received 26 comments from 24 different interested parties concerning the temporary regulations published in T.D. ATF-421. The comments are discussed below.

#### Personal Use Exemption

Fifteen comments opposed the position taken by ATF in T.D. ATF-421 that the BBA did not provide for a personal use exemption for previously

exported tobacco products. The commenters argued that Congress did not intend for the amendments in section 9302 of the BBA to apply to people traveling into the United States with previously exported non-taxpaid U.S. manufactured cigarettes for personal use. Section 5704(d) of the IRC at that time provided that tobacco products and cigarette papers that were previously exported could only be brought back into the United States and released from customs custody to a manufacturer or export warehouse proprietor, and ATF interpreted this provision as precluding the adoption of a personal use exemption by regulation.

TTB notes that the personal use exemption issue has been addressed by the enactment of the CAA, which included a personal use exemption, and by the subsequent promulgation of T.D. ATF-465, as discussed above.

#### Return to the Original Manufacturer

Section 5754 of the IRC as adopted by the BBA allowed previously exported tobacco products and cigarette papers and tubes to be brought back into the United States and released from customs custody as provided in section 5704(d), that is, to a manufacturer of tobacco products or cigarette papers and tubes or to an export warehouse proprietor. ATF received several comments requesting that it change the regulations to provide that only the “original” manufacturer of previously exported tobacco products and cigarette papers and tubes would be eligible to receive reimported products.

The subsequent amendment of section 5704(d) of the IRC by the ICCA and the resulting regulatory amendments adopted in T.D. ATF-465, as discussed above, addressed this issue.

#### Removal of Export-labeled Tobacco Products from the Market by a Certain Date

Several comments noted that the temporary regulations permitted the domestic sale of export-labeled tobacco products removed prior to January 1, 2000, and that there was no “cut-off date” by which the sale of these products in domestic commerce must cease. These comments recommended that ATF require all tobacco products made in the United States and bearing an export label to be removed from domestic commerce by a specific date.

TTB notes that section 4002 of the ICCA amended the IRC to provide that previously exported articles that were imported before January 1, 2000, for sale in the domestic market could not be legally sold or held for sale after February 7, 2001, unless they were removed from their export packaging and repackaged by the original manufacturer into new packaging that does not contain an export label. This change was discussed in the preamble of T.D. ATF-465. TTB believes that the ICCA adequately addressed the issue raised by the commenters.

#### Minimum Manufacturing Activity Requirements

As noted above, the BBA amended section 5712 of the IRC by adding a provision for minimum capacity or activity requirements, as prescribed by the Secretary, as an additional factor for rejecting an application and denying a permit. T.D. ATF-421 amended § 270.61 (now § 40.61), to state that a permit to

manufacture tobacco products will only be granted to those persons whose principal business activity under that permit will be the original manufacture of tobacco products, and that a permit will not be granted to any person whose principal activity under that permit will be to receive or transfer non-taxpaid tobacco products in bond. Furthermore, to qualify for a permit, the amount of tobacco products manufactured under a permit must exceed the amount transferred or received in bond under that permit.

Three comments were received in response to the minimum manufacturing activity requirements adopted in T.D. ATF-421. One expressed approval of the regulation. Two comments expressed concern that the new qualification to obtain a permit did not require a manufacturer to sell its products in the United States. The commenters asserted that the absence of this requirement creates a loophole under which unauthorized reimporers may circumvent the provisions of the BBA by qualifying as “manufacturers” simply by setting up equipment and producing a substandard “cigarette” product that was not intended to be sold in the United States. As a means of addressing this potential problem, one comment recommended that ATF define the term “manufacture of tobacco products” to include the “physical manufacturing of cigarettes from basic components, as well as shipping of those cigarettes into the market for sale or consumption.”

One commenter further expressed concern that ATF did not propose regulations providing for the “inspection of facilities for purposes of verifying that a purported manufacturer is (1) legitimately manufacturing and selling product

and (2) not receiving more previously exported cigarettes than is permitted under the Temporary Regulations.”

Based on TTB’s enforcement experience, TTB does not believe that the current regulatory text contains a loophole that allows a person to set up a sham operation as contended. TTB believes that the permit application review process and the Bureau’s audit and investigation activities are sufficient to identify persons who are not engaging in the original manufacture of tobacco products and, as such, do not qualify for a TTB permit. TTB further notes that the section of the regulations in question was subsequently amended by T.D. TTB–78 and subject to its accompanying notice and public comment procedures. Therefore, it is unnecessary to further address this section in this document.

Importation Restrictions on Previously Exported Tobacco Products and Cigarette Papers and Tubes

As noted above, the BBA added section 5754 to the IRC entitled “Restriction on importation of previously exported tobacco products.” Under section 5754, tobacco products and cigarette papers and tubes previously exported from the United States may be imported or brought into the United States only as provided in section 5704(d), that is, by release from customs custody, without payment of tax, to a manufacturer or to an export warehouse proprietor in accordance with such regulations and under such bonds as the Secretary shall prescribe. ATF’s position, as stated in the preamble of T.D. ATF–421, was that section 5754 precluded an importer from importing previously exported products, paying tax, and selling them in the domestic market, and that the statutory text was clear and left no discretion. There were two comments

from the same person in strong opposition to ATF's interpretation of this statutory provision.

TTB notes that sections 5704(d) and 5754 were subsequently amended by the ICCA to limit the parties that could receive reimported products and to require the repackaging of such products prior to sale in the United States. T.D. ATF-465 incorporated these statutory changes in the regulations in § 275.82(c) (now § 41.82(c)). Thus, the clear, limited wording of the statutory provisions in question precludes the adoption of a regulation that would contravene the position taken by ATF.

#### Foreign Manufactured Cigarettes

Several commenters stated that the regulations published in T.D. ATF-421 should address problems associated with cigarettes manufactured outside of the United States. TTB believes that the issues raised in these comments are beyond the scope of this rulemaking action.

#### Repackaging of Reimported Products

Consistent with the provisions of the BBA, T.D. ATF-421 included a provision requiring that reimported tobacco products and cigarette papers and tubes bearing export marks must be stripped of their original packaging and repackaged with the proper marks and notices as the Secretary prescribes for the domestic U.S. market. Two comments were received in response to this requirement. Both commenters agreed with the new requirement, but one suggested the inclusion of a provision whereby manufacturers could only

repackage previously exported cigarettes that were originally manufactured in their own manufacturing facilities.

TTB notes that, as discussed above, the ICCA addressed this issue by providing that previously exported tobacco products and cigarette papers and tubes could be released from customs custody only to the original manufacturer of the articles in question or to an authorized export warehouse proprietor and could be repackaged by the original manufacturer. This provision was incorporated in the regulations by T.D. ATF-465.

### Definitions

One commenter suggested that the terms, "Sells," "Relands," and "Receives" as used in § 275.83 (now § 41.83) should be defined to clearly indicate the nature of the activities subject to citation under this provision. The commenter stated that "[t]his would encompass all direct importers and each activity in the chain of importation including the offshore seller (if jurisdiction can be obtained), wholesalers, merchandise brokers, retailers, and consumers of illegally reintroduced cigarettes."

TTB notes that the wording of § 41.83 is basically a verbatim recitation of the language found in section 5761(c) of the IRC. TTB believes that the statutory and regulatory texts are sufficiently clear and that therefore no further regulatory change is necessary.

The same commenter suggested that ATF define the term "Person" more broadly to include: "in the case of a corporate participant, any more than 50%-owned affiliated corporation, and in the case of a closely held corporation, its

shareholders or directors. In the case of a partnership, joint venture, or limited liability company, the term person should be defined to include operating partners or managers.”

TTB believes that the term “Person” is sufficiently defined in 27 CFR 41.11 and notes that the regulatory definition is consistent with the IRC at 26 U.S.C. 7701(a).

#### Significant Regulatory Action

In T.D. ATF–421, ATF stated: “It has been determined that this temporary rule is not a significant regulatory action as defined by Executive Order 12866 because any economic effects flow directly from the underlying statute and not from this temporary rule. Therefore, a regulatory assessment is not required.”

One commenter stated: “This position is incorrect because the effect of the Proposed Regulation exceeds the statutes that control, and which the Proposed Regulation is purported to augment. In addition, the effect of the Proposed Regulation has significant impact (by eliminating certain business entities from doing business in the re-importation of tobacco products) and has significant economic and tax impact on such entities.”

ATF did not, and TTB does not, have the discretion in administering 26 U.S.C. 5754 to determine who can reimport tobacco products. In fact, the regulations that implement section 5754 merely repeat, essentially verbatim, the language of the statute. The regulations do not exceed the authority contained in the statute as the commenter suggests, and TTB continues to believe that the

regulation is not a significant regulatory action as defined by Executive Order 12866 (as discussed in more detail below).

#### Subsequent Regulatory Changes

In addition to the changes made by T.D. ATF-465, published in the **Federal Register** (66 FR 45613) on August 29, 2001, the following subsequent regulatory amendments adopted by ATF and TTB affected some of the sections of the regulations that were added or amended by T.D. ATF-421:

- T.D. ATF-424, published in the **Federal Register** (64 FR 71929) on December 22, 1999, revised the introductory text of § 270.183 (now § 40.183).
- T.D. ATF-460, published in the **Federal Register** (66 FR 39091) on July 27, 2001, recodified 27 CFR part 270 as part 40.
- T.D. ATF-463, published in the **Federal Register** (66 FR 42731) on August 15, 2001, recodified 27 CFR part 200 as part 71.
- T.D. ATF-464, published in the **Federal Register** (66 FR 43478) on August 20, 2001, recodified 27 CFR part 290 as part 44.
- T.D. ATF-467, published in the **Federal Register** (66 FR 49531) on September 28, 2001, revised the definition of “Manufacturer of cigarette papers and tubes” in 27 CFR 275.11 (now § 41.11). This definition does not appear in this document.
- T.D. TTB-16, published in the **Federal Register** (69 FR 52421) on August 26, 2004, recodified 27 CFR part 275 as part 41.
- T.D. TTB-44, published in the **Federal Register** (71 FR 16918) on April 4, 2006, made nomenclature changes to 27 CFR chapter I to reflect

organizational changes that resulted from the Homeland Security Act of 2002.

These nomenclature changes included replacing references to the “Director” with “Administrator”, and “ATF” with “TTB”, and specific office or officer titles with “appropriate TTB officer.”

- T.D. TTB–75, published in the **Federal Register** (74 FR 14479) on March 31, 2009, to implement certain changes made to the IRC by sections 701 and 702 of the Children’s Health Insurance Program Reauthorization Act (CHIPRA), amended 27 CFR 40.183(e), and 27 CFR 41.81(c)(4)(ii) and (iii).

- T.D. TTB–78, published in the **Federal Register** (74 FR 29401) on June 22, 2009, to implement other changes made by section 702 of the CHIPRA, amended 27 CFR 40.61, the definition of “Export warehouse” in 27 CFR 41.11, 41.201, 41.202, 41.206 and 41.208, and removed 27 CFR 41.192, 41.205 and 41.207.

#### **Temporary Rule T.D. ATF–422**

On December 22, 1999, ATF published another temporary rule, T.D. ATF–422, in the **Federal Register** (64 FR 71947) setting forth regulatory changes to 27 CFR part 275 (now part 41) implementing the changes made by section 9302 of the BBA pertaining to tobacco product importer permits.

In accordance with the transitional rule contained in section 9302(i)(2) of the BBA, ATF stated in T.D. ATF–422 that persons who were already engaged in the business as an importer of tobacco products could continue in such business after January 1, 2000, provided they had filed an application for a permit with ATF before January 1, 2000. Such persons would be issued a temporary permit,

which would remain valid for a period of one year or until a final determination was made on their application, if a final determination was not made within that time. ATF stated that all others must obtain a permit before engaging in the business as an importer of tobacco products or cigarette papers and tubes beginning January 1, 2000.

In T.D. ATF-422, ATF noted that only manufacturers and export warehouse proprietors may import tobacco products in bond. Hence, a bond is not required to be filed by any other importer of tobacco products in conjunction with the permit because such importers are not authorized to import tobacco products without payment of tax upon release from customs custody.

ATF took the position in T.D. ATF-422 that fully qualified applicants would be issued a permit limited to a three-year duration. ATF explained that the three-year duration had been determined to be a reasonable method to avoid the proliferation of numerous unused permits, which would pose administrative difficulties and potential jeopardy to the revenue. ATF stated that keeping track of unused permits would strain limited resources and that such permits could eventually fall into the hands of unqualified persons who would be unknown and unaccountable to ATF. ATF said that administrative controls would be put in place to facilitate timely renewals by permittees.

The tobacco product importer permit provisions were added to part 275 as new subparts K (tobacco products importer) and L (changes after original qualification of importers), which were modeled on the permit qualification provisions applicable to tobacco product manufacturers but with some

differences to reflect the principles applicable to importers noted above. In addition, T.D. ATF-422 added, revised or otherwise amended the following sections in part 275 to conform them to the new importer permit provisions or, unrelated to the importer permit provisions, for purposes of updating the regulatory texts: §§ 275.11, 275.25, 275.40, 275.41, 275.50, 275.62, 275.81, 275.85, 275.85a, 275.86, 275.106, 275.110, 275.111, 275.115a, 275.140, and 275.141.

#### Subsequent Regulatory Changes

Because the amendments made by T.D. ATF-422 to §§ 275.105, 275.106, 275.110, 275.111, and 275.121 (now §§ 41.105, 41.106, 41.110, 41.111, and 41.121) were superseded by the revision of those sections by T.D. ATF-444 and finalized by T.D. TTB-68, those amendments are not included in this new temporary rule.

Because §§ 275.205 through 275.208 (now §§ 41.205 through 41.208) added by T.D ATF-422 were revised or removed in the publication of T.D. TTB-78, those sections are not included in this temporary rule.

#### Discussion of Comments Received in Response to T.D. ATF-422

In conjunction with the publication of T.D. ATF-422, ATF published a notice of proposed rulemaking, Notice No. 888, in the **Federal Register** (64 FR 71955) on December 22, 1999. This notice invited comments on the regulations prescribed in T.D. ATF-422. The original comment period for Notice No. 888 lasted 60 days and closed on February 22, 2000. On April 3, 2000, ATF

published Notice No. 894 (65 FR 17477), which reopened the comment period for Notice No. 888 until May 3, 2000.

After the publication of T.D. ATF-422, ATF published two corrections and one amended correction to the temporary regulations published as T.D. ATF-422. The corrections were published as T.D. ATF-422a (65 FR 15058), T.D. ATF-422b (65 FR 45523), and T.D. ATF-422c (65 FR 63545). None of the changes contained in these correction documents affect this temporary rule.

During the comment period for Notice No. 888, ATF received comments from two different parties. The comments concerned recordkeeping and reporting requirements and the preparation and submission of one ATF form. These comments are summarized, and TTB's responses to them are set forth, below.

#### Records and Reports

One commenter noted that § 275.204 (now § 41.204), which sets forth the general requirement that tobacco product importers keep records and submit reports, also states that such records and reports are not required with respect to tobacco products while in customs custody. The commenter recommended that this regulation also exclude from reporting and recordkeeping tobacco products entered under a temporary importation bond (TIB). (TIBs involve entry of merchandise under Chapter 98 of the HTSUS, and under regulations administered by United States Customs and Border Protection, without payment of duty and tax; merchandise imported under a TIB must be re-exported or destroyed within one year after importation unless an extension of the one year

period is granted.) In addition, the commenter asserted that the same section should exclude from the importer recordkeeping and reporting requirements tobacco products imported and delivered to export warehouses because recordkeeping and reporting requirements for those products are prescribed in 27 CFR part 290 (now 27 CFR part 44).

With regard to products under a TIB, TTB has viewed such products to be under constructive customs custody for purposes of § 41.204, that is, the statement in § 41.204, that records and reports will not be required under part 41 with respect to tobacco products while in customs custody, applies to such products covered by a TIB. TTB may review its importer reporting and recordkeeping requirements, and specifically the issue of products covered by a TIB, to ensure that adequate documentation on imported tobacco products is available and sufficient to ensure appropriate tax payment where applicable. The provision in question may be subject to future notice and public comment but is not part of this rulemaking or accompanying notice.

With regard to products imported and delivered to export warehouses, the importer is not relieved of its responsibility to maintain records and submit reports covering products it has delivered to an export warehouse, even where the importer is also the export warehouse proprietor. The importer's records and reports must include all products that are shipped or consigned to the importer, under its importer permit. The export warehouse proprietor must maintain records and submit reports that cover all products on hand, received, removed, transferred, and lost or destroyed, under its export warehouse permit. In some

cases, where an importer and export warehouse proprietor are the same person, the same commercial records may serve as records for both purposes but, for adequate protection of the revenue, the activities occurring under the authority of each permit must be fully reflected in the records and reports related to that permit.

The commenter also stated that ATF should require additional information about tobacco products on the reports prescribed in part 275 (now part 41). The commenter suggested that importers be required to maintain records and to submit reports that are as rigorous as those required for domestic manufacturers. For example, the commenter suggested that importers record the cigarette brand, the name of the manufacturer of the cigarettes and the manufacturing address, and whether the cigarettes are purchased directly or indirectly from the manufacturer.

As noted above, TTB may review the current recordkeeping and reporting requirements for importers of tobacco products to ensure the requirements are sufficient to protect the revenue. If TTB determines that more restrictive requirements are necessary, any proposed changes would be made available for public comment. TTB believes it is not appropriate to include more restrictive requirements in this document without prior notice and opportunity to comment. With regard to the specific records suggested by the commenter, we note that brand information is currently required of both domestic manufacturers and importers only with regard to recording the sale price (by brand) of large cigars. The other records suggested by the commenter must be carefully considered in

the context of importation, particularly with regard to whether such records are necessary for the collection of the Federal excise tax on imported products.

Notice of Release for Small Test Quantities

The second commenter stated that it routinely imports small quantities of previously exported cigarettes for testing in the United States and that the requirement to prepare and submit form ATF F 2145 (now TTB F 5200.11), Notice of Release of Tobacco Products, Cigarette Papers, or Cigarette Tubes, in order to obtain the release of a few cartons of returned cigarettes is unwarranted and burdensome. The commenter stated that requiring the preparation and submission of this form in this situation “forces the importer to incur administrative costs and expenses that are inconsistent with the value of the goods” to be imported and “unnecessarily adds to the importer’s reporting burden.” Furthermore, the commenter noted, “securing the required certifications takes time and delays the release and testing of the goods.”

The commenter requested that ATF amend the temporary regulations to permit a domestic manufacturer to import up to six cartons of previously exported cigarettes for testing without having to prepare and submit ATF F 2145 (currently TTB F 5200.11). As an alternative, the commenter suggested that ATF allow manufacturers importing small quantities of test cigarettes to submit a "blanket" ATF F 2145 that would cover such imports for a calendar month or quarter.

As discussed above, the ICCA was enacted after the publication of T.D. ATF-422, and provided that tobacco products and cigarette papers and tubes manufactured in the United States and previously exported and returned may be

released from customs custody without payment of tax only to the original manufacturer or to an export warehouse proprietor authorized to receive them by the original manufacturer. This statutory provision in effect significantly decreased the number of persons who could import previously exported tobacco products and cigarette papers and tubes. Further, since the original publication of this provision, TTB has worked with and continues to work with industry members on a case-by-case basis to facilitate such removals without risk to the revenue. For example, in some cases, based on case-specific circumstances and the compliance history of the importer, an importer may submit copies of TTB F 5200.11 and receive certification on those forms in anticipation of releasing tobacco products or cigarette papers or tubes from customs custody without payment of tax. TTB believes that such flexibility reduces the regulatory burden of this requirement. Accordingly, we are not changing the regulatory text in this temporary rule action to incorporate the commenter's suggestion.

**Reissuance of T.D. ATF-421 and T.D. ATF-422 as a New Temporary Rule**

ATF did not take action to adopt, as a final rule, the T.D. ATF-421 and T.D. ATF-422 temporary regulations. TTB notes that the regulatory amendments adopted in T.D. ATF-421 and T.D. ATF-422 were significantly altered by the subsequent statutory and regulatory amendments discussed above. In view of this and the significant period of time that has elapsed since those two temporary rule documents were published, TTB believes that the best approach at this juncture is to publish one temporary rule that, in effect, reissues the regulatory texts adopted in T.D. ATF-421 and T.D. ATF-422 with changes to

the texts to conform them to the later changes noted earlier in this document. In addition, in accordance with the requirements of 26 U.S.C. 7805(e)(1), TTB is publishing, in the proposed rules section of this issue of the **Federal Register**, a notice of proposed rulemaking inviting comments from the public on this new temporary rule.

#### Provisions of T.D. ATF-421 Reflected in This New Temporary Rule

With the exceptions as stated above and outdated references to form numbers in part 44, this temporary rule includes the following regulatory provisions issued in T.D. ATF-421 (with appropriate section number changes to reflect the recodification of 27 CFR parts 200, 270, 275, and 290 as mentioned above).

- The record requirements of tobacco product manufacturers in § 40.183 paragraphs (a), (b), (c), (d), (f), (g), (h), and (i), which were revised by T.D. ATF-421 are being reissued;
- Section 40.213, which was added by T.D. ATF-421 to cover the repackaging of tobacco products labeled for export when they are destined to be sold in the U.S. market, is being reissued in this temporary rule;
- Section 40.233 was amended by T.D. ATF-421 and is reissued in this temporary rule to require that all required marks, labels, or notices appear on tobacco products shipped under bond to a tobacco manufacturer or an export warehouse;
- Section 41.1 was revised by T.D ATF-421 and is reissued in this temporary rule to outline the scope of the part;

- In § 41.11, T.D. ATF–421 added, and this temporary rule is reissuing the definition for the term “Export warehouse proprietor” and similarly is reissuing, with some minor wording changes, the definitions for the terms “Export warehouse” and “Relanding”;

- In § 44.11, T.D. ATF–421 added, and this temporary rule is revising and reissuing a definition of “Zone restricted status”;

- Sections 44.61 and 44.181 were revised by T.D. ATF–421 and are reissued, with a revision to § 44.61, in this temporary rule to require that all products bear the required marks, labels, or notices before removal or transfer;

- The fifth sentence in § 44.62 regarding the restriction on deliveries of products to vessels and aircraft as supplies was revised by T.D. ATF–421 and is revised and reissued in this temporary rule; and

- Section 44.142, requiring export warehouse records to include several new items of information, was revised in T.D. ATF–421 and is revised and reissued in this new temporary rule.

#### Provisions of T.D. ATF–422 Reflected in this New Temporary Rule

- With the above-stated exceptions and with the exception of 27 CFR 41.39, which was removed by T.D. ATF–422 and later reissued, this temporary rule includes the following regulatory provisions issued in T.D. ATF–422 (with appropriate section number changes to reflect the recodification of 27 CFR part 275 as mentioned above). This temporary rule also reaffirms the removal of certain sections that were removed by T.D. ATF-422 (§§ 41.101(d) and (e), 41.107, 41.108, 41.117, 41.118, and 41.135 through 41.138). In § 41.11, the

definitions for the terms “Customs officer,” “Records,” “Removal or remove”, and “Port Director of Customs” are being revised and reissued;

- Section 41.85 was revised and is being further revised and reissued to, among other things, to clarify that its application is limited to tobacco products and cigarette papers and tubes that are not put up in packages and to remove the reference to importations prior to December 16, 1986;

- Sections 41.11, 41.25, 41.40, 41.41, 41.50, 41.62, 41.81, 41.85, 41.85a, 41.86, 41.106, 41.110, 41.111, 41.115a, 41.140, and 41.141 were revised and are being reissued with clarifying, editorial, procedural, and technical amendments;

- In subpart K, §§ 41.190, 41.191, 41.193, 41.194, 41.195, 41.196, 41.197, 41.199, 41.200, 41.201, 41.202, 41.203, and 41.204, were added. These provisions concern application, issuance, duration, renewal, and retention requirements that apply to tobacco product importer permits. These sections are being reissued with clarifying, editorial, procedural, and technical changes, including changes to 41.201 and 41.202 to extend the duration of importer permits, as described below; and

- In subpart L, §§ 41.220 through 41.228 were revised. These sections prescribe procedures for amending a tobacco product importer permit or providing notice when changes occur to the name, ownership and control, or location or address of a permittee. These sections are being reissued with editorial changes to enhance readability of the texts.

### **Extension of the Duration of New Importer Permits**

As noted above, the regulations promulgated under T.D. ATF-422 provided for the expiration of a tobacco products importer permit three years from the date of issuance. An importer could, within 30 days of the expiration date, apply for its renewal of the permit. The reason for a limited-duration permit was to ensure that permits were issued to, and remained in the hands of, persons actively engaged in the importation of tobacco products under that permit. TTB has now reconsidered the three-year permit duration, particularly with a view to reducing the burden on industry members and more efficiently allocating agency resources, and has determined that the purposes of the limited-duration permit could still be met if the permit duration was changed from three years to five years.

Accordingly, this temporary rule amends §§ 41.201 and 41.202 to provide that permits issued on or after the effective date of this temporary rule will be valid for a period of five years from the date of issuance. So long as a timely application for renewal is filed (that is, within 30 days prior to the expiration date), the permit will continue in effect until TTB has taken final action on the application for renewal. Consistent with the minimum manufacturing and activity requirements of the operations regulations for tobacco products and processed tobacco, permit renewal would not be available to a person who did not import tobacco products under the permit within the one-year period immediately prior to the application to renew.

These temporary regulations also address permits that pre-date the effective date of this document. A person who is operating as an importer of tobacco products, who holds such a permit, and who wishes to continue in business must apply for and receive a new five-year permit. The application must be submitted to TTB within 150 days after the effective date of this temporary rule, or 30 days prior to the expiration date shown on the permit form, whichever is later. If a person timely files an application but that application is not complete (that is, the applicant has not submitted information or documentation sufficient for TTB to take action on the permit), 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 permit 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. Provided that a timely application is filed, the person may continue operations until TTB takes final action on the application.

Any person that is operating under a permit that pre-dates the effective date of this temporary rule, and that has applied for a renewal of the permit but whose application for renewal is still pending on the effective date of this temporary rule, must reapply for a permit within 150 days after the effective date of the temporary rule. TTB will work with such applicants to obtain any supplementary documentation and information needed to complete the application for a new permit. These changes will, among other things, enable

TTB to purge its record of inactive permits and ensure TTB has complete, accurate, and up-to-date information on entities that hold five-year permits.

Any application for an original permit (rather than for a renewal of an existing permit) that was received prior to the effective date of this temporary rule and that is still pending on the effective date of this rule will be processed as though it were filed on or after the effective date of this temporary rule, that is, as an application for a five-year permit. The changes contained in this rulemaking do not impose any new documentation or information requirements on those applying for an original permit.

For the same reasons noted above, TTB intends to also extend the duration of the permits it issues to importers of processed tobacco. TTB notes that a number of importers of tobacco products have amended their permits to provide for the importation of processed tobacco and, because the permits are often connected in this way, TTB believes that it would be administratively preferable to amend at the same time the regulations applicable to importers of processed tobacco at 27 CFR 41.240, 41.241, and 41.242 which provide for the issuance, duration, and renewal of permits for the importation of processed tobacco. These amendments mirror the new texts of §§ 41.200, 41.201, and 41.202. The same considerations described above that apply to a pending application for permit renewal or to a pending application for an original permit apply equally to importers of processed tobacco.

### **Clarification of the Term “Sale Price” in Reference to Large Cigars**

The regulatory amendments contained in T.D. TTB-78, referred to above, included an amendment to the definition of “Sale price” in 27 CFR 41.11. This amendment, which involved the addition of the words “United States” before the word “manufacturer,” was merely intended to reflect the long-standing agency position regarding what sale transaction is the basis for the determination of tax on the large cigars. However, TTB inadvertently failed to make a corresponding change to the reference to “sale price” in the operative regulation, 27 CFR 41.39. This temporary rule makes this technical correction and also adds a new sentence at the end of § 41.39 to direct the reader to 27 CFR 41.40 for circumstances in which a domestic manufacturer would be liable for the tax on imported tobacco products.

### **Amendment to the Definition of “Manufacturer of Tobacco Products”**

On July 6, 2012, the President signed into law the Moving Ahead for Progress in the 21st Century Act (“MAP-21”), Public Law 112-141. Section 100122 of MAP-21 amended the definition of “Manufacturer of tobacco products” at 26 U.S.C. 5702(d) to include any person who for commercial purposes makes available for consumer use (including the consumer’s personal consumption or use) a machine capable of making tobacco products. The definition as amended also states that a person making such a machine available for consumer use shall be deemed the person making the removal, as that term is defined by 26 U.S.C. 5702(j), with respect to any tobacco products manufactured by such machine.

The definition as amended further states that a person who sells a machine directly to a consumer at retail for a consumer's personal home use is not making a machine available for commercial purposes if such machine is not used at a retail premises and is designed to produce tobacco products only in personal use quantities. This temporary rule amends the definition of "Manufacturer of tobacco products" where it appears in the "Meaning of terms" sections at §§ 40.11, 41.11, and 44.11 to reflect this statutory change.

### **Public Participation**

To submit comments on the temporary regulations contained in this document, please refer to the related notice of proposed rulemaking (Notice No. 137) published in the Proposed Rules section of this issue of the **Federal Register**.

### **Regulatory Flexibility Act**

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. chapter 6), we certify that these regulations will not have a significant economic impact on a substantial number of small entities. Any effects of this rulemaking on small businesses flow directly from the underlying statutes. Accordingly, a regulatory flexibility analysis is not required. The temporary regulations also reduce the administrative burden on importers of tobacco products and processed tobacco by requiring that they renew their permits only every five years rather than every three years. Pursuant to 26 U.S.C. 7805(f), TTB will submit the temporary regulations to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the temporary regulations on small businesses.

### **Executive Order 12866**

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

### **Paperwork Reduction Act**

The collections of information in the regulations contained in this reissued temporary rule have been previously reviewed and approved by Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3504(h)) and assigned control numbers 1513–0068, 1513–0070, 1513–0078, 1513–0106, and 1513–0107. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. There is no new collection of information imposed by this temporary rule.

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

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

### **Inapplicability of Prior Notice and Comment**

TTB is issuing this temporary final rule without prior notice and comment pursuant to authority under section 4(a) of the Administrative Procedure Act (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and comment when the agency for good cause finds that those

procedures are “impracticable, unnecessary, or contrary to the public interest.” We believe prior notice and comment is unnecessary because we expect the affected industry members will benefit from an extension of the permit duration which will reduce the industry members’ ongoing regulatory burdens. In addition, TTB believes that good cause exists to provide the industry with this temporary rule because, in addition to the extension of the duration of the permit, the temporary rule incorporates statutory amendments that are already in effect. TTB is soliciting public comment on the regulatory provisions contained in this temporary rule in a concurrently issued notice of proposed rulemaking.

### **Drafting Information**

Kara T. Fontaine and other Regulations and Rulings Division staff, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

### **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 fund 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.

**Amendments to the Regulations**

Accordingly, for the reasons set forth in the preamble, 27 CFR parts 40, 41, and 44 are amended as set forth below.

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

1. The authority citation for part 40 continues to read as follows:

**Authority:** 26 U.S.C. 448, 5701–5705, 5711–5713, 5721–5723, 5731–5734, 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. In § 40.11, the definition of “Manufacturer of tobacco products” is revised to read as follows:

**§ 40.11 Meaning of terms.**

\* \* \* \* \*

Manufacturer of tobacco products. (1) Any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco, other than:

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

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

(2) The term “Manufacturer of tobacco products” includes any person who for commercial purposes makes available for consumer use (including such consumer’s personal consumption or use under paragraph (1)(i) of this definition) a machine capable of making cigarettes, cigars, or other tobacco products. A person making such a machine available for consumer use shall be deemed the person making the removal with respect to any tobacco products manufactured by such machine. A person who sells a machine directly to a consumer at retail for a consumer’s personal home use is not making a machine available for commercial purposes if such machine is not used at a retail premises and is designed to produce tobacco products only in personal use quantities.

\* \* \* \* \*

3. In § 40.183, the introductory text and paragraphs (a) through (d) and (f) through (i) and the Office of Management and Budget control number referenced at the end of the section, are revised to read as follows:

**§ 40.183 Record of tobacco products.**

The record of a manufacturer of tobacco products must show the date and total quantities of all tobacco products by kind (small cigars; large cigars; small cigarettes; large cigarettes; chewing tobacco; snuff; pipe tobacco; roll-your-own tobacco) that are:

- (a) Manufactured;
- (b) Received in bond by—

- (1) Transfer from other factories,
- (2) Release from customs custody,
- (3) Transfer from export warehouses, and
- (4) Transfer from foreign trade zones;
- (c) Received by return to bond;
- (d) Disclosed as an overage by inventory;

\* \* \* \* \*

(f) Removed, in bond, for—

- (1) Export,
- (2) Transfer to export warehouses,
- (3) Transfer to other factories,
- (4) Transfer to foreign trade zones,
- (5) Use of the United States, and
- (6) Experimental purposes off factory premises;
- (g) Otherwise disposed of, without determination of tax, by—
  - (1) Consumption by employees on factory premises,
  - (2) Consumption by employees off factory premises, together with the

number of employees to whom furnished,

- (3) Use for experimental purposes on factory premises,
- (4) Loss,
- (5) Destruction, and
- (6) Reduction to materials;
- (h) Disclosed as a shortage by inventory; and

(i) On which the tax has been determined and which are—

(1) Received, and

(2) Disposed of.

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

4. Section 40.213 is revised to read as follows:

**§ 40.213 Tobacco products labeled for export.**

Tobacco products labeled for export are ineligible for removal from the factory for distribution into the U.S. domestic market. Tobacco products labeled for export may not be sold, transferred, or delivered into the U.S. domestic market by a manufacturer of tobacco products unless the manufacturer repackages the tobacco product by removing it from its original package bearing the export marks and placing it into a new package. The new package, mark, and notice must conform to the requirements of this subpart.

5. In § 40.233, the last sentence is revised to read as follows:

**§ 40.233 Transfer in bond.**

\* \* \* However, tobacco products are eligible for transfer in bond to a manufacturer of tobacco products or to an export warehouse only if they bear the required marks, labels, and notices.

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

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

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

7. Section 41.1 is revised to read as follows.

**§ 41.1 Importation of tobacco products, cigarette papers and tubes, and processed tobacco.**

This part contains regulations relating to tobacco products, cigarette papers and tubes, and processed tobacco imported into the United States from a foreign country or brought into the United States from Puerto Rico, the Virgin Islands, or a possession of the United States.

8. In § 41.11, the definitions of “Customs officer”, “Export warehouse”, “Export warehouse proprietor”, “Manufacturer of tobacco products”, “Port Director of Customs”, “Records”, “Relanding”, and “Removal or remove” are revised to read as follows:

**§ 41.11 Meaning of terms.**

\* \* \* \* \*

Customs officer. An officer of U.S. Customs and Border Protection or any agent or other person authorized by law or designated by the Secretary of the Treasury or the Secretary of Homeland Security to perform the duties of an officer of U.S. Customs and Border Protection.

\* \* \* \* \*

Export warehouse. A bonded internal revenue warehouse for the storage of tobacco products and cigarette papers and tubes, upon which the internal revenue tax has not been paid or for the storage of processed tobacco, for

subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States.

Export warehouse proprietor. Any person who operates an export warehouse.

\* \* \* \* \*

Manufacturer of tobacco products. (1) Any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco, other than:

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

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

(2) The term "Manufacturer of tobacco products" includes any person who for commercial purposes makes available for consumer use (including such consumer's personal consumption or use under paragraph (1)(i) of this definition) a machine capable of making cigarettes, cigars, or other tobacco products. A person making such a machine available for consumer use shall be deemed the person making the removal with respect to any tobacco products manufactured by such machine. A person who sells a machine directly to a consumer at retail for a consumer's personal home use is not making a machine available for commercial purposes if such machine is not used at a retail premises and is designed to produce tobacco products only in personal use quantities.

\* \* \* \* \*

Port Director of Customs. The director of any port or port of entry as defined in 19 CFR 101.1. A list of customs service ports and ports of entry is set forth in 19 CFR 101.3.

\* \* \* \* \*

Records. The accounts, books, correspondence, declarations, papers, statements, technical data, electronic media and the computer programs necessary to retrieve the stored information in a usable form, and other documents that:

(1) Pertain to any importation of tobacco products, cigarette papers or tubes, or processed tobacco, to the information contained in the documents required by law or regulation under the Tariff Act of 1930, as amended, in connection with the importation or shipment of merchandise into the United States from Puerto Rico; and

(2) Are of the type normally kept in the ordinary course of business; and

(3) Are sufficiently detailed to:

(i) Establish the right to make the importation or shipment into the United States from Puerto Rico;

(ii) Establish the correctness of any importation or shipment into the United States from Puerto Rico;

(iii) Determine the liability of any person for duties and taxes due, or which may be due, to the United States;

(iv) Determine the liability of any person for fines, penalties, and forfeitures; and

(v) Determine whether the person has complied with the laws and regulations administered by TTB and U.S. Customs and Border Protection (CBP) and with any other documents required under laws or regulations administered by TTB and CBP.

Relanding. When used with reference to tobacco products and cigarette papers and tubes, the term “relanding” means importing, bringing, or returning into the jurisdiction of the United States any tobacco products or cigarette papers or tubes that were manufactured in the United States, labeled or shipped for export (including to Puerto Rico) as prescribed in this chapter, and previously exported from the United States.

Removal or remove. When used with reference to tobacco products or cigarette papers or tubes or any processed tobacco, the term “removal” or “removed” means removal from the factory, release from internal revenue bond under 26 U.S.C. 5704, release from customs custody (including conditional release as defined in 19 CFR 141.0a(i)), and also includes the smuggling or other unlawful importation of such articles into the United States.

\* \* \* \* \*

9. In § 41.25 the fourth sentence is revised to read as follows:

**§ 41.25 Disposal of forfeited, condemned, and abandoned tobacco products and cigarette papers and tubes.**

\* \* \* Except when the tax is to be paid to the Port Director of Customs or other authorized customs officer in accordance with customs regulations (19 CFR part 127) on sales of articles by customs officers, the payment of tax on those articles must be evidenced by presentation, to the officer

having custody of the articles, of a receipt from the appropriate TTB officer showing such payment. \* \* \*

10. In § 41.39, the first sentence is amended by adding the words “United States” before the word “manufacturer”, and a sentence is added at the end to read as follows:

**§ 41.39 Determination of sale price of large cigars.**

\* \* \* See § 41.40 of this chapter regarding liability for tax on large cigars, not put up in packages, released from customs custody without payment of tax for delivery to a domestic manufacturer of tobacco products.

11. Section 41.40 is revised to read as follows:

**§ 41.40 Persons liable for tax.**

The importer of tobacco products or cigarette papers and tubes is liable for the internal revenue taxes imposed thereon by 26 U.S.C. 5701 or 7652, except when tobacco products or cigarette papers or tubes imported or brought into the United States (other than those previously exported and returned) are released from customs custody, without payment of tax as provided under 26 U.S.C. 5704(c). Under section 5704(c), tobacco products and cigarette papers and tubes, imported or brought into the United States, may be released from customs custody, without payment of tax, for delivery to the proprietor of an export warehouse, or to a manufacturer of tobacco products or cigarette papers and tubes if such articles are not put up in packages. Under these circumstances the transferee will become liable for the internal revenue tax on these articles upon release from customs custody, and the importer will

thereupon be relieved from the liability for the tax. However, if the transferee is also the importer, the importer will not be relieved from the liability for the tax.

12. Section 41.41 is revised to read as follows:

**§ 41.41 Determination and payment of tax.**

Tobacco products and cigarette papers and tubes imported or brought into the United States, on which internal revenue taxes are due and payable, are not eligible for release from customs custody until those taxes have been determined.

13. In § 41.50, the last two sentences are revised to read as follows:

**§ 41.50 Exemptions.**

\* \* \* These exemptions include, but are not limited to, certain importations in passengers' baggage, for use of crew members, and by foreign officials. Persons importing tobacco products and cigarette papers and tubes as described in this section are not required to obtain a permit.

14. Section 41.62 is revised to read as follows:

**§ 41.62 Customs collection of internal revenue taxes on tobacco products and cigarette papers and tubes imported or brought into the United States.**

Internal revenue taxes on tobacco products and cigarette papers and tubes imported or brought into the United States, which are to be paid to the Port Director of Customs or other authorized customs officer, in accordance with this part, must be collected, accounted for, and deposited as internal revenue collections by the Port Director of Customs in accordance with customs procedures and regulations.

15. In § 41.81, paragraphs (a), (b), and (c) introductory text are revised to read as follows:

**§ 41.81 Taxpayment.**

(a) General. This section applies to tobacco products and cigarette papers and tubes upon which internal revenue tax is payable and which are imported into the United States from a foreign country or are brought into the United States from Puerto Rico, the Virgin Islands, or a possession of the United States. For provisions relating to restrictions on the importation of previously exported tobacco products and cigarette papers and tubes, see § 41.82.

(b) Method of payment. Except for articles imported or brought into the United States as provided in §§ 41.85 and 41.85a, the internal revenue tax must be determined before the tobacco products, cigarette papers, or cigarette tubes are removed from customs custody. The tax must be paid on the basis of a return on the customs form or by authorized electronic transmission by which the tobacco products, cigarette papers, or cigarette tubes are duty- and tax-paid to customs.

(c) Required information. When tobacco products or cigarette papers or tubes enter the United States for consumption, or when they are released from customs custody for consumption, the importer must include the Federal excise tax information specified in paragraphs (c)(1) through (7) of this section on the customs form or on the authorized electronic transmission if the form or electronic transmission allows for the reporting of such information. Whether or not the specified information appears on the form or electronic transmission filed

with customs, that information, together with a copy of the customs form or the electronic transmission, must be retained and made available for inspection by the appropriate TTB officer.

\* \* \* \* \*

16. Section 41.85 is revised to read as follows:

**§ 41.85 Release from customs custody of imported tobacco products or cigarette papers or tubes.**

(a) General. This section applies only to tobacco products and cigarette papers and tubes that are not put up into packages in which they will be sold to consumers. Subject to the requirements of § 41.86, the Port Director of Customs or authorized customs officer may release the following articles from customs custody without payment of internal revenue tax under the internal revenue bond of the manufacturer or export warehouse proprietor to whom the articles are released:

(1) Tobacco products manufactured in a foreign country, the Virgin Islands, or a possession of the United States, for transfer to the bonded premises of a manufacturer of tobacco products or to the bonded premises of an export warehouse proprietor; and

(2) Cigarette papers and tubes manufactured in a foreign country, the Virgin Islands, or a possession of the United States, for transfer to the factory of manufacturer of cigarette papers and tubes, to an export warehouse proprietor, or to a manufacturer of tobacco products solely for use in the manufacture of cigarettes.

(b) Products from the Virgin Islands. In addition to the documentation required by § 41.86, in the case of products exported from the Virgin Islands the manufacturer also must file an extension of coverage of the internal revenue bond on TTB F 5000.18, and receive a notice of approval from the appropriate TTB officer, in order to obtain release under paragraph (a)(1) of this section. The extension of coverage must be executed by the principal and the surety and must be in the following form:

“Whereas the purpose of this extension is to bind the obligors for the purpose of the tax imposed by 26 U.S.C. 7652(b), on tobacco products and cigarette papers and tubes exported from the Virgin Islands and removed from customs custody in the United States without payment of internal revenue tax, for delivery to the principal on said bond.”

“Now, therefore, the said bond is further specifically conditioned that the principal named therein must pay all taxes imposed by 26 U.S.C. 7652(b) plus penalties, if any, and interest, for which he may become liable with respect to these products exported from the Virgin Islands and removed from customs custody in the United States without payment of internal revenue tax thereon, and must comply with all provisions of law and regulations with respect thereto.”

(c) Receipt by manufacturer. Articles received into the factory of a manufacturer under this section are subject to the requirements of part 40 of this chapter.

17. Section 41.85a is revised to read as follows:

**§ 41.85a Release from customs custody of returned articles.**

(a) Domestically manufactured tobacco products (classifiable under item 9801.00.80 of the Harmonized Tariff Schedule of the United States, 19 U.S.C.

1202) exported from and returned to the United States without change to the product or the shipping container may be released from customs custody in the United States, under the bond of the original manufacturer or of the export warehouse proprietor who has been authorized by the original manufacturer (see § 41.82), without payment of that part of the duty attributable to internal revenue tax, for delivery to the bonded premises of the original tobacco products manufacturer or to the bonded premises of the export warehouse proprietor.

(b) Domestically manufactured cigarette papers and tubes (classifiable under item 9801.00.80 of the Harmonized Tariff Schedule of the United States, 19 U.S.C. 1202) exported from and returned to the United States without change to the product or the shipping container may be released from customs custody in the United States, without payment of that part of the duty attributable to internal revenue tax, for delivery to the bonded premises of the original manufacturer of the cigarette papers and tubes or an export warehouse proprietor authorized by the original manufacturer to receive such products.

(c) Releases under this section must be in accordance with the procedures set forth in § 41.86. Once released, the tobacco products and cigarette papers and tubes are subject to the tax and other provisions of 26 U.S.C. chapter 52 and, as applicable, to the regulations in part 40 of this chapter as if they had not been exported or otherwise removed from internal revenue bond.

18. Section 41.86 is revised to read as follows:

**§ 41.86 Procedure for release.**

(a) Every manufacturer of tobacco products or cigarette papers and tubes and every export warehouse proprietor who desires to obtain the release of tobacco products or cigarette papers and tubes from customs custody, without payment of internal revenue tax under its internal revenue bond, as provided in §§ 41.85 or 41.85a, must prepare a notice of release, TTB F 5200.11 and file the form with the appropriate TTB officer in accordance with the instructions on the form. The appropriate TTB officer will certify TTB F 5200.11 covering the release of the tobacco products or cigarette papers and tubes under 26 U.S.C. 5704(c) or (d) if the manufacturer or export warehouse proprietor is authorized to receive the products.

(b) Importers who are manufacturers of tobacco products or cigarette papers and tubes or export warehouse proprietors, or their authorized agents, who request the release of tobacco products or cigarette papers and tubes from customs custody in the United States under this section, using customs electronic filing procedures, must not request the release until they have received the TTB F 5200.11 certified by the appropriate TTB officer. Once U.S. Customs and Border Protection releases the tobacco products or cigarette papers and tubes in accordance with 19 CFR part 143, customs directives, and any other applicable instructions, the importer must submit a copy of the TTB F 5200.11 along with a copy of the electronic filing and customs release to the appropriate TTB officer at the address shown on TTB F 5200.11. The importer must retain two copies of the TTB F 5200.11, one copy to meet TTB recordkeeping requirements and one copy to meet customs recordkeeping requirements.

(c) Importers or their authorized agents requesting release of tobacco products or cigarette papers or tubes from customs custody in the United States under any authorized procedure other than the electronic filing procedures provided for in paragraph (b) of this section, must submit all copies of the TTB F 5200.11 to the appropriate customs officer along with the request for release. The customs officer will verify that the TTB F 5200.11 has been certified by the appropriate TTB officer and return all copies to the importer or the importer's authorized agent.

(d) Once U.S. Customs and Border Protection releases the tobacco products or cigarette papers and tubes in accordance with 19 CFR part 143, customs directives, and any other applicable instructions, the importer must send a copy of the TTB F 5200.11 along with a copy of the customs release to the appropriate TTB office at the address shown thereon. The importer must retain two copies of the TTB F 5200.11, one copy to meet TTB recordkeeping requirements and one copy to meet customs recordkeeping requirements.

19. In § 41.115a, paragraph (e) is revised to read as follows:

**§ 41.115a Payment of tax by electronic fund transfer.**

\* \* \* \* \*

(e) Procedure. Upon the notification required under paragraph (b)(1) of this section, the appropriate TTB officer will issue to the taxpayer a TTB Procedure entitled, Payment of Tax by Electronic Fund Transfer (EFT). This publication outlines the procedure a taxpayer must follow when preparing returns and EFT remittances under this part.

\* \* \* \* \*

20. In § 41.140, the first sentence is revised to read as follows:

**§ 41.140 Taxpayment of unpackaged Puerto Rican products made in Puerto Rico and brought into the United States.**

Every manufacturer of tobacco products or cigarette papers or tubes in the United States who receives, under its bond without payment of internal revenue tax, Puerto Rican tobacco products or cigarette papers or tubes not put up in packages, and who subsequently removes such products subject to tax, must pay the tax imposed on these products by 26 U.S.C. 7652(a) at the rates prescribed in 26 U.S.C. 5701 on the basis of a return as prescribed by part 40 of this chapter. \* \* \*

21. In § 41.141, the first sentence is revised to read as follows:

**§ 41.141 Reports.**

Every manufacturer of tobacco products or cigarette papers or tubes in the United States who receives Puerto Rican tobacco products or cigarette papers or tubes under its bond without payment of internal revenue tax must report the receipt and disposition of such tobacco products and cigarette papers and tubes on supplemental monthly reports. \* \* \*

\* \* \* \* \*

22. Section 41.190 is revised to read as follows:

**§ 41.190 Persons required to qualify.**

Any person who engages in the business as an importer of tobacco products must qualify as an importer of tobacco products in accordance with this part. Any person eligible for an exemption described in § 41.50 is not engaged in

the business as an importer of tobacco products. A person importing tobacco products for personal use, in such quantities as may be allowed by Customs without payment of tax, is not required to have an importer's permit.

23. Section 41.191 is revised to read as follows:

**§ 41.191 Application for permit.**

Every person, before commencing business as an importer of tobacco products, must make application for, and obtain, the permit in accordance with this subpart. The permit application must be made on TTB F 5230.4 in accordance with the instructions for the form. All documents required under this part to be furnished with the permit application must be made a part thereof.

24. Section 41.193 is revised to read as follows:

**§ 41.193 Corporate documents.**

Every corporation that files an application for a permit as an importer of tobacco products must furnish with its application for the permit required by § 41.191 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 that, or the officers who, are authorized to sign documents or otherwise act in behalf of the corporation in matters relating to 26 U.S.C. chapter 52 and the 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 the corporation. Where the

corporation has previously filed with the appropriate TTB officer any information required by this section and that information is currently complete and accurate, a written statement to that effect, in duplicate, will be sufficient for purposes of this section.

25. Section 41.194 is revised to read as follows:

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

Every partnership or association that files an application for a permit as an importer of tobacco products must furnish with its application for the permit required by § 41.191 a true copy of the articles of partnership or association, if any, or the certificate of partnership or association where required to be filed by any State, county, or municipality. Where a partnership or association has previously filed these documents with the appropriate TTB officer and the documents are currently complete and accurate, a written statement, in duplicate, to that effect by the partnership or association will be sufficient for purposes of this section.

26. Section 41.195 is revised to read as follows:

**§ 41.195 Trade name certificate.**

Every person that files an application for a permit as an importer of tobacco products operating under a trade name must furnish with the application for the permit required by § 41.191 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 the trade name. If no such certificate or other document is issued by the State, county, or municipal authority, a written

statement, in duplicate, to that effect by the person will be sufficient for purposes of this section.

27. Section 41.196 is revised to read as follows:

**§ 41.196 Power of attorney.**

If the application for a permit or any report or other document required to be executed under this part is to be signed by an individual as an attorney in fact for any person (including one of the partners for a partnership or one of the members of an association), or if an individual is otherwise to officially represent such person, a power of attorney on TTB F 5000.8 must be furnished to the appropriate TTB officer. A power of attorney is not required for individuals whose authority is furnished with the corporate documents required by § 41.193. A new TTB F 5000.8 does not have to be filed with the appropriate TTB officer if that form previously was submitted to TTB and is still in effect.

28. Section 41.197 is revised to read as follows:

**§ 41.197 Additional information.**

The appropriate TTB officer may require the submission of, and the applicant must furnish, as a part of the application for a permit, such additional information the appropriate TTB officer deems necessary to determine whether the applicant is entitled to a permit under this subpart.

29. Section 41.199 is revised to read as follows:

**§ 41.199 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 provide to the

applicant a notice of the contemplated disapproval of the application and an opportunity for hearing thereon in accordance with part 71 of this chapter. If, after the 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.

30. Section 41.200 is revised to read as follows:

**§ 41.200 Issuance of permit.**

If the application for the permit required under this subpart is approved, the appropriate TTB officer will issue the permit on TTB F 5200.24.

31. Section 41.201 is revised to read as follows:

**§ 41.201 Duration of permit.**

(a) Permits with an effective date on or after [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]. A permit issued under § 41.200 bearing an effective date of [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER] or later will be valid for a period of five years from the effective date shown on the permit. Provided that a timely application for renewal is filed under § 41.202, the expiring permit will continue in effect until final action is taken by TTB on the application for renewal.

(b) Permits with an effective date prior to [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]. A person operating as an importer of tobacco products that holds a permit bearing an effective date that is prior to [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER], and that wishes to continue operations as an importer of

tobacco products, must apply for and receive a new permit issued under § 41.200. The person must file the application under § 41.191 within 150 days after [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER], or within 30 days prior to the expiration date shown on the existing permit form, whichever is later. If a person timely files an application but that application is not complete (that is, the applicant has not submitted information or documentation sufficient for TTB to take action on the permit), 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 permit 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. Provided that a timely application is filed, the person may continue operations under the existing permit until TTB takes final action on the application for the new permit.

32. Section 41.202 is revised to read as follows:

**§ 41.202 Renewal of permit.**

(a) Permits with an effective date on or after [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]. A person operating as an importer of tobacco products that holds a permit required under § 41.191 and issued under § 41.200 bearing an effective date of [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER] or later, and that wishes to continue operations beyond the expiration of the permit, must apply for renewal of the permit within 30 days prior to expiration of the permit, in

accordance with the instructions provided with the renewal application form. Permits will be renewed only for those persons that have engaged in the importing of tobacco products under the current permit during the one-year period immediately prior to the date of the application to renew.

(b) Permits with an effective date prior to [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]. A person may not obtain renewal of a permit bearing an effective date prior to [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]. A person operating as an importer of tobacco products that holds a permit bearing an effective date prior to [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER], and that wishes to continue in operations as an importer of tobacco products, must apply for and receive a new permit for issuance under § 41.200 and in accordance with the rules contained in § 41.201(b).

33. Section 41.203 is revised to read as follows:

**§ 41.203 Retention of permit and supporting documents.**

The importer 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 importer must make the permit and supporting documents available for inspection by any appropriate TTB officer upon request.

34. Section 41.204 is revised to read as follows:

**§ 41.204 Records and reports in general.**

Every tobacco products importer must keep records and, when required by this part, submit reports, of the physical receipt and disposition of tobacco products. Records and reports are not required under this part with respect to tobacco products that are in customs custody.

35. Subpart L is revised to read as follows:

**Subpart L—Changes After Original Qualification of Importers**

Sec.

Changes in Name

41.220 Change in individual name.

41.221 Change in trade name.

41.222 Change in corporate name.

Changes in Ownership or Control

41.223 Fiduciary successor.

41.224 Transfer of ownership.

41.225 Change in officers, directors, or stockholders of a corporation.

41.226 Change in control of a corporation.

Changes in Location or Address

41.227 Change in location.

41.228 Change in address.

**Subpart L—Changes After Original Qualification of Importers**

**Changes in Name**

**§ 41.220 Change in individual name.**

When there is a change in the name of an individual operating under a permit as an importer of tobacco products, the importer must, within 30 days of the change, submit an application on TTB F 5230.5 for an amended permit.

**§ 41.221 Change in trade name.**

When there is a change in, or an addition or discontinuance of, a trade name used by an importer of tobacco products in connection with operations authorized by the permit, the importer must, within 30 days of the change, apply for an amended permit on TTB F 5230.5 to reflect such change. The importer must also furnish a true copy of any new trade name certificate or document issued to the business, or a statement in lieu thereof, as required by § 41.195.

**§ 41.222 Change in corporate name.**

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

**Changes in Ownership or Control**

**§ 41.223 Fiduciary successor.**

If an administrator, executor, receiver, trustee, assignee, or other fiduciary is to take over the business of an importer of tobacco products as a continuing operation, the fiduciary must, before commencing operations, apply for a permit in accordance with § 41.191 and furnish certified copies, in duplicate, of the order of the court or other pertinent documents, showing his or her appointment and qualification as the fiduciary. Where a fiduciary intends only to liquidate the

business, qualification as an importer of tobacco products is not required if the fiduciary promptly files with the appropriate TTB officer a written statement to that effect.

**§ 41.224 Transfer of ownership.**

If a transfer in ownership of the business of an importer of tobacco products (including a change of any member of a partnership or association) is to be made, the importer must give written notice to the appropriate TTB officer, naming the proposed successor and the desired effective date of the transfer. Before commencing operations, the proposed successor must qualify as an importer of tobacco products in accordance with subpart K of this part. The importer must give notice of the transfer, and the proposed successor must apply for the permit, in sufficient time for examination and approval of the application before the desired date of the transfer. The predecessor importer must make a concluding report in accordance with § 41.206 and must surrender the permit with that report. The successor importer must make a first report in accordance with § 41.206.

**§ 41.225 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 tobacco products, 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 must, within 30 days of that action, so notify the appropriate TTB officer in writing, giving the identity of the person. In

the event that the acquisition of more than 10 percent in aggregate of the outstanding stock of the corporation results in a change of control of the corporation, the provisions of § 41.226 will apply. When there is any change in the authority furnished under § 41.196 for officers to act on behalf of the corporation, the importer must immediately so notify the appropriate TTB officer in writing.

**§ 41.226 Change in control of a corporation.**

When the issuance, sale, or transfer of the stock of a corporation operating as an importer of tobacco products results in a change in the identity of the principal stockholders exercising actual or legal control of the operations of the corporation, the corporate importer must, within 30 days after the change occurs, apply for a new permit on TTB F 5230.4. If the application is not timely made, the present permit will automatically terminate at the expiration of that 30-day period, and the importer must dispose of all tobacco products on hand in accordance with this part, make a concluding report in accordance with § 41.206, and surrender the permit with that report. If the application for a new permit is timely made, the present permit will continue in effect pending final action with respect to the new application.

**Changes in Location or Address**

**§ 41.227 Change in location.**

When an importer of tobacco products intends to relocate its principal business office, the importer must, before commencing operations at the new location, make application on TTB F 5230.5 for, and obtain, an amended permit.

**§ 41.228 Change in address.**

When any change occurs in the address, but not the location, of the principal business office of an importer of tobacco products as a result of action by local authorities, the importer must, within 30 days of such change, make application on TTB F 5230.5 for an amended permit.

36. Section 41.240 is revised to read as follows:

**§ 41.240 Issuance of permit.**

If the application for the permit required under this subpart is approved, the appropriate TTB officer will issue the permit on TTB F 5200.24.

37. Section 41.241 is revised to read as follows:

**§ 41.241 Duration of permit.**

(a) Permits with an effective date on or after [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]. A permit issued under § 41.240 bearing an effective date of [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER] or later will be valid for a period of five years from the effective date shown on the permit. Provided a timely application for renewal is filed under § 41.242, the expiring permit will continue in effect until final action is taken by TTB on the application for renewal.

(b) Permits with an effective date prior to [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]. A person operating as an importer of processed tobacco that holds a permit bearing an effective date that is prior to [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER] and that wishes to continue operations as an importer of

processed tobacco must apply for and receive a new permit issued under § 41.240. The person must file the application under § 41.232 within 150 days after [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER], or within 30 days prior to the expiration date shown on the existing permit form, whichever is later. If a person timely files an application but that application is not complete (that is, the applicant has not submitted information or documentation sufficient for TTB to take action on the permit), 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 permit 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. Provided that a timely application is filed, the person may continue operations under the existing permit until TTB takes final action on the application for the new permit.

38. Section 41.242 is revised to read as follows:

**§ 41.242 Renewal of permit.**

(a) Permits with an effective date on or after [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]. A person operating as an importer of processed tobacco that holds a permit issued under § 41.240 bearing an effective date of [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER] or later, and that wishes to continue operations beyond the expiration of the permit, must apply for renewal of the permit within 30 days prior to expiration of the permit, in accordance with

instructions provided with the renewal application form. Permits will be renewed only for those persons that have engaged in the importing of processed tobacco under the current permit during the one year period immediately prior to the date of the application to renew.

(b) Permits with an effective date prior to [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]. A person may not obtain renewal of a permit bearing an effective date prior to [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]. A person operating as an importer of processed tobacco that holds a permit bearing an effective date prior to [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER], and that wishes to continue in operations as an importer of processed tobacco, must apply for and receive a new permit for issuance under § 41.240 and in accordance with the rules contained in § 41.241(b).

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

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

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

40. In § 44.11, the definition of “Manufacturer of tobacco products” and of “Zone restricted status” are revised to read as follows.

**§ 44.11 Meaning of terms.**

\* \* \* \* \*

Manufacturer of tobacco products. (1) Any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco, other than:

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

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

(2) The term "Manufacturer of tobacco products" includes any person who for commercial purposes makes available for consumer use (including such consumer's personal consumption or use under paragraph (1)(i) of this definition) a machine capable of making cigarettes, cigars, or other tobacco products. A person making such a machine available for consumer use shall be deemed the person making the removal with respect to any tobacco products manufactured by such machine. A person who sells a machine directly to a consumer at retail for a consumer's personal home use is not making a machine available for commercial purposes if such machine is not used at a retail premises and is designed to produce tobacco products only in personal use quantities.

\* \* \* \* \*

Zone restricted status. The status assigned to tobacco products and cigarette papers and cigarette tubes taken into a foreign trade zone from the customs territory of the United States for the sole purpose of exportation or storage until exported.

41. Section 44.61 is revised to read as follows:

**§ 44.61 Removals, withdrawals, and shipments authorized.**

(a) Tobacco products and cigarette papers and tubes may be removed from a factory or from an export warehouse, and cigars may be withdrawn from a customs bonded warehouse, without payment of tax for direct exportation or for delivery for subsequent exportation, in accordance with the provisions of this part.

(b) Tobacco products and cigarette papers and tubes are eligible for removal or transfer in bond under this part only if they bear the marks, labels, and notices required by this part.

42. In § 44.62, the fifth sentence and the seventh sentence are revised to read as follows:

**§ 44.62 Restrictions on deliveries of tobacco products and cigarette papers and tubes to vessels and aircraft, as supplies.**

\* \* \* For this purpose, the customs authorities may require the master of the receiving vessel to submit, prior to lading, customs documentation for permission to lade the articles. \* \* \* Deliveries may be made to aircraft that are clearing through customs and that are enroute to a place beyond the jurisdiction of the internal revenue laws of the United States, and to aircraft operating on a regular schedule between U.S. customs areas as defined in the Air Commerce Regulations (19 CFR part 122). \* \* \*

\* \* \* \* \*

43. Section 44.142 is revised to read as follows:

**§ 44.142 Records.**

(a) In general. Each export warehouse proprietor must keep in the warehouse complete and concise records that show the:

- (1) Number of containers;
- (2) Unit type (for example: cartons, cases);
- (3) Kinds of articles (for example: small cigarettes);
- (4) Name of manufacturer and brand; and

(5) Quantity of tobacco products and cigarette papers and tubes, and any processed tobacco received, removed, transferred, destroyed, lost, or returned to manufacturers or to customs bonded warehouse proprietors.

(b) Other records; form and retention. In addition to the records specified in paragraph (a) of this section, the export warehouse proprietor must retain a copy of each TTB F 5200.14 from a manufacturer, another export warehouse proprietor, or a customs warehouse proprietor, from whom tobacco products or cigarette papers or tubes were received, as well as a copy of each TTB F 5200.14 covering the tobacco products and cigarette papers and tubes removed from the warehouse. The entries for each day in the records maintained under this section must be made by the close of the business day following the day on which the transactions occur. No particular form of records is prescribed, but the information required must be readily ascertainable. The copies of TTB F 5200.14 and other records must be retained for 3 years following the close of the calendar year in which the shipments were received or removed

and must be made available for inspection by any appropriate TTB officer upon request.

44. Section 44.181 is revised to read as follows:

**§ 44.181 Packages.**

All tobacco products and cigarette papers and tubes must, before removal or transfer under this subpart, be put up by the manufacturer in packages that bear the label or notice, tax classification, and mark, as required by this subpart. For purposes of this subpart, the package does not include the cellophane or other transparent exterior wrapping material.

Signed: April 10, 2013.

**John J. Manfreda,**

Administrator.

Approved: April 11, 2013.

**Timothy E. Skud,**

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

[FR Doc. 2013-15254 Filed 06/26/2013 at 8:45 am; Publication Date: 06/27/2013]