

CFR Correction

In Title 26 of the Code of Federal Regulations, Part 1 (§§ 1.908 to 1.1000), revised as of April 1, 2008, in § 1.924(c)–1, make the following corrections:

1. On pages 62 and 63, remove paragraphs (d) introductory text, (d)(1) through (7), and (2) following (d)(7);
2. Reinstate paragraphs (d)(1) and (2) to read as set forth below; and
3. On page 64, in the last sentence of paragraph (d)(6), insert the word “in” before the words “§ 1.415(c)–2(b) and (c)”.

§ 1.924(c)–1 Requirement that a FSC be managed outside the United States.

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(d) *Disbursement of dividends, legal and accounting fees, and salaries of officers and directors out of the principal bank account of the FSC—(1) In general.* All dividends, legal fees, accounting fees, salaries of officers of the FSC, and salaries or fees paid to members of the board of directors of the FSC that are disbursed during the taxable year must be disbursed out of bank account(s) of the FSC maintained outside the United States. Such an account is treated as the principal bank account of the FSC for purposes of section 924(c). Dividends, however, may be netted against amounts owed to the FSC (e.g., commissions) by a related supplier through book entries. If the FSC regularly disburses its legal or accounting fees, salaries of officers, and salaries or fees of directors out of its principal bank account, the occasional, inadvertent payment by mistake of fact or law of such amounts out of another bank account will not be considered a disbursement by the FSC if, upon determination that such payment was made from another account, reimbursement to such other account is made from the principal bank account of the FSC within a reasonable period from the date of the determination. Disbursement out of the principal bank account of the FSC may be made by transferring funds from the principal bank account to a U.S. account of the FSC provided that (i) the payment of the dividends, salaries or fees to the recipients is made within 12 months of the transfer, (ii) the purpose of the expenditures is designated and, (iii) the payment of the dividends, salaries or fees is actually made out of the same U.S. account that received the disbursement from the principal bank account.

(2) *Reimbursement.* Legal or accounting fees, salaries of officers, and

salaries or fees of directors that are paid by a related person wholly or partially on behalf of a FSC must be reimbursed by the FSC. The amounts paid by the related person are not considered disbursed by the FSC until the related person is reimbursed by the FSC. The related person must be reimbursed no later than the last date prescribed for filing the FSC's tax return (including extensions) for the taxable year to which the reimbursement relates. Any reimbursement for amounts paid on behalf of the FSC must be disbursed out of the FSC's principal bank account (and not netted against any obligation owed by the related person to the FSC), as set forth in paragraph (c) of this section. To determine the amounts paid on behalf of the FSC, the FSC may rely upon a written statement or invoice furnished to it by the related person which shows the following:

(i) The actual fees charged for performing the legal or accounting services for the FSC or, if such fees cannot be ascertained by the related person, a good faith estimate thereof, and the actual salaries or fees paid for services as officers and directors of the FSC, and

(ii) The person who performed or provided the services.

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[FR Doc. E9–7205 Filed 3–30–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1****Income Taxes; Transfers of Property by U.S. Persons to Foreign Corporations***CFR Correction*

In Title 26 of the Code of Federal Regulations, Part 1 (§§ 1.301 to 1.400), revised as of April 1, 2008, on page 306, in § 1.367(a)–6T, in paragraph (e)(5)(ii)(B), reinstate the remainder of the first sentence, following the word “some”, to read as follows: “. . . portion of which was recaptured on the disposition, of the recaptured portions of those overall foreign losses after multiplication by the following fraction:”.

[FR Doc. E9–7203 Filed 3–30–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY**Alcohol and Tobacco Tax and Trade Bureau****27 CFR Parts 40, 41, 44, 46, and 71**

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

RIN 1513–AB70

Increase in Tax Rates on Tobacco Products and Cigarette Papers and Tubes; Floor Stocks Tax on Certain Tobacco Products, Cigarette Papers, and Cigarette Tubes; and Changes to Basis for Denial, Suspension, or Revocation of Permits (2009R–118P)

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

ACTION: Temporary Rule.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau is amending its regulations to implement certain provisions of the Children's Health Insurance Program Reauthorization Act of 2009 (the Act). This final rule amends existing regulations to reflect increases in the Federal excise tax rates on tobacco products and cigarette papers and tubes, revises existing floor stocks tax regulations to reflect the scope of the floor stocks tax provisions of the Act, and revises existing regulations to include the new statutory criteria for denial, suspension, or revocation of tobacco permits. We also are soliciting comments from all interested parties on these amendments through a notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

DATES: *Effective date:* March 31, 2009. *Applicability dates:* The amendments in 27 CFR 40.21, 40.23, 40.25, 40.25a, 40.351, 40.352, 41.30 through 41.35, 46.75, and 46.191 through 46.274, are applicable April 1, 2009. The amendments in 27 CFR 40.74, 40.332, 41.198, 44.92, 44.162, 71.46, and 71.46b were applicable on February 4, 2009.

FOR FURTHER INFORMATION CONTACT: For questions concerning floor stocks tax, contact the National Revenue Center, Alcohol and Tobacco Tax and Trade Bureau (*FloorStocksTax@ttb.gov*, 513–684–3334 or 1–877–TTB-FAQS (1–877–882–3277)); for other questions concerning this document, contact Amy Greenberg, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau (202–927–8210).

SUPPLEMENTARY INFORMATION:

Impact of the Homeland Security Act on This Rulemaking

Effective January 24, 2003, the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2135 (2002)) divided the Bureau of Alcohol, Tobacco and Firearms (ATF) into two new agencies, the Alcohol and Tobacco Tax and Trade Bureau (TTB) in the Department of the Treasury and the Bureau of Alcohol, Tobacco, Firearms and Explosives in the Department of Justice. The regulation and taxation of tobacco products and cigarette papers and tubes remains a function of the Department of the Treasury and is the responsibility of TTB. References to ATF in this document reflect the time period prior to January 24, 2003, while references to TTB are after that date.

TTB Authority

Chapter 52 of the Internal Revenue Code of 1986 (IRC) contains permit, Federal excise tax payment, and related provisions regarding tobacco products and cigarette papers and tubes. TTB has authority to issue, deny, suspend, and revoke permits of manufacturers, importers, and export warehouse proprietors pursuant to regulations contained in parts 40, 41, 44, and 71 of title 27 of the Code of Federal Regulations (CFR). TTB also collects Federal excise taxes on tobacco products and cigarette papers and tubes from proprietors of domestic bonded manufacturing premises pursuant to regulations contained in 27 CFR part 40; the Bureau of Customs and Border Protection (CBP) collects these taxes from importers of these products pursuant to regulations contained in title 19 of the CFR. TTB also has authority to regulate the importation and exportation of tobacco products and cigarette papers and tubes, and the removal of tobacco products and cigarette papers and tubes for use of the United States under 27 CFR parts 41, 44 and 45, respectively. Under 27 CFR part 46, TTB has authority to administer floor stocks taxes and other miscellaneous matters involving these products.

Tax Increase

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

This document amends the tobacco regulations in parts 40, 41, 44, and 46 to reflect the new excise tax rates. These amendments include additional examples of computations that show the new tax rates.

Floor Stocks Tax

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

The floor stocks tax regulations currently in 27 CFR part 46, subpart I, were promulgated by ATF to administer the 2000 and 2002 cigarette floor stocks taxes imposed by section 9302(j) of Public Law 105–33. There is no need to retain those regulations (any collection or other administrative action relating to those taxes would be conducted under the provisions of the law and regulations in effect at the time). Accordingly, in this document, TTB revises subpart I of part 46 to implement the new floor stocks tax imposed by the Act, relying on and replicating the prior provisions to the greatest extent possible. However, TTB notes that there are some differences between the law that imposed the earlier floor stocks tax and the 2009 floor stocks tax imposed by the Act, which are addressed in the new regulations adopted in this document as follows:

- The 2009 floor stocks tax applies to more articles (that is, not only to cigarettes), so the instructions for taking inventories and computing appropriate tax are modified accordingly.
- For purposes of the previous floor stocks tax regime, ATF included instructions for keeping separate inventories of cigarettes marked for export. Since holding products marked for export is prohibited by 26 U.S.C. 5751, inventory instructions for such products are not necessary.
- The Act provides no exemption for products held in vending machines, so no such exemption is provided in this circumstance.

- Under the previous floor stocks tax, ATF regulations provided that a person holding articles subject to floor stocks tax who owed no tax after taking the allowed credit, would not have to file a return. However, based on experience under that previous floor stocks tax, TTB believes that it is necessary to require the filing of a return even when no tax is due. If TTB were to provide an exemption from filing a return when no tax is due, TTB would not be able to determine if the failure to file a return is due to zero liability or willful noncompliance with the requirements of the statute, so no exemption is provided for in the regulatory texts adopted in this document. Therefore, those whose tax owed is zero must file a return.

Section 702(d) of the Act expanded the definition of “roll-your-own” tobacco to include tobacco for making cigars and tobacco for use as wrappers for cigars, effective April 1, 2009. The floor stocks tax, however, applies only to “roll-your-own” products covered by the old definition (that is, “any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes”). Therefore, in order to avoid confusion in the implementation of the floor stocks tax, that definition change will be reflected in a separate rulemaking.

Denial, Suspension and Revocation of Permits

Section 702(b) of the Act amended 26 U.S.C. 5712 and 5713 to expand the basis for denial, suspension and revocation of tobacco permits with effect from February 4, 2009. In this document, TTB includes the amended statutory language in the pertinent sections of the TTB regulations, that is, in §§ 40.74, 40.332, 41.198, 44.92, 44.162, 71.46, and 71.49b.

Temporary Rule

Based on the February 4, 2009, enactment of the changes to the criteria for denial, suspension, and revocation of permits and the April 1, 2009, effective date of the tax increases and floor stocks tax, TTB believes that proper administration and enforcement of those requirements necessitates the immediate adoption of implementing regulations as a temporary rule. TTB believes that such implementing action ensures that affected industry members will have timely knowledge of the regulatory requirements.

Public Participation

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

Regulatory Flexibility Act

We certify that this temporary rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The regulatory obligations and relevant collections of information derive directly from the Internal Revenue Code of 1986, as amended, and the regulations in this rule concerning these obligations and collections merely implement and provide necessary standards for complying with the statutory requirements. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Pursuant to 26 U.S.C. 7805(f), this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Paperwork Reduction Act

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

Under the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

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

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–927–8525 (facsimile); or
- formcomments@ttb.gov (e-mail).

Executive Order 12866

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

Inapplicability of Prior Notice and Comment and Delayed Effective Date Procedures

Because this document implements provisions of a law which are effective on February 4 and on April 1, 2009, and because immediate guidance is necessary to implement these provisions, it is found to be impracticable to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b).

Pursuant to the provisions of 5 U.S.C. 553(d)(2), and (d)(3), we are issuing these regulations without a delayed effective date. TTB has determined that this regulation is an interpretative rule that implements Public Law 111–3 as provided for in section 553(d)(2). TTB also has determined that good cause exists to provide industry members with immediate guidance on procedures to conduct an inventory and pay the appropriate floor stocks tax in accordance with section 553(d)(3).

Drafting Information

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

List of Subjects

27 CFR Part 40

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

27 CFR Part 41

Cigars and cigarettes, Claims, Customs duties and inspection, Electronic funds

transfers, Excise taxes, Imports, Labeling, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Virgin Islands, Warehouses.

27 CFR Part 44

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

27 CFR Part 46

Administrative practice and procedure, Cigars and cigarettes, Claims, Excise taxes, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco.

27 CFR Part 71

Administrative practice and procedure, Alcohol and alcoholic beverages, Tobacco.

Amendments to the Regulations

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

PART 40—MANUFACTURE OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

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

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 2. Paragraph (a) of § 40.21 is revised to read as follows:

§ 40.21 Cigar tax rates.

(a) Cigars are taxed at the following rates under 26 U.S.C. 5701(a):

Type and amount	Tax rate for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Small cigars per thousand	\$1.828	\$50.33
Large cigars*		
• percentage of sale price	20.719%	52.750%
• but not to exceed—	\$48.75 per thousand	\$0.4026 per cigar.

* For large cigars: Until March 31, 2009, the percentage tax rate applies when the sale price is \$235.294 per thousand or less, and the flat tax rate applies when the sale price is more than \$235.294 per thousand. On and after April 1, 2009, the percentage tax rate applies when the sale price is \$763.222 or less per thousand cigars, and the flat tax rate applies when the sale price is more than \$763.222 per thousand cigars.

* * * * *

§ 40.23 Cigarette tax rates.

■ 3. Section 40.23 is revised to read as follows:

Cigarettes are taxed at the following rates under 26 U.S.C. 5701(b):

Product	Tax rate per thousand for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Small cigarettes	\$19.50	\$50.33
Large cigarettes up to 6½" long	\$40.95	\$105.69
Large cigarettes over 6½" long	Taxed at the rate for small cigarettes, counting each 2¾" or fraction thereof of the length of each as one cigarette.	

■ 4. Section 40.25 is revised to read as follows:

§ 40.25 Smokeless tobacco tax rates.

Smokeless tobacco products are taxed at the following rates under 26 U.S.C. 5701(e):

Product	Tax rate per pound* for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Snuff	\$ 0.585	\$ 1.51
Chewing tobacco	\$ 0.195	\$ 0.5033

* Prorate tax for fractions of a pound.

■ 5. Section 40.25a is revised to read as follows:

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

Pipe tobacco and roll-your-own tobacco are taxed at the following rates

under 26 U.S.C. 5701(f) and (g), respectively:

Product	Tax rate per pound* for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Pipe tobacco	\$ 1.0969	\$ 2.8311
Roll-your-own tobacco	\$ 1.0969	\$ 24.78

* Prorate tax for fractions of a pound.

■ 6. Section 40.74 is revised to read as follows:

§ 40.74 Investigation of applicant.

(a) *Investigation.* The appropriate TTB officer may cause inquiry or investigation to be made to verify the information furnished in connection with an application for permit and to ascertain whether the applicant is eligible for a permit. Any of the following conditions may be grounds for denial of a permit:

(1) The premises on which it is proposed to conduct the business are not adequate to protect the revenue;

(2) The activity proposed to be carried out at such premises does not meet the minimum manufacturing or activity requirements of § 40.61(b); or

(3) The applicant (including, in the case of a corporation, any officer, director, or principal stockholder and, in the case of a partnership, a partner)—

(i) Is, by reason of his business experience, financial standing, or trade

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

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

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

(b) *TTB action.* The appropriate TTB officer, if there is reason to believe that the applicant is not entitled to a permit, shall promptly give the applicant notice of the contemplated disapproval of the application and opportunity for hearing thereon in accordance with part 71 of this chapter, which part (including the provisions relating to the recommended

decision and to appeals) is applicable to such proceedings. If, after such notice and opportunity for hearing, the appropriate TTB officer finds that the applicant is not entitled to a permit, he shall, by order stating the findings on which his decision is based, deny the permit.

(26 U.S.C. 5712)

■ 7. Section 40.183 is amended by revising paragraph (e) to read as follows:

§ 40.183 Record of tobacco products.

* * * * *

(e) Removed subject to tax (itemize large cigars by sale price in accordance with § 40.22, except that before April 1, 2009, cigars that cost more than \$235.294 may optionally be shown as if the price were \$236 per thousand, and on and after April 1, 2009, cigars that cost more than \$763.222 may optionally be shown as if the price were \$764 per thousand);

* * * * *

■ 8. Section 40.184 is amended by revising paragraph (a)(4) to read as follows:

§ 40.184 Record of removals subject to tax.

(a) * * *

(4) For large cigars, show the sale price (if the sale price is more than \$235.294 per thousand before April 1, 2009, or more than \$763.222 per thousand on and after April 1, 2009, you may place a note to that effect in the record instead of the actual price).

* * * * *

■ 9. Section 40.332 is revised to read as follows:

§ 40.332 Suspension and revocation of permit.

Where the appropriate TTB officer has reason to believe that a manufacturer of tobacco products has not in good faith complied with the provisions of 26

U.S.C. chapter 52, and regulations thereunder, or with any other provision of 26 U.S.C. with intent to defraud, or has violated any condition of his permit, or has failed to disclose any material information required or made any material false statement in the application for the permit, or has failed to maintain his premises in such manner as to protect the revenue, or is, by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with 26 U.S.C. chapter 52, or has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, the appropriate TTB

officer shall issue an order, stating the facts charged, citing such person to show cause why his permit should not be suspended or revoked. Such citation shall be issued and opportunity for hearing afforded in accordance with part 71 of this chapter, which part is applicable to such proceedings. If, after hearing, the hearing examiner, or on appeal, the Administrator, finds that such person has not shown cause why his permit should not be suspended or revoked, such permit shall be suspended for such period as the appropriate TTB officer deems proper or shall be revoked.

(72 Stat 1421, as amended; 26 U.S.C. 5713)

■ 10. Section 40.351 is revised to read as follows:

§ 40.351 Cigarette papers.

Cigarette papers are taxed at the following rates under 26 U.S.C. 5701(c):

Product	Tax rate for each 50 papers* for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Cigarette papers up to 6½" long	\$ 0.0122	\$ 0.0315
Cigarette papers over 6½" long	Use rates above, but count each 2¾ inches, or fraction thereof, of the length of each as one cigarette paper.	

* Tax rate for less than 50 papers is the same. The tax is not prorated.

(72 Stat. 1414; 26 U.S.C. 5701)

■ 11. Section 40.352 is revised to read as follows:

§ 40.352 Cigarette tubes.

Cigarette tubes are taxed at the following rates under 26 U.S.C. 5701(d):

Product	Tax rate for each 50 tubes* for removals during the years:	
	2002 to March 31, 2009	April 1, 2009 and after
Cigarette tubes up to 6½" long	\$ 0.0244	\$ 0.0630
Cigarette tubes over 6½" long	Use rates above, but count each 2¾ inches, or fraction thereof, of the length of each as one cigarette tube.	

* Tax rate for less than 50 tubes is the same. The tax is not prorated.

(72 Stat. 1414; 26 U.S.C. 5701)

PART 41—IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

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

Authority: 18 U.S.C. 2342; 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5712, 5713, 5721–5723, 5741, 5754, 5761–5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7651, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 13. Section 41.30 is revised to read as follows:

§ 41.30 Pipe tobacco and roll-your-own tobacco tax rates.

Pipe tobacco and roll-your-own tobacco are taxed at the following rates under 26 U.S.C. 5701(f) and (g), respectively:

Product	Tax rate per pound* for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Pipe tobacco	\$ 1.0969	\$ 2.8311
Roll-your-own tobacco	\$ 1.0969	\$ 24.78

* Prorate tax for fractions of a pound.

■ 14. Paragraph (a) of § 41.31 is revised to read as follows:

§ 41.31 Cigar tax rates.

(a) Cigars are taxed at the following rates under 26 U.S.C. 5701(a):

Type and amount	Tax rate for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Small cigars per thousand	\$1.828	\$50.33
Large cigars*		
• percentage of sale price	20.719%	52.750%
• but not to exceed—	\$48.75 per thousand	\$0.4026 per cigar.

* For large cigars: Until March 31, 2009, the percentage tax rate applies when the sale price is \$235.294 per thousand or less, and the flat tax rate applies when the sale price is more than \$235.294 per thousand. On and after April 1, 2009, the percentage tax rate applies when the sale price is \$763.222 or less per thousand cigars, and the flat tax rate applies when the sale price is more than \$763.222 per thousand cigars.

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§ 41.32 Cigarette tax rates.

■ 15. Section 41.32 is revised to read as follows:

Cigarettes are taxed at the following rates under 26 U.S.C. 5701(b):

Product	Tax rate per thousand for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Small cigarettes	\$19.50	\$50.33
Large cigarettes up to 6½" long	\$40.95	\$105.69
Large cigarettes over 6½" long	Taxed at the rate for small cigarettes, counting each 2¾ or fraction thereof of the length of each as one cigarette.	

■ 16. Section 41.33 is revised to read as follows:

§ 41.33 Smokeless tobacco tax rates.

Smokeless tobacco products are taxed at the following rates under 26 U.S.C. 5701(e):

Product	Tax rate per pound* for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Snuff	\$0.585	\$1.51
Chewing tobacco	\$0.195	\$0.5033

* Prorate tax for fractions of a pound.

■ 17. Section 41.34 is revised to read as follows:

§ 41.34 Cigarette papers.

Cigarette papers are taxed at the following rates under 26 U.S.C. 5701(c):

Product	Tax rate for each 50 papers* for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Cigarette papers up to 6½ long	\$0.0122	\$0.0315
Cigarette papers over 6½ long	Use rates above, but count each 2¾" or fraction thereof of the length of each as one cigarette paper.	

* Tax rate for less than 50 papers is the same. The tax is not prorated.

■ 18. Section 41.35 is revised to read as follows:

§ 41.35 Cigarette tubes.

Cigarette tubes are taxed at the following rates under 26 U.S.C. 5701(d):

Product	Tax rate for each 50 tubes* for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Cigarette papers up to 6½ long	\$0.0244	\$ 0.0630

Product	Tax rate for each 50 tubes* for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Cigarette papers over 6½ long	Use rates above, but count each 2¾ or fraction thereof of the length of each as one cigarette tube.	

* Tax rate for less than 50 tubes is the same. The tax is not prorated.

■ 19. Section 41.81 is amended by revising paragraphs (c)(4)(ii) and (c)(4)(iii) to read as follows:

§ 41.81 Taxpayment.

* * * * *

(c) * * *

(4) * * *

(ii) For large cigars with a sale price of not more than \$235.294 per thousand before April 1, 2009, or a sale price of not more than \$763.222 per thousand on and after April 1, 2009, the number and total sale price of such cigars;

(iii) For large cigars with a sale price of more than \$235.294 per thousand before April 1, 2009, or a sale price equal to or more than \$763.222 per thousand on and after April 1, 2009, the number of cigars;

* * * * *

■ 20. Section 41.106 is amended by revising paragraphs (a)(5) and (a)(6) to read as follows:

§ 41.106 Record of shipment by taxpayer.

(a) * * *

(5) The number and total sale price of large cigars having a sale price of not more than \$235.294 per thousand before April 1, 2009, or a sale price of not more than \$763.222 per thousand on and after April 1, 2009, to be shipped;

(6) The number of large cigars having a sale price equal to or more than \$235.294 per thousand before April 1, 2009, or a sale price equal to or more than \$763.222 per thousand on and after April 1, 2009, to be shipped;

* * * * *

■ 21. Section 41.110 is amended by revising paragraphs (e) and (f) to read as follows:

§ 41.110 Record of tax computation and shipment by bonded manufacturer under deferred taxpayment.

* * * * *

(e) The number and total sale price of large cigars having a sale price of not more than \$235.294 per thousand before April 1, 2009, or a sale price of not more than \$763.222 per thousand on and after April 1, 2009, to be shipped;

(f) The number of large cigars having a sale price equal to or more than \$235.294 per thousand before April 1, 2009, or a sale price equal to or more

than \$763.222 per thousand on and after April 1, 2009, to be shipped;

* * * * *

■ 22. Section 41.198 is revised to read as follows:

§ 41.198 Investigation of applicant.

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

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

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

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

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

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

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703, 5704, 5708, 5711–13, 5721–5723, 5731, 5741, 5751, 5754, 6066, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 24. Section 44.92 is revised to read as follows:

§ 44.92 Investigation of applicant.

(a) *Investigation.* The appropriate TTB officer shall promptly cause such inquiry or investigation to be made, as may be necessary, to verify the information furnished in connection

with an application for permit and to ascertain whether the applicant is eligible for a permit. Any of the following conditions may be grounds for denial of a permit:

(1) The premises on which it is proposed to conduct the business are not adequate to protect the revenue; or

(2) The applicant (including, in the case of a corporation, any officer, director, or principal stockholder and, in the case of a partnership, a partner)—

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

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

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

(b) *TTB action.* An appropriate TTB officer who has reason to believe that the applicant is not entitled to a permit shall promptly give the applicant notice of the contemplated disapproval of his application and opportunity for hearing thereon in accordance with part 71 of this chapter, which part (including the provisions relating to the recommended decision and to appeals) is made applicable to such proceedings. If, after such notice and opportunity for hearing, the appropriate TTB officer finds that the applicant is not entitled to a permit, he shall, by order stating the findings on which his decision is based, deny the permit.

(72 Stat. 1421; 26 U.S.C. 5712)

■ 25. Section 44.162 is revised to read as follows:

§ 44.162 Suspension and revocation of permit.

Where the appropriate TTB officer has reason to believe that an export warehouse proprietor has not in good faith complied with the provisions of 26 U.S.C. chapter 52, and regulations

thereunder, or with any other provision of 26 U.S.C. with intent to defraud, or has violated any condition of his permit, or has failed to disclose any material information required or made any material false statement in the application for permit, or has failed to maintain his premises in such manner as to protect the revenue, or is, by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with 26 U.S.C. chapter 52, or has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products,

processed tobacco, cigarette paper, or cigarette tubes, the appropriate TTB officer shall issue an order, stating the facts charged, citing such export warehouse proprietor to show cause why the permit should not be suspended or revoked after hearing thereon in accordance with part 71 of this chapter, which part (including the provisions relating to appeals) is made applicable to such proceedings. If, after hearing, the hearing examiner, or on appeal, the Administrator, finds that such person has not shown cause why the permit should not be suspended or revoked, such permit shall be suspended for such period as the appropriate TTB officer deems proper or shall be revoked.

(72 Stat. 1421; 26 U.S.C. 5713)

PART 46—MISCELLANEOUS REGULATIONS RELATING TO TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

■ 26. The authority citation for Part 46 continues to read as follows:

Authority: 18 U.S.C. 2341–2346, 26 U.S.C. 5704, 5708, 5751, 5754, 5761–5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7805; 44 U.S.C. 3504(h), 49 U.S.C. 782, unless otherwise noted.

■ 27. Section 46.75 is amended by removing the tables titled “Example using 1993–1999 Rates” and “Example using 2000–2001 Rates” and by adding a new example at the end:

§ 46.75 Required information for claims.

* * * * *

EXAMPLE USING RATES FOR APRIL 1, 2009 AND AFTER

Quantity	Article	Rate of tax	Amount
20,000	Small cigars	\$50.33 per thousand	\$1,006.60
1,000	Large cigars—sale price \$100/thousand	52.75% of sale price	52.75
500	Large cigars—sale price \$0.77 per cigar	\$0.4026 per cigar	201.30
10,000	Small cigarettes	\$50.33 per thousand	503.30
5,000	Large cigarettes	\$105.69 per thousand	528.45
199,975	Cigarette papers	\$0.0315 per 50 papers	126.00
1,000	Cigarette tubes	\$0.0630 per 50 tubes	1.26
100 lbs	Chewing tobacco	\$0.5033 per pound	50.33
200 lbs	Snuff	\$1.51 per pound	302.00
100 lbs	Pipe tobacco	\$2.8311 per pound	283.11
300 lbs	Roll-your-own tobacco	\$24.78 per pound	7,434.00
Total claimed	10,489.10

■ 28. Subpart I is revised to read as follows:

Subpart I—Floor Stocks Tax on Certain Tobacco Products, Cigarette Papers, and Cigarette Tubes Held for Sale on April 1, 2009

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- 46.191 Purpose of this subpart.
- 46.192 Definitions used in this subpart.
- 46.193 Persons liable for floor stocks tax.
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- 46.201 General.
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- 46.204 Articles in transit.
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- 46.206 Articles in a foreign trade zone.
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Tax Liability Calculation

- 46.221 Floor stocks tax rates.

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Filing Requirements

- 46.231 Floor stocks tax return.
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Records

- 46.241 Required records.
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Claims

- 46.251 Payment of tax required.
- 46.252 Claim based on error on return.
- 46.253 Destruction of articles by a Presidentially-declared major disaster.
- 46.254 Additional reasons for filing a claim.

Alternate Methods or Procedures

- 46.261 Purpose of an alternate method or procedure.
- 46.262 Application.
- 46.263 Conditions for approval.
- 46.264 Withdrawal of an approval.

TTB Authorities

- 46.270 [Reserved]
- 46.271 Entry, examination and testimony.
- 46.272 Issuance of summons.
- 46.273 Refusing entry or examination.
- 46.274 Penalties for failure to comply.

Subpart I—Floor Stocks Tax on Certain Tobacco Products, Cigarette Papers, and Cigarette Tubes Held for Sale on April 1, 2009

Authority: Section 701, Pub. L. 111–3, unless otherwise noted.

General

§ 46.191 Purpose of this subpart.

The regulations in this subpart implement the floor stocks tax on certain tobacco products, cigarette papers, and cigarette tubes held for sale on April 1, 2009.

§ 46.192 Definitions used in this subpart.

As used in this subpart, the following terms have the meanings indicated unless the context in which they are used requires a different meaning or a different definition is prescribed for a

particular section or portion of this subpart.

(a) *Appropriate TTB officer.* An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.46, Delegation of the Administrator's Authorities in 27 CFR 46, Miscellaneous Regulations Relating to Tobacco Products and Cigarette Papers and Tubes.

(b) *Articles subject to floor stocks tax.* All Federally taxpaid or tax determined tobacco products (other than large cigars described in 26 U.S.C. 5701(a)(2)), cigarette papers, and cigarette tubes that are held for sale on April 1, 2009.

(c) *Cigarette paper.* Paper, or any other material except tobacco, prepared for use as a cigarette wrapper.

(d) *Cigarette tube.* Cigarette paper made into a hollow cylinder for use in making cigarettes.

(e) *Controlled group.* A related group of dealers under common control. Controlled groups include:

(1) *Controlled group of corporations.* The term "controlled group of corporations" has the meaning given to that term by 26 U.S.C. 1563(a) and the implementing regulations in 26 CFR 1.1563-1 through 1.1563-4, except that the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each time it appears.

Controlled groups of corporations include, but are not limited to:

(i) Parent-subsidiary controlled groups as defined in 26 CFR 1.1563-1T(a)(2).

(ii) Brother-sister controlled groups as defined in 26 CFR 1.1563-1T(a)(3).

(iii) Combined groups as defined in 26 CFR 1.1563-1T(a)(4).

(2) *Nonincorporated dealers under common control.* A group of dealers is considered to be a controlled group when the group would qualify as a controlled group of corporations, except for the fact that one or more of the dealers is not incorporated.

(f) *Dealer.* A person or other entity holding articles subject to floor stocks tax for sale on April 1, 2009, including manufacturers, importers, wholesalers, and retailers.

(g) *Floor stocks tax.* A tax imposed on all Federally taxpaid or tax determined tobacco products (other than large cigars described in 26 U.S.C. 5701(a)(2)), cigarette papers, and cigarette tubes held for sale on April 1, 2009. The floor stocks tax is the difference between the previous excise tax rate and the new excise tax rate.

(h) *Foreign trade zone.* A foreign trade zone established and operated pursuant to the Act of June 18, 1934, as amended, 19 U.S.C. 81a.

(i) *Person.* An individual, trust, estate, partnership, association, company, or corporation, any State, including the District of Columbia, or political subdivision thereof, or any agency or instrumentality of a State or political subdivision thereof.

(j) *Tobacco products.* Cigars, cigarettes, snuff, chewing tobacco, pipe tobacco, and roll-your-own tobacco as described in 26 U.S.C. 5702(a), (b), (m)(2), (m)(3), (n) and (o), respectively.

§ 46.193 Persons liable for floor stocks tax.

A dealer who holds for sale any articles subject to floor stocks tax on April 1, 2009, is liable for floor stocks tax. See §§ 46.204 and 46.205 regarding articles subject to floor stocks tax that are in transit on April 1, 2009 and § 46.206 regarding articles subject to floor stocks tax that are held in a foreign trade zone on April 1, 2009.

§ 46.194 Persons not liable for floor stocks tax.

A person who does not meet the definition of a dealer is not liable for the floor stocks tax under this subpart.

§ 46.195 Floor stocks requirements.

(a) *Take inventory.* The dealer must establish the quantity of articles subject to the floor stocks tax held for sale on April 1, 2009. The dealer may take a

physical inventory or may use a record (book) inventory, as specified in § 46.202 or § 46.203.

(b) *Compute tax.* The dealer must compute the amount of tax for the articles held for sale on April 1, 2009. Refer to the table in § 46.222. The dealer may apply the tax credit as provided in § 46.223.

(c) *File tax return and pay tax.* After computing the floor stocks tax, the dealer must file a return even if no tax is due. See § 46.233 for payment methods if tax is due.

(d) *Maintain records.* The dealer must maintain all records used to determine the quantity of articles subject to floor stocks tax and the quantity of articles held for sale on April 1, 2009 that are not subject to floor stocks tax. The dealer must also maintain records of all computations used to determine the amount of tax owed. Refer to § 46.241.

(Approved by the Office of Management and Budget under control number 1513-0129)

Inventories

§ 46.201 General.

(a) *Date.* The dealer must take an inventory to establish the quantities of articles subject to the floor stocks tax held for sale on April 1, 2009. The dealer must take the physical inventory or record (book) inventory not earlier than March 26, 2009 and not later than April 10, 2009.

(b) *Reconciliation.* If the dealer takes a physical inventory on any day other than April 1, 2009, the resulting records must be reconciled to reflect the actual quantity of articles held at 12:01 a.m. on April 1, 2009. These records must include all supporting records of receipt and disposition.

(c) *Method.* The dealer may take a physical inventory in accordance with § 46.202 or a record (book) inventory in accordance with § 46.203. The following table lists the taxable articles and the method to use for each to determine quantities:

Article	Inventory method
Small cigarettes	Count the number of cigarettes.
Large cigarettes 6½" or less in length	Count the number of large cigarettes.
Large cigarettes more than 6½" in length	Keep a separate count for each size of large cigarette. Count each 2¾", or fraction thereof, as one small cigarette.
Small Cigars	Count the number of small cigars.
Snuff	Count the number of packages at each weight, noting the weight in pounds and ounces. Convert the ounces to pounds.
Chewing tobacco	Count the number of packages at each weight, noting the weight in pounds and ounces. Convert the ounces to pounds.
Pipe tobacco	Count the number of packages at each weight, noting the weight in pounds and ounces. Convert the ounces to pounds.
Roll-your-own tobacco	Count the number of packages at each weight, noting the weight in pounds and ounces. Convert the ounces to pounds.
Cigarette papers 6½" or less in length	Count the number of cigarette papers, divide by 50, and round up if there is any remainder.

Article	Inventory method
Cigarette papers more than 6½" in length	Count the number for each size of cigarette paper. Count each 2¾", or fraction thereof, as new cigarette paper. Divide adjusted total by 50 and round up if there is any remainder.
Cigarette tubes 6½" or less in length	Count the number of cigarette tubes, divide by 50, and round up if there is any remainder.
Cigarette tubes more than 6½" in length	Count the number for each size of cigarette tube. Count each 2¾", or fraction thereof, as one cigarette tube. Divide adjusted total by 50 and round up if there is any remainder.

§ 46.202 Physical inventory requirements.

The dealer's physical inventory must result in a written record of:

(a) The quantity and type of each article subject to floor stocks tax recorded in sufficient detail to determine the tax rate as stated in § 46.222. See the table in § 46.201(c) for the information required for each type of article;

(b) The date and time the inventory was taken;

(c) The name of the individual(s) conducting the inventory and the name of the dealer for whom the inventory was taken; and

(d) The location where the inventory was taken (street address, city and State).

(Approved by the Office of Management and Budget under control number 1513-0129)

§ 46.203 Record (book) inventory requirements.

(a) The dealer may use a record (book) inventory if the dealer has source records that show:

(1) The quantities of receipts and dispositions of all articles subject to floor stocks tax;

(2) The types and quantities of articles actually on hand as if a physical inventory had taken place on April 1, 2009. See the table in § 46.201(c) for the information required for each type of article;

(3) The name and address of the consignor and consignee. For over the counter sales by retail dealers, the consignee name and address is not required;

(4) The date of receipt or disposition of the articles; and

(5) The brand name of each product.

(b) If the dealer does not take the inventory as of the close of business on the last business day before April 1, 2009, the records must be reconciled as provided in § 46.201(b).

(Approved by the Office of Management and Budget under control number 1513-0129)

§ 46.204 Articles in transit.

The dealer must include articles subject to floor stocks tax that are in transit in the inventory if the dealer holds title to those articles. If the dealer has transferred title to the article, the

dealer must document the title transfer in writing. For example, the dealer may mark the bill of lading with a written statement that indicates the time and place of the title transfer.

(Approved by the Office of Management and Budget under control number 1513-0129)

§ 46.205 Guidelines to determine title to articles in transit.

The dealer may use the following guidelines to establish who holds title to articles in transit.

(a) If State law mandates the change in title, then no agreement or contract between seller and buyer can alter it.

(b) In the absence of State law governing the change of title between seller and buyer, the Uniform Commercial Code allows the seller and buyer to agree when title passes.

(c) If there is no State law or agreement between the seller and buyer, the Uniform Commercial Code states that title transfer depends on how the seller ships the articles.

(1) If the shipment is free on board (F.O.B.) destination, the title transfer occurs when the seller completes the physical delivery of the articles.

(2) If the shipment is free on board (F.O.B.) shipping point, the title transfer occurs at the time and place of shipment, which is generally by common carrier.

§ 46.206 Articles in a foreign trade zone.

If articles subject to floor stocks tax are stored in a foreign trade zone established under the Foreign Trade Zone Act (the Act of June 18, 1934, 48 Stat. 998, 19 U.S.C. 81a *et seq.*), the dealer is liable for the tax and must take an inventory in accordance with § 46.207 or when either of the following conditions apply:

(a) Internal revenue taxes have been determined or customs duties liquidated, with respect to the articles pursuant to the first proviso of section 3(a) of the Foreign Trade Zone Act; or

(b) Articles are held by a customs officer pursuant to the second proviso of section 3(a) of the Foreign Trade Zone Act.

§ 46.207 Articles held in bond.

If the dealer is a manufacturer or an export warehouse proprietor and holds

articles in TTB bond on April 1, 2009, the floor stocks tax does not apply to those articles. Likewise, if the dealer holds articles in a customs bonded warehouse on which tax has not been paid or determined, the floor stocks tax does not apply on those articles.

However, if the dealer on April 1, 2009, holds articles in a customs bonded warehouse or foreign trade zone on which tax has been paid or determined pursuant to 26 U.S.C. 5703(b)(2)(B), the floor stocks tax applies to those articles.

§ 46.208 Unmerchutable articles.

Articles that the dealer holds for return to a supplier because of some defect are not subject to the floor stocks tax. However, the dealer must segregate any such unmerchutable articles and include them in a separate section of the inventory record. The dealer cannot include as unmerchutable any items that may be held because of poor market demand or to reduce the dealer's inventory. If, for any reason, the tobacco products or cigarette papers or tubes that were determined to be unmerchutable are not subsequently returned or destroyed, the dealer must file an additional floor stocks tax return and pay tax on such products plus any applicable penalties and interest.

(Approved by the Office of Management and Budget under control number 1513-0129)

§ 46.209 Articles in vending machines.

There is no exemption for articles in vending machines. They are subject to the floor stocks tax and must be included in the dealer's inventory record.

§ 46.210 Articles marked "not for sale" or "complimentary".

Articles marked "not for sale" or "complimentary" that are part of a sale (for example, buy two packs and get one pack free) are subject to the floor stocks tax and must be included in the physical or record (book) inventory as provided in §§ 46.202 or § 46.203.

Tax Liability Calculation

§ 46.221 Floor stocks tax rates.

Product	Floor stocks tax rate
Small cigars	\$48.502 per thousand.
Small cigarettes	30.83 per thousand.
Large cigarettes 6½ inch or less in length	64.74 per thousand.
Large cigarettes more than 6½ inch in length	30.83 per thousand units of length.
Snuff	0.925 per pound.
Chewing tobacco	0.3083 per pound.
Pipe tobacco	1.7342 per pound.
Roll-your-own	23.6831 per pound.
Cigarette papers	0.0193 per 50 papers or fraction thereof
Cigarette tubes	0.0386 per 50 tubes or fraction thereof.

§ 46.222 Determination of amount of tax due.

After the dealer has taken the inventory, the dealer must convert the

inventory quantities to taxable units using the table below. For tobacco products, round the quantities to two decimal places. The dealer must then

apply the applicable tax rate for each type of taxable article using the table in § 46.221 to determine the amount of tax due.

Product	Computation
Small cigars weighing not more than 3 pounds thousand	Divide number of cigars by 1,000 and multiply by the small cigar tax rate.
Small cigarettes weighing not more than 3 pounds thousand	Divide number of cigarettes by 1,000 and multiply by the small cigarette tax rate.
Large cigarettes weighing more than 3 pounds thousand, measuring 6½" or less in length.	Divide number of cigarettes by 1,000 and multiply by the large cigarette tax rate.
Large cigarettes weighing more than 3 pounds thousand, measuring more than 6½" in length.	Mathematically adjust the number of large cigarettes using the instructions below.* Divide the adjusted number of large cigarettes by 1,000 and multiply by the small cigarette tax rate.
Snuff	Multiply the total in pounds by the snuff tax rate.
Chewing tobacco	Multiply the total in pounds by the chewing tobacco tax rate.
Pipe tobacco	Multiply the total in pounds by the pipe tobacco tax rate.
Roll-your-own	Multiply the total in pounds by the roll-your-own tax rate.
Cigarette papers 6½" or less in length	Divide the number of cigarette papers by 50, add 1 if there is a remainder, and multiply that number by the cigarette paper tax rate.
Cigarette papers more than 6½" in length	Mathematically adjust the number of cigarette papers using the instructions below.* Divide the adjusted number of cigarette papers by 50, add 1 if there is a remainder, and multiply that number by the cigarette paper tax rate.
Cigarette tubes 6½" or less in length	Divide the number of cigarette tubes by 50, add 1 if there is a remainder, and multiply that number by the cigarette tube tax rate.
Cigarette tubes more than 6½" in length	Mathematically adjust the number of cigarette tubes using the instructions below.* Divide the adjusted number of cigarette tubes by 50, add 1 if there is a remainder, and multiply that number by the cigarette tube tax rate.

*Large cigarettes, cigarette papers, and cigarette tubes more than 6½ inch in length are counted as multiple units. Each 2¾ inch or fraction of the length is counted as a separate taxable unit. For each different length of product in this category, divide the length by 2¾ inch and add 1 to the result if there is a remainder. Multiply the number of cigarettes, cigarette papers, or tubes of that length by the resulting number.

§ 46.223 Tax credit.

The dealer is allowed a credit of up to \$500 against the total floor stocks tax. However, controlled groups are eligible for only one credit for the entire group. The credit may be divided equally among the members or apportioned in any other manner agreeable to the members.

Filing Requirements

§ 46.231 Floor stocks tax return.

Form 5000.28T09, 2009 Floor Stocks Tax Return—Tobacco Products and Cigarette Papers and Tubes, is available for printing through the TTB Web site (<http://www.ttb.gov>) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue

Center, 550 Main Street, Suite 8002, Cincinnati, OH 45202–5215.

§ 46.232 Preparation of floor stocks tax return.

The dealer must complete and file the floor stocks tax return in accordance with the instructions for the form.

§ 46.233 Payment of floor stocks tax.

(a) *Electronic funds transfer.* If the dealer pays any other excise taxes collected by TTB by electronic funds transfer, then the dealer must also send the payment for the floor stocks tax by an electronic funds transfer. Other dealers may voluntarily elect to pay the floor stocks tax by electronic funds transfer. Electronic funds transfers of floor stocks tax must be received on or before July 31, 2009.

(b) *Check or money order.* Dealers not paying floor stocks tax by electronic fund transfer must pay by a check or money order sent with Form 5000.28T09.

§ 46.234 Tax payment deadline.

Section 701 of Public Law 111–3 specifies a tax payment deadline of August 1, 2009. However, section 5703(b)(2)(E) of the Internal Revenue Code requires that when a due date falls on a Saturday, Sunday or a legal holiday, the preceding day that is not a Saturday, Sunday or legal holiday will be the due date. Therefore, the floor stocks tax is due on July 31, 2009, since August 1, 2009, falls on a Saturday.

§ 46.235 Filing requirements for multiple locations.

The dealer may file a consolidated return if all locations or places of business have the same employer identification number. The dealer also has the option of filing a separate return for each place of business or location.

§ 46.236 Articles in a warehouse.

(a) Articles warehoused at one or more locations must be reported on the tax return representing the location where the articles will be offered for sale.

(b) Articles offered for sale at several locations must be reported on a tax return filed by one or more of the locations. The articles can be reported by a single location or apportioned among several locations.

§ 46.237 Controlled group member.

If the dealer is a member of a controlled group, but has its own employer identification number, the dealer must file a separate floor stocks tax return. The dealer may take the tax credit referred to in § 46.223 if it is apportioned to the dealer as a member of the controlled group.

Records**§ 46.241 Required records.**

The dealer must maintain:

- (a) Inventory records;
- (b) Tax computation records;
- (c) Names, addresses and employer identification numbers of all controlled group members, if applicable;
- (d) A copy of the tax return, if the dealer filed one;
- (e) A list of locations covered by the tax return; and
- (f) A copy of any alternate method or procedure approval issued under § 46.263.

(Approved by the Office of Management and Budget under control number 1513-0129)

§ 46.242 Period for maintaining records.

The dealer must maintain the required records for a period of three years from the due date of the tax return or the date the return was filed, whichever is later. However, the appropriate TTB officer may require, in writing, that the dealer keep these records for an additional period of not more than 3 years.

(Approved by the Office of Management and Budget under control number 1513-0129)

§ 46.243 Articles at multiple locations.

The dealer must maintain a list of all places where the dealer holds articles subject to the floor stocks tax. This list must include:

- (a) Address;

(b) Name of the proprietor (if different);

(c) The employer identification number (if different); and

(d) Types and quantities of articles held at each location.

(Approved by the Office of Management and Budget under control number 1513-0129)

§ 46.244 Location of records.

The dealer must keep the inventory records at the principal place of business. All records must be made available to an appropriate TTB officer upon demand.

(Approved by the Office of Management and Budget under control number 1513-0129)

§ 46.245 Errors in records.

If the inventory records or tax computation records contain an error that resulted in an overpayment of tax, the dealer may file a claim for refund. If the inventory or tax computation records contain an error that resulted in an underpayment of tax, the dealer must file an additional tax return on which the dealer shows and pays the additional tax, interest and any applicable penalties.

(Approved by the Office of Management and Budget under control number 1513-0129)

Claims**§ 46.251 Payment of tax required.**

Before the dealer can file a claim for refund, the dealer must have paid the floor stocks tax and subsequently determined that there was an overpayment of the tax.

§ 46.252 Claim based on error on return.

If the dealer overpaid tax due to an error on the return, the dealer may file a claim for refund. The claim must be filed within 3 years from the date the tax return was filed or 2 years from the time the tax was paid, whichever is later. The dealer's claim must be filed on TTB Form 2635 (5620.8). The claim must include detailed and sufficient evidence explaining why the dealer believes the tax was overpaid. The claim and supporting documentation must be mailed or delivered to the address shown on the form.

(Approved by the Office of Management and Budget under control number 1513-0030)

§ 46.253 Destruction of articles by a Presidentially-declared major disaster.

After the dealer has paid the floor stocks tax, the dealer may file a claim for refund of tax on articles lost, rendered unmarketable, or condemned because of a Presidentially-declared major disaster. Subpart C of this part

prescribes the time, evidence, and procedures for filing such a claim.

§ 46.254 Additional reasons for filing a claim.

(a) *Manufacturer.* Subparts I and K of part 40 of this chapter prescribe the times, reasons and procedures for filing other claims for refunds.

(b) *Export warehouse proprietor.* Subpart G of part 44 of this chapter prescribes the time, evidence, and procedures for filing other claims for refunds.

(c) *Exported taxpaid.* If taxpaid articles are shipped from the United States, the dealer may file a claim for drawback of taxes under subpart K of part 44 of this chapter.

(d) *Importer.* An importer may follow the procedures for filing a claim as set forth in subpart I of part 41 of this chapter.

Alternate Methods or Procedures**§ 46.261 Purpose of an alternate method or procedure.**

For purposes of this subpart, an alternate method or procedure is a different way of meeting a requirement imposed by this subpart. An alternate method or procedure must be approved in writing by TTB.

§ 46.262 Application.

The dealer seeking approval of an alternate method or procedure under this subpart must apply in writing to the National Revenue Center, 550 Main Street, Room 8002, Cincinnati, Ohio 45202-5215. The dealer must describe the alternate method or procedure and reasons the dealer wishes to use it. The dealer cannot use the alternate method until the dealer receives written approval from the appropriate TTB officer.

§ 46.263 Conditions for approval.

The alternate method or procedure may be approved if it meets all of the following conditions:

- (a) There is good cause for its use;
- (b) It is consistent with the purpose and effect intended by the prescribed method or procedure;
- (c) It affords equivalent security to the revenue;
- (d) It is not contrary to any provision of law;
- (e) It will not result in an increase in cost to the Government;
- (f) It will not hinder the effective administration of this subpart such as delaying timely payment of taxes; and
- (g) It is not a method or procedure that relates to the payment or collection of tax.

§ 46.264 Withdrawal of an approval.

The approval will be withdrawn if revenue is jeopardized or administration of this subpart is hindered. The appropriate TTB officer will give the dealer a written notice of the withdrawal.

TTB Authorities**§ 46.270 [Reserved]****§ 46.271 Entry, examination and testimony.**

Appropriate TTB officers, in performing official duties, may enter any premises to examine articles subject to floor stocks tax. They may enter the premises during the day or may also enter at night if the premises are open. Appropriate TTB officers may audit and examine all articles, inventory records, books, papers, or other resource data for the purpose of ascertaining, determining, or collecting floor stocks tax. They may take testimony, under oath, of any person when inquiring as to proper payment of floor stocks taxes.

§ 46.272 Issuance of summons.

Appropriate TTB officers can issue summonses when there is no referral to the Justice Department under the authority stated in § 70.22 of this chapter. The summons will state a place and time for such items or person to appear. TTB will issue a summons to require:

(a) Any books of account or other data pertaining to liability for floor stocks tax;

(b) Any person liable for the floor stocks tax or having possession of books of account or other data; and

(c) Any other appropriate person in connection with the books or tax liability.

§ 46.273 Refusing entry or examination.

If the dealer or another person in charge of the premises refuses to admit any appropriate TTB officer or prevents any appropriate TTB officer from examining the records or articles, the dealer may be liable for the penalties described in 26 U.S.C. 7342 or 7212.

§ 46.274 Penalties for failure to comply.

If the dealer fails to follow the regulations set forth in this subpart, TTB may apply applicable civil and criminal penalties under the Internal Revenue Code of 1986. For example, failure to file and failure to pay penalties may be assessed against the dealer if the dealer does not timely file the tax return or timely pay the taxes due. In addition, interest under 26 U.S.C. 6621 accrues for any underpayment of tax and on all assessed penalties until paid.

PART 71—RULES OF PRACTICE IN PERMIT PROCEEDINGS

■ 29. The authority citation for part 71 is revised to read as follows:

Authority: 26 U.S.C. 5271, 5181, 5712, 5713, 7805, 27 U.S.C. 204.

■ 30. Section 71.46 is revised to read as follows:

§ 71.46 Suspension and revocation of tobacco permits.

Whenever the appropriate TTB officer has reason to believe that any person has not in good faith complied with any of the provisions of 26 U.S.C. chapter 52 or regulations issued thereunder, or has not complied with any provision of 26 U.S.C. which involves intent to defraud, or has violated any of the conditions of his permit, or has failed to disclose any material information required, or has made any materially false statement, in the application for his permit, or has failed to maintain his premises in such manner as to protect the revenue, or is, by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with 26 U.S.C. chapter 52, or has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, the appropriate TTB officer shall issue a citation for the revocation or suspension of such permit.

(72 Stat 1421, as amended; 26 U.S.C. 5713)

■ 31. Section 71.49b is revised to read as follows:

§ 71.49b Denial of application for tobacco permit.

The appropriate TTB officer may issue a citation for the contemplated disapproval of an application for a tobacco permit provided for in 26 U.S.C. 5713, if the appropriate TTB officer on examination of the application has reason to believe—

(a) The premises on which it is proposed to conduct the business are not adequate to protect the revenue;

(b) The applicant for a permit does not meet the minimum manufacturing and activity requirements in § 40.61 of this chapter; or

(c) The applicant (including, in the case of a corporation, any officer, administrator, or principal stockholder and, in the case of a partnership, a partner) is, by reason of his business experience, financial standing, or trade

connections, or by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with 26 U.S.C. chapter 52, or has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, or has failed to disclose any material information required or made any material false statement in the application.

(72 Stat. 1421, as amended; 26 U.S.C. 5712)

Signed: March 10, 2009.

John J. Manfreda,
Administrator.

Approved: March 12, 2009.

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

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DEPARTMENT OF VETERANS AFFAIRS**38 CFR Part 3**

RIN 2900-AN04

Posttraumatic Stress Disorder

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document affirms an amendment to the Department of Veterans Affairs (VA) adjudication regulations regarding service connection for posttraumatic stress disorder (PTSD) that eliminated the requirement of evidence corroborating occurrence of the claimed in-service stressor in claims in which PTSD is diagnosed in service. This amendment is necessary to facilitate proof of service connection in such claims. By this amendment, we intend to more quickly adjudicate claims for service connection for PTSD for these veterans.

DATES: The interim final rule became effective on October 29, 2008, and is applicable to claims pending before VA on the effective date of that rule, as well as to claims filed after that date.

FOR FURTHER INFORMATION CONTACT: Maya Ferrandino, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (727) 319-5847. (This is not a toll-free number.)