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## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Parts 40, 41, 44, 45, and 46

[Docket No. TTB-2010-0004; Notice No. 120; re: Notice No. 106]

RIN 1513-AB78

#### Standards for Pipe Tobacco and Roll-Your-Own Tobacco; Request for Public Comment

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

**ACTION:** Advance notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) is reopening the comment period for Notice No. 106, which requested public comments on standards to distinguish between pipe tobacco and roll-your-own tobacco for Federal excise tax purposes based on certain physical characteristics of the two products. This reopening of the comment period solicits comments from the public on certain issues that were raised in public comments received in response to Notice No. 106. This notice also sets forth for possible public comment the results of preliminary laboratory analyses conducted by TTB.

**DATES:** We must receive written comments on or before October 24, 2011.

**ADDRESSES:** You may send comments on this notice to one of the following addresses:

- <http://www.regulations.gov>: Use the comment form for Notice No. 106 as posted within Docket No. TTB-2010-0004 on "Regulations.gov," the Federal e-rulemaking portal, to submit comments via the Internet;

- **Mail:** Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412.

- **Hand Delivery/Courier in Lieu of Mail:** Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200-E, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of all published notices, selected supporting materials, and the comments received about this

proposal within Docket No. TTB-2010-0004 at <http://www.regulations.gov>. A link to this Regulations.gov docket is posted on the TTB Web site at [http://www.ttb.gov/regulations\\_laws/all\\_rulemaking.shtml](http://www.ttb.gov/regulations_laws/all_rulemaking.shtml) under Notice No. 106. You also may view copies of all published notices, all supporting materials, and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202-453-2270 to make an appointment.

#### FOR FURTHER INFORMATION CONTACT:

Christopher M. Thiemann, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200E, Washington, DC 20220; telephone 202-453-1039, Ext. 138.

#### SUPPLEMENTARY INFORMATION:

##### TTB Authority

Chapter 52 of the Internal Revenue Code of 1986 (IRC) sets forth the Federal excise tax and related provisions that apply to tobacco products and processed tobacco manufactured, or imported into, the United States. Section 5702(c) of the IRC (26 U.S.C. 5702(c)) defines the term "tobacco products" as "cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco." Each of these terms is also separately defined in section 5702. Section 5702(p) states that a manufacturer of processed tobacco is "any person who processes any tobacco other than tobacco products" and that "the processing of tobacco shall not include the farming or growing of tobacco or the handling of tobacco solely for sale, shipment, or delivery to a manufacturer of tobacco products or processed tobacco."

Regulations implementing the provisions of chapter 52 of the IRC are contained in 27 CFR parts 40 (Manufacture of tobacco products, cigarette papers and tubes, and processed tobacco), 41 (Importation of tobacco products, cigarette papers and tubes, and processed tobacco), 44 (Exportation of tobacco products and cigarette papers and tubes, without payment of tax, or with drawback of tax), 45 (Removal of tobacco products and cigarette papers and tubes, without payment of tax, for use of the United States), and 46 (Miscellaneous regulations relating to tobacco products and cigarette papers and tubes). These statutory and regulatory provisions are administered by the Alcohol and Tobacco Tax and Trade Bureau (TTB).

#### Publication of Notice No. 106

On July 22, 2010, TTB published in the **Federal Register** (75 FR 42659) an advance notice of proposed rulemaking, Notice No. 106, in response to changes made to the IRC tobacco provisions by sections 701 and 702 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). These changes to the IRC included an expansion of the definition of "roll-your-own tobacco" and an increase in the tax rate applicable to pipe tobacco and roll-your-own tobacco that resulted in a significant difference in the tax rates applicable to the two groups of products. In Notice No. 106, TTB described the heightened need for more regulatory detail to clarify the difference between pipe tobacco and roll-your-own tobacco as a result of the tax rate changes adopted by CHIPRA. In that notice, TTB also described and requested comments on six written submissions concerning the distinctions between pipe tobacco and roll-your-own tobacco that it had received in response to earlier rulemaking action regarding CHIPRA.

#### Comments Received

TTB received 24 comments from groups and individuals in response to Notice No. 106. Commenters provided input on the distinctions between pipe tobacco and roll-your-own tobacco based on physical characteristics as described by the original six submissions noted above. Commenters also provided suggestions on other characteristics which would be useful for distinguishing between pipe tobacco and roll-your-own tobacco, and made other substantive comments about the issues involved in the rulemaking. One of the 24 comments was withdrawn by the commenter after the close of the comment period, and two of the comments were not suitable for public posting because they did not address the issues presented for public comment. The remaining 21 comments may be viewed at the Regulations.gov Web site referred to in the **ADDRESSES** section of this document.

After the close of the Notice No. 106 comment period, TTB received a request to meet with attorneys from Patton Boggs LLP and their client, Liggett Vector Brands LLC. At this meeting, which took place on June 13, 2011, Liggett Vector's chief executive officer and other company representatives presented TTB with a proposal to use certain physical characteristics to distinguish between pipe tobacco and roll-your-own tobacco that differ from the standards proposed by other

commenters, described in Notice No. 106. The new proposal, which was submitted as a slide presentation, is now posted with the comments on Notice No. 106 as Comment 23 and may be viewed at the Regulations.gov Web site referred to above.

Additionally, TTB believes it would be appropriate to bring to the attention of the public the results of preliminary laboratory tests that TTB conducted on a number of products labeled as pipe tobacco and as roll-your-own tobacco purchased by TTB from stores in the Beltsville, Maryland, area on February 13, 2009. TTB subjected the samples to a series of experiments to determine whether there were analytical markers that might be appropriate for further evaluation as a means of distinguishing between pipe tobacco and roll-your-own tobacco, and to evaluate standards submitted by industry members in response to the CHIPRA rulemaking actions in order to identify any methodological issues with those standards. A posting summarizing the results of these laboratory tests may be viewed at the Regulations.gov Web site referred to under the **ADDRESSES** section of this document. These posted results do not constitute a TTB conclusion regarding the distinction between pipe tobacco and roll-your-own tobacco but rather are merely intended as an additional point of reference for comments that the public may wish to make regarding the basic issue raised in Notice No. 106.

#### **Determination To Re-Open Public Comment Period**

Because some of the comments received in response to Notice No. 106 raise points that were not specifically addressed in that notice, and in view of the subsequent proposal from Liggett Vector Brands LLC, TTB has determined that it would be appropriate to reopen the comment period for Notice No. 106 in order to afford industry members and other interested parties an opportunity to submit comments on those additional points and proposals. In addition, the Bureau believes that it would be appropriate to make available for comment preliminary results of the laboratory procedures referred to above.

Accordingly, TTB is reopening the comment period for Notice No. 106 for an additional 60 days from the date of publication of this document. After the close of that 60-day comment period, TTB will carefully review the comments previously submitted in response to Notice No. 106, the Liggett Vector Brands LLC proposal, and any additional comments submitted in response to this document, in order to

determine whether there is a sufficient basis for the publication of a notice of proposed rulemaking regarding specific regulatory changes to clarify the distinction between pipe tobacco and roll-your-own tobacco.

#### **Public Participation**

##### *Comments Invited*

As discussed above, in addition to the questions originally presented in Notice No. 106, TTB invites interested members of the public to comment on the proposals made by various commenters and on whether the proposed standards are appropriate and sufficient for distinguishing between pipe tobacco and roll-your-own tobacco. Further, we continue to invite commenters to opine on how many of the physical characteristics in a given proposal should be present in order for the product to be classified as "pipe tobacco" (e.g., 2 of 5, 3 of 6). Finally, because we recognize that roll-your-own tobacco and pipe tobacco must be classified relative to processed tobacco, which is not taxed, we also invite comments on how processed tobacco may differ from the other two named commodities.

If any comments include the results of any analytical procedures by or on behalf of the commenter, please provide the specific analytical data on which the comment is based. All comments previously submitted to TTB regarding Notice No. 106 will be given full consideration, so there is no need to resubmit such comments.

##### *Submitting Comments*

You may submit comments on this notice by using one of the following three methods:

- **Federal e-Rulemaking Portal:** You may send comments via the online comment form linked to Notice No. 106 as posting in Docket No. TTB-2010-0004 on "Regulations.gov," the Federal e-rulemaking portal, at <http://www.regulations.gov>. A link to the docket is posted on the TTB Web site at [http://www.ttb.gov/regulations\\_laws/all\\_rulemaking.shtml](http://www.ttb.gov/regulations_laws/all_rulemaking.shtml) under Notice No. 106. Supplemental files may be attached to comments submitted via Regulations.gov. For information on how to use Regulations.gov, click on the site's Help or FAQ tabs.
- **U.S. Mail:** You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412.
- **Hand Delivery/Courier:** You may hand-carry your comments or have them

hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200-E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 106 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and the Bureau considers all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via Regulations.gov, please include the entity's name in the "Organization" blank of the comment form. If you comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

##### *Confidentiality*

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or that is inappropriate for public disclosure.

##### *Public Disclosure*

On the Federal e-rulemaking portal, Regulations.gov, TTB will post, and the public may view, copies of all published notices, selected supporting materials, and all comments received in response to this proposal within Docket No. TTB-2010-0004. A link to this docket is posted on the TTB Web site at [http://www.ttb.gov/regulations\\_laws/all\\_rulemaking.shtml](http://www.ttb.gov/regulations_laws/all_rulemaking.shtml) under Notice No. 106. You may also reach Docket No. TTB-2010-0004 through the Regulations.gov search page at <http://www.regulations.gov>.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. TTB may omit voluminous attachments or material that the Bureau considers unsuitable for posting.

You and other members of the public may view copies of all published notices, all supporting materials, and all electronic or mailed comments TTB has received or will receive in response to

this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact the TTB information specialist at the above address or by telephone at 202-453-2270 to schedule an appointment or to request copies of comments or other materials.

#### Drafting Information

Christopher M. Thiemann of the Regulations and Rulings Division drafted this notice.

Signed: August 10, 2011.

Mary G. Ryan,

Acting Administrator.

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## POSTAL REGULATORY COMMISSION

### 39 CFR Part 3050

[Docket No. RM2011-12; Order No. 810]

#### Periodic Reporting

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission is establishing a docket in response to a Postal Service request for an informal rulemaking on proposed changes in certain analytical methods used in periodic reporting. The proposed changes are identified as Proposals Four through Eight. They affect, respectively, Inbound International Mail; cost assignment of certain flat sorting operations; bias in mixed mail tallies; and Express Mail. Establishing this docket will allow the Commission to consider the Postal Service's proposal and comments from the public.

**DATES:** Comments are due: September 9, 2011.

**ADDRESSES:** Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (<http://www.prc.gov>) or by directly accessing the Commission's Filing Online system at <https://www.prc.gov/prc-pages/filing-online/login.aspx>. Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at 202-789-6820 (case-related information) or [DocketAdmins@prc.gov](mailto:DocketAdmins@prc.gov) (electronic filing assistance).

**SUPPLEMENTARY INFORMATION:** On August 8, 2011, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate an informal rulemaking proceeding to consider changes in the analytical methods approved for use in periodic reporting.<sup>1</sup>

*Proposal Four: Proposed change in method of reporting Revenue, Pieces, and Weight (RPW) for Inbound International Mail.* Currently, in its RPW report, the Postal Service estimates the revenue that it receives from the terminal dues system for six major Inbound International Mail products by developing a distribution key for those products from the most recently completed International Cost and Revenue Analysis (ICRA) report. It applies that key to international mail revenues in the relevant General Ledger accounts. Where it relies on this method to estimate product revenues in the RPW, it does not estimate pieces or weight for those products.

Since Quarter 2 of FY 2010, the Postal Service has been using the Foreign Postal Settlement (FPS) system to settle its international mail accounts. With respect to inbound settlement, FPS compiles revenue, piece, and weight information by product stream from billing documents/electronic messaging. FPS posts revenue to the book of accounts based on actual inbound transactions processed, and on estimates of transactions received, but not yet processed. While the settlement process is not completed until months after the close of the calendar year, the FPS system accrues revenue monthly, based on the estimate of mail volume received that month. When final settlement occurs the following year, the difference between the accrued amount and the final settlement amount is posted to the appropriate General Ledger account. *Id.* at 6.

The Postal Service has developed software that maps FPS inbound product streams to the categories used in the Inbound International RPW. Proposal Four would replace the ICRA distribution key method of estimating the revenue of inbound products with the more detailed and timely data mapped from FPS. The Postal Service explains that an incidental benefit of the proposed mapping is that it would align RPW reporting categories more closely with the Mail Classification Schedule than is the case currently.<sup>2</sup>

<sup>1</sup> Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposals Four-Eight), August 8, 2011 (Petition).

<sup>2</sup> *Id.* at 8. As examples, the Postal Service notes that Inbound Return Receipt and Inbound

The Postal Service also proposes to report prior-year settlement revenues and currency gains and losses in Other Mailing Services Revenue (Market Dominant) and Other Shipping Services Revenue (Competitive). The Postal Service asserts that these entries have no direct correlation with current-period activity, and therefore would distort RPW relationships if they were to continue to be included in the current-period report. *Id.*

The Postal Service summarizes the benefits to be gained from adopting Proposal Four. It asserts that the proposal would more closely align revenue, pieces, and weight reported in the Inbound International RPW with current-year activity; that it would report such information at a greater level of detail than is done currently (including volume and weight information for the first time); that it would separate current-year revenue from prior-year revenue and currency gains and losses; and that it would correct some current misreporting of inbound product data as outbound. *Id.* at 4.

The Postal Service illustrates the impact of Proposal Four in Attachments B and C to the Petition. It asserts that the impacts would be minor, and would be confined to Inbound International Mail. *Id.* at 10-12.

*Proposal Five: Assigning Flats Sequencing System (FSS) and Automated Flats Sorting Machine (AFSM) 100 Data to Separate Cost Pools.* Currently, cost data for FSS operations are assigned to cost pools for the AFSM 100 3-digit Management Operating Data System (MODS) operation. Proposal Five would assign FSS cost data to FSS-specific cost pools. The Postal Service supports the separate break out of FSS costs by noting that the FSS is a major new flats processing system that is becoming widely deployed. It also notes that the mail mix in FSS operations can differ from that in AFSM 100 operations because FSS can be used to sequence non-saturation carrier route flats, which would bypass AFSM 100 operations. *Id.* at 13.

Proposal Five would assign the Stand-Alone Mail Prep machine (MODS operation 530) operation and the FSS Sorter (MODS operation 538) distribution operations to the same cost pool. The Postal Service argues that they are interrelated in the same manner that the prep operations for the AFSM 100 (MODS operation 140) and the AFSM 100/Automated Induction distribution

Restricted Delivery are currently misreported as part of Outbound Ancillary Services, and that its proposed mapping would correct this. *Id.* at 5.