Signed: February 18, 2005.

John J. Manfreda,

Administrator.

Approved: March 1, 2005.

Timothy E. Skud,

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

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 45

[T.D. TTB–26]

RIN 1513–AA99

Removal of Tobacco Products and Cigarette Papers and Tubes, Without Payment of Tax, for United States Use in Law Enforcement Activities

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

ACTION: Temporary rule; solicitation of comments.

SUMMARY: The Department of the Treasury and the Alcohol and Tobacco Tax and Trade Bureau adopt a temporary amendment to the regulations relating to the removal of tobacco products and cigarette papers and tubes, without payment of tax, for use of the United States. This amendment allows manufacturers of tobacco products and cigarette papers and tubes to remove these articles without payment of tax for use by Federal agencies in their law enforcement activities, and to exempt packages of those removed products from the tax-exempt labeling requirement. We take this action to timely meet the needs of Federal agency law enforcement operations, particularly investigations involving tobacco product diversion and smuggling.

DATES: This temporary rule is effective April 15, 2005. We must receive written comments on or before June 14, 2005.

ADDRESSES: You may send comments to any of the following addresses:

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, (Attn: T.D. TTB–26), P.O. Box 14412, Washington, DC 20044–4412.
- 202–927–8525 (facsimile).
- *nprm@ttb.gov* (e-mail).
- *http://www.ttb.gov/tobacco/rules/index.htm.* (An online comment form is posted with this temporary rule document on our Web site).
- *http://www.regulations.gov* (Federal e-rulemaking portal; follow instructions for submitting comments).

You may view copies of this document and any comments we receive on this temporary rule by appointment at the TTB Library, 1310 G Street NW., Washington, DC 20220. To make an appointment, call 202–927–2400. You may also access copies of this document and any comments received online at *http://www.ttb.gov/tobacco/rules/index.htm.*

FOR FURTHER INFORMATION CONTACT: Linda Wade Chapman, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, 1310 G Street NW., Suite 200–E, Washington, DC 20220; telephone 202–927–8210; or e-mail *Linda.Chapman@ttb.gov.*

SUPPLEMENTARY INFORMATION:

Background

Statutory and Regulatory Provisions

Section 5704(b) of the Internal Revenue Code of 1986 (26 U.S.C. 5704(b)) provides that a manufacturer may, among other things, remove tobacco products and cigarette papers and tubes without payment of tax for use of the United States, in accordance with regulations prescribed by the Secretary of the Treasury. The regulations administered by the Alcohol and Tobacco Tax and Trade Bureau (TTB) include, in part 45 (27 CFR part 45), provisions that implement this aspect of section 5704(b).

Section 45.31 of the TTB regulations (27 CFR 45.31) sets forth two circumstances in which manufacturers of tobacco products and cigarette papers and tubes may remove those articles for sale or donation to Federal agencies without payment of Federal excise tax. Specifically:

- In the case of articles purchased by a Federal agency with funds appropriated by the U.S. Congress, the manufacturer may remove the articles for delivery to the Federal agency for gratuitous distribution under the supervision of the agency.
- In the case of articles purchased by a donor from a manufacturer or donated directly by a manufacturer, the manufacturer may remove the articles for delivery to a Federal agency for gratuitous distribution, under the supervision of the agency, to charges of the United States or to patients in a hospital or institution operated by a State Government or the District of Columbia where the Federal agency maintains a program for distribution to members or veterans of the armed forces of the United States in the hospital or institution.

Section 45.31 further provides that tobacco products and cigarette papers and tubes removed under the provisions of part 45 may not be sold subsequent to removal.

In addition, § 45.46 of the TTB regulations (27 CFR 45.46) provides that every package of tobacco products and cigarette papers and tubes removed under part 45 must have the words ''Tax-Exempt. For Use of U.S. Not To Be Sold.'' adequately imprinted on the package or on a label securely affixed to the package.

The Need for Regulatory Change

Individuals and criminal organizations continue to engage in criminal activities involving diversion of tobacco products from the legal market and the smuggling of genuine and counterfeit tobacco products. These activities often violate the Contraband Cigarette Trafficking Act (18 U.S.C. 2341 *et seq.*), the Jenkins Act (15 U.S.C. 375 *et seq.*), or other statutory provisions, endanger the public, and jeopardize Federal, State, and local government revenues. For example, in 2002, a U.S. district court in North Carolina convicted several people of smuggling large quantities of cigarettes from that State for resale in higher-tax States in order to raise funds for a foreign terrorist organization. In addition, in January 2004, an indictment returned in El Paso, Texas, in response to a criminal investigation charged a criminal group with smuggling over 107 million counterfeit and properly trademarked cigarettes across the southern U.S. border, thereby costing the Federal government and three State governments over $8 million in lost tax revenue.

On numerous occasions, Federal law enforcement agencies—including the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, and the Bureau of Immigration and Customs Enforcement—have used non-taxpaid tobacco products provided by a manufacturer in undercover, sting, or other law enforcement activities. Many tobacco product manufacturers are willing to provide Federal agencies with tobacco products for use in law enforcement activities, and we believe they should be able to remove those products without payment of tax under 26 U.S.C. 5704(b). However, because § 45.31 does not specifically authorize the tax-free removal of such goods for Federal law enforcement purposes, these Federal agencies must ask the manufacturer to apply to TTB for

approval of an alternate method or procedure under § 45.21 of the TTB regulations (27 CFR 45.21) to remove the tobacco products without payment of tax and without the required tax-exempt label.

Section 45.21 permits TTB to approve variances from methods or procedures specifically prescribed in part 45, provided that good cause exists for the variance and that the variance is consistent with the purpose and intended effect of the prescribed method or procedure. In addition, the variance must afford equivalent security to the revenue, not be contrary to law, not result in increased cost to the Government, or hinder administration of part 45. In the case of law enforcement activities, the variances relate to the limited uses and the post-removal sale prohibition prescribed in § 45.31 and the tax-exempt label requirement in § 45.46.

TTB has found that requests from manufacturers for tax-free removals for Federal agencies' law enforcement activities meet the criteria for a variance under § 45.21. Consequently, we routinely grant written requests for these variances on a case-by-case basis. While we attempt to issue these variances as quickly as possible, this case-by-case written approval process often is counter-productive in the context of a fast-moving criminal investigation and unnecessarily adds to the administrative workload of TTB and the cooperating tobacco manufacturers.

Accordingly, we believe that it is appropriate to amend the regulations to remove this administrative bottleneck. We also believe that, for the reasons stated below, it is in the public interest to implement these regulatory changes immediately as a temporary rule with provision for the submission of public comments, which we will consider before adoption of a final rule in this matter. This temporary rule will eliminate the need for manufacturers of tobacco products and cigarette papers and tubes to obtain a variance to remove their products without payment of tax for use in a Federal law enforcement operation. These changes will save Federal law enforcement agencies valuable time in conducting their investigations and will not jeopardize the general public or the revenue.

The supplying of tobacco products and cigarette papers and tubes by manufacturers to Federal agencies will continue to be voluntary, and these changes in the regulations do not impose additional cost, compliance, or reporting burdens on manufacturers. In addition, the temporary regulation does not preclude manufacturers from selling tobacco products, without payment of tax, for use in a Federal law enforcement operation.

Discussion of the Temporary Amendments

The amendments set forth in this document include a revision of § 45.31, which divides the section into paragraphs (a) and (b) in order to accommodate the new provision allowing removals without payment of tax for Federal law enforcement use and in order to improve the readability of the section. Paragraph (a) includes the terms of the existing first two sentences of the text as well as the new Federal law enforcement removal provision. Paragraph (b) repeats the sale prohibition terms of the last sentence of the existing text, but includes an exception for Federal law enforcement removals under paragraph (a)(3) when a sale is a necessary part of the law enforcement activity.

In addition, we amend § 45.46 by adding an exception clause at the beginning of the text for articles removed pursuant to § 45.31(a)(3). This exception is necessary because the tax-exempt label required by § 45.46 could interfere with the Federal agency's law enforcement efforts.

Public Participation

Submitting Comments

We invite comments from interested members of the public on this temporary rule. Please provide specific information in support of your comments, and submit your comments by the closing date shown above in this notice. Your comments must reference T.D. TTB–26 and must include your name and mailing address. Your comments must be legible and written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals. You may submit comments in one of five ways:

- *Mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *Facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must—

(1) Be on 8.5- by 11-inch paper;

(2) Contain a legible, written signature; and

(3) Be no more than five pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

- *E-mail:* You may e-mail comments to *nprm@ttb.gov.* Comments transmitted by electronic mail must—

(1) Contain your e-mail address;

(2) Reference this notice number on the subject line; and

(3) Be legible when printed on 8.5- by 11-inch paper.

- *Online form:* We provide a comment form with the online copy of this temporary rule document on our Web site at *http://www.ttb.gov/tobacco/rules/index.htm.* Select the ''Send comments via e-mail'' link under this document number.
- *Federal e-Rulemaking Portal:* To submit comments to us via the Federal e-rulemaking portal, visit *http://www.regulations.gov* and follow the instructions for submitting comments.

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, in light of all circumstances, whether to hold a public hearing.

Confidentiality

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

Public Disclosure

You may view copies of this temporary rule document and any comments we receive by appointment at the TTB Library at 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact our librarian at the above address or telephone 202–927–2400 to schedule an appointment or to request copies of comments.

For your convenience, we will post this document and any comments we receive on this temporary rule on the TTB Web site. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the TTB Library. To access the online copy of this temporary rule and any posted comments, visit *http://www.ttb.gov/tobacco/rules/index.htm.* Select the ''View Comments'' link under this document number to view the posted comments.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for a temporary rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This temporary rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory analysis.

Inapplicability of Prior Notice and Comment and Delayed Effective Date Procedures

This temporary rule merely implements an existing agency practice by facilitating the removal, without Federal tax, of tobacco products and cigarette papers and tubes for the use of Federal agencies in law enforcement operations. The regulatory changes address immediate needs of Federal law enforcement agencies and relieve an existing administrative burden on TTB and tobacco industry members. In addition, the supplying of tobacco products and cigarette papers and tubes by manufacturers to Federal agencies continues to be voluntary, and this regulatory change would only ease an existing burden on manufacturers who wish to provide their products for this purpose. Accordingly, pursuant to 5 U.S.C. 553(b)(B), we have determined that prior public notice and comment procedures on this regulation are unnecessary and contrary to the public interest. For the same reasons, pursuant to 5 U.S.C. 553(d) (1) and (3), we find that there is good cause for dispensing with a delayed effective date.

Drafting Information

The principle author of this document is Linda Wade Chapman, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects in 27 CFR Part 45

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

Amendments to the Regulations

■ For the reasons discussed in the preamble, we amend part 45 of the TTB regulations (27 CFR part 45) as follows:

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

■ 1. The authority citation for part 45 continues to read as follows:

Authority: 26 U.S.C. 5703, 5704, 5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805, 44 U.S.C. 3504(h).

■ 2. Revise the section heading and text of § 45.31 to read as follows:

§ 45.31 Removals for delivery to a Federal agency.

(a) *Removal of articles.* A manufacturer may remove tobacco products or cigarette papers and tubes without payment of tax, in accordance with this part, for delivery to a Federal agency if:

(1) The removed articles were purchased by the Federal agency with funds appropriated by the Congress of the United States and are for gratuitous distribution under the supervision of the Federal agency;

(2) The removed articles were purchased by a donor from the manufacturer, or donated directly by the manufacturer, for gratuitous distribution under the supervision of the Federal agency to:

(i) Charges of the United States; or

(ii) Patients in a hospital or institution operated by the Government of a State or the District of Columbia where the Federal agency maintains a program for distribution to members or veterans of the armed forces of the United States in the hospital or institution; or

(3) The removed articles are intended for use by the Federal agency in an investigation or other Federal law enforcement activity.

(b) *Sale prohibited.* Except in the case of articles described in paragraph (a)(3) of this section where a sale is incident to the Federal law enforcement activity, tobacco products and cigarette papers and tubes removed under this section may not be sold after their removal.

■ 3. Amend § 45.46 by removing the word ''Every'' and adding, in its place, the words ''Except in the case of articles described in § 45.31(a)(3), every''.

Signed: January 31, 2005.

John J. Manfreda,

Administrator.

Approved: February 16, 2005.

Timothy E. Skud,

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

[FR Doc. 05–7582 Filed 4–14–05; 8:45 am]

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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in May 2005. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: *Effective Date:* May 1, 2005.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

Accordingly, this amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during May 2005, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during May 2005, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during May 2005.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 3.90 percent for the first 20 years following the valuation date and 4.75 percent thereafter. These interest assumptions represent an increase (from those in