

enforceable in a court possessing equitable powers;

(iv) The trustee of the trust does not have discretion to vary either the beneficiaries or the amounts payable to the beneficiaries. For purposes of this paragraph (i)(9)(iv), a trustee shall not be treated as having such discretion where the trustee has discretion to make payments of principal to the single section 509(a)(1) or (2) organization that is currently entitled to receive all of the trust's income or where the trust instrument provides that the trustee may cease making income payments to a particular charitable beneficiary in the event of certain specific occurrences, such as the loss of exemption under section 501(c)(3) or classification under section 509(a)(1) or (2) by the beneficiary or the failure of the beneficiary to carry out its charitable purpose properly; and

(v) None of the trustees would be disqualified persons within the meaning of section 4946(a) (other than foundation managers under section 4946(a)(1)(B)) with respect to the trust if such trust were treated as a private foundation.

(10) *Foreign supported organizations.* A supporting organization is not operated in connection with one or more supported organizations if it supports any supported organization organized outside of the United States.

(11) *Transition rules*—(i) A Type III supporting organization in existence on the effective date of these regulations that met and continues to meet the requirements of Treas. Reg. § 1.509(a)–4(i)(3)(ii), as in effect prior to the date these regulations are published as final or temporary regulations, will be treated as meeting the requirements of paragraph (i)(4)(i) of this section until the first day of the organization's first taxable year beginning after the date these regulations are published as final or temporary regulations.

(ii) A Type III supporting organization in existence on the effective date of these regulations that met and continues to meet the requirements of Treas. Reg. § 1.509(a)–4(i)(3)(iii), as in effect prior to the date these regulations are published as final or temporary regulations, will be treated as meeting the requirements of paragraph (i)(5)(i) of this section until the first day of its second taxable year beginning after the effective date of these regulations. Beginning in the first taxable year beginning after the effective date of these regulations, such organizations must value their assets according to paragraph (i)(8) of this section. Beginning in the second taxable year beginning after the effective date of these regulations (and in all succeeding

taxable years), these organizations must meet all of the requirements of paragraph (i)(5)(i) of this section.

(iii) For the first taxable year after the effective date of these regulations, the annual distributable amount for Type III supporting organizations that are not functionally integrated is zero.

(12) *Effective/applicability date.* These regulations are effective on the date of publication of the Treasury decision adopting these rules as final or temporary regulations.

\* \* \* \* \*

## PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

**Par. 3.** The authority citation for part 53 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par. 4.** In § 53.4943–11, section heading is revised and paragraphs (f) and (g) are added to read as follows:

### § 53.4943–11 Effective/Applicability date.

\* \* \* \* \*

(f) Special transitional rule for private foundations that qualified as Type III supporting organizations before August 17, 2006. The present holdings of a private foundation that qualified as a Type III supporting organization under section 509(a)(3) immediately before August 17, 2006, and that was reclassified as a private foundation under section 509(a) on or after August 17, 2006, solely as a result of the rules enacted by section 1241 of the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780), will be determined using the same rules that apply to Type III supporting organizations under section 4943(f)(7).

(g) Special transitional rule for Type III supporting organizations created as trusts before November 20, 1970. A trust that qualifies as a Type III supporting organization under section 509(a)(3) and meets the requirements of Treas. Reg. § 1.509(a)–4(i)(9) will be treated as a “functionally integrated Type III supporting organization” for purposes of section 4943(f)(3)(A).

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. E9–22866 Filed 9–23–09; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

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

[Docket No. TTB–2009–0002; Notice No. 99; Re: T.D. TTB–81, T.D. TTB–78, Notice No. 95]

RIN 1513–AB75

#### Extension of Package Use-Up Rule for Roll-Your-Own Tobacco and Pipe Tobacco (2009R–368P)

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

**ACTION:** Notice of proposed rulemaking; cross-reference to temporary rule.

**SUMMARY:** Elsewhere in this issue of the **Federal Register**, the Alcohol and Tobacco Tax and Trade Bureau is issuing a temporary rule to extend the use-up period and delay the application of the new pipe tobacco and roll-your-own tobacco classification rule adopted on June 22, 2009, in response to certain changes made to the Internal Revenue Code of 1986 by the Children's Health Insurance Program Reauthorization Act of 2009. That temporary rule also corrects two minor errors in the previously published regulatory texts. The text of the regulations in the temporary rule published in the Rules and Regulations section of this issue of the **Federal Register** serves as the text of the proposed regulations.

**DATES:** Comments must be received on or before November 23, 2009.

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

- <http://www.regulations.gov>: Use the comment form for this notice on the Federal e-rulemaking portal, Regulations.gov, 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 this notice, selected supporting materials, and any comments we receive about this proposal within Docket No. TTB–2009–0002 at <http://www.regulations.gov>. A direct link to this docket is posted on

the TTB Web site at <http://www.ttb.gov/tobacco/tobacco-rulemaking.shtml> under Notice No. 99. You also may view copies of this notice, 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:**

Amy Greenberg, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau (202-453-2099).

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 22, 2009, the Alcohol and Tobacco Tax and Trade Bureau (TTB) published a temporary rule in the **Federal Register** (T.D. TTB-78, 74 FR 29401) to implement certain changes made to the Internal Revenue Code of 1986 by the Children's Health Insurance Program Reauthorization Act of 2009 (the Act). The regulatory changes made by the temporary rule went into effect on June 22, 2009. The temporary rule included a new classification rule reflecting the expansion of the statutory definition of roll-your-own tobacco to include cigar wrapper and filler. The temporary rule also outlined new notice requirements for the packaging and labeling of pipe tobacco and roll-your-own tobacco to distinguish these two products from each other for tax purposes. As such, the temporary rule included two use-up rules allowing manufacturers and importers of pipe tobacco and roll-your-own tobacco to use their existing packages until August 1, 2009.

In the June 22, 2009, issue of the **Federal Register**, TTB also published a notice of proposed rulemaking, Notice No. 95 (74 FR 29433), inviting comments on the temporary regulations contained in T.D. TTB-78, with comments due on or before August 21, 2009. In response to Notice No. 95, we received two comments raising concerns regarding the pipe tobacco classification and notice provisions of T.D. TTB-78, which we believe warrant immediate consideration. Both commenters requested a delay in the implementation of the pipe tobacco classification and notice-related requirements, asserting that the use-up periods in the temporary regulations (that is, to August 1, 2009) gave insufficient time for industry members to comply with the new requirements.

**New Temporary Rule and Notice of Proposed Rulemaking**

After carefully considering these two comments, TTB believes it should delay

the application of the new classification rule regarding pipe tobacco and roll-your-own tobacco, and extend the two use-up rules for existing packaging. As a result, we are publishing a new temporary rule, T.D. TTB-81, in the Rules and Regulations section of this issue of the **Federal Register**. These revised temporary regulations involve amendments to parts 40, 41, and 45 of the TTB regulations (27 CFR parts 40, 41, and 45). The text of the revised temporary regulations serves as the text of these proposed regulations, and the preamble to the revised temporary regulations explains these proposed regulations in detail. The new temporary rule also corrects two minor errors in the previously published regulatory texts.

**Public Participation**

*Comments Invited*

We invite comments from interested members of the public on this proposed rulemaking.

*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 this notice in Docket No. TTB-2009-0002 on "Regulations.gov," the Federal e-rulemaking portal, at <http://www.regulations.gov>. A link to the docket is available under Notice No. 99 on the TTB Web site at <http://www.ttb.gov/tobacco/tobacco-rulemaking.shtml>. 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. 99 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. We do not acknowledge receipt of comments, and we consider 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, we will post, and the public may view, copies of this notice, the related temporary rule, selected supporting materials, and any electronic or mailed comments we receive about this proposal. A direct link to the Regulations.gov docket containing this notice and the posted comments received on it is available on the TTB Web site at <http://www.ttb.gov/tobacco/tobacco-rulemaking.shtml> under Notice No. 99. You may also reach the docket containing this notice and the posted comments received on it 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. We may omit voluminous attachments or material that we consider unsuitable for posting.

You and other members of the public may view copies of this notice, the related temporary rule, other supporting materials, and any electronic or mailed comments we receive about 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 our 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.

### Regulatory Flexibility Act, Paperwork Reduction Act, and Executive Order 12866

Since the regulatory text proposed in this notice of proposed rulemaking is identical to that contained in the companion temporary rule published elsewhere in this issue of the **Federal Register**, the analyses contained in the preamble of the temporary rule concerning the Regulatory Flexibility Act, the Paperwork Reduction Act, and Executive Order 12866 also apply to this proposed rule.

#### Drafting Information

Michael Hoover of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

#### List of Subjects

##### 27 CFR Part 40

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

##### 27 CFR Part 41

Cigars and cigarettes, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Virgin Islands, Warehouses.

##### 27 CFR Part 45

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

#### Proposed Amendments to the Regulations

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR, chapter I, parts 40, 41, and 45 as follows:

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

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

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

2. [The proposed amendatory instructions and the proposed amended regulatory text for part 40 are the same as the amendatory instructions and the amended regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**.]

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

3. The authority citation for part 41 is revised to read as follows:

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

4. [The proposed amendatory instructions and the proposed amended regulatory text for part 41 are the same as the amendatory instructions and the amended regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**.]

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

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

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

6. [The proposed amendatory instructions and the proposed amended regulatory text for part 45 are the same as the amendatory instructions and the amended regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**.]

Signed: August 23, 2009.

**John J. Manfreda,**  
Administrator.

Approved: September 4, 2009.

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

[FR Doc. E9–23173 Filed 9–23–09; 8:45 am]

**BILLING CODE 4810–31–P**

### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Part 3

#### RIN 2900–AM74

### Definition of Service in the Republic of Vietnam

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** In a document published in the **Federal Register** on April 16, 2008, the Department of Veterans Affairs (VA) proposed to amend its adjudication regulations regarding the definition of “service in the Republic of Vietnam.” This document withdraws that proposed rule.

**DATES:** The proposed rule published at 73 FR 20566 on April 16, 2008, is withdrawn as of *September 24, 2009*.

**FOR FURTHER INFORMATION CONTACT:** Nancy Copeland, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9685. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** This rulemaking was initiated to respond to a decision rendered by the U. S. Court of Appeals for Veterans Claims (CAVC) in *Haas v. Nicholson*, 20 Vet. App. 257 (2006). While the comment period for the proposed rule was pending, the United States Court of Appeals for the Federal Circuit (Federal Circuit) decided *Haas v. Peake*, 525 F.3d 1168 (Fed. Cir. 2008). The Federal Circuit reversed and remanded the CAVC decision. The Federal Circuit found that VA’s requirement that a claimant had been present within the land borders of Vietnam at some point in the course of his/her duty constitutes a permissible interpretation of 38 U.S.C. 1116, and affirmed that the language used in its implementing regulation, 38 CFR 3.307(a)(6)(iii), may be interpreted as stating such an interpretation. A petition for a writ of certiorari by the U.S. Supreme Court was denied. *Haas v. Peake*, cert. denied, 129 S.Ct. 173 No. 08–525, 2009 WL 129302 (U.S. Jan. 21, 2009). There is no longer a need to revise § 3.307(a)(6)(iii), or the regulations that use identical language to define service in the Republic of Vietnam (38 CFR 3.814 and 3.815). Thus, VA is withdrawing the proposed rule.