

posted vertical clearance; minimum cross-sectional width; lane width(s); shoulder width(s); and pavement type.

(3) *Interior tunnel structural features.* Tunnel shape (e.g., circular, rectangular, horseshoe, oval); ground conditions (e.g., soft ground, soft rock, hard rock, mixed face); ceiling type (e.g., structural lining, integral box, suspended panel); finish lining type (e.g., tiles, metal panels, precast panels, masonry block, shotcrete or gunite, coating or paint); and primary tunnel support lining.

(4) *Portal structural features.* Portal types (e.g., cast-in place or precast concrete, stone masonry, bare rock); and portal shapes (e.g., circular, rectangular, horseshoe, oval).

(b) *Preliminary assessment of tunnel condition.* (1) Using data from the most recent inspection, each State or Federal agency must rate the structural and functional systems in its tunnels, where applicable, from 0 to 9 in accordance with the chart on page 4–12 of the Highway and Rail Transit Tunnel Inspection Manual and submit the data to FHWA within 90 days of the effective date of this rule.

(2) A system rated 3 or below is considered a critical finding. The State or Federal agency must file a follow-up plan with the FHWA within 30 days of identification of a critical finding and the actions taken to address all critical findings.

(c) *Updates to preliminary findings.* Upon performing an initial inspection of a tunnel under § 650.511(a), each State or Federal agency shall notify the FHWA of any updates to the information provided under subsections (a) and (b) of this section.

(d) *Tunnel inventory.* Each State or Federal agency must prepare, maintain, and make available to the FHWA upon request, an inventory of all tunnels subject to the NTIS reflecting the findings of the tunnel inspections.

(e) *Data entry for inspections.* For all inspections, enter the tunnel data into the State or Federal agency inventory within 90 days of the date of inspection.

(f) *Data entry for tunnel modifications and new tunnels.* For modifications to existing tunnels that alter previously recorded data and for new tunnels, enter the data into the State or Federal agency inventory within 90 days after the completion of the work.

(g) *Data entry for tunnel load restriction and closure changes.* For changes in traffic load restriction or closure status, enter the data into the State or Federal agency inventory within 90 days after the change in status of the tunnel.

#### § 650.517 Reference Manual.

“The Federal Highway Administration and Federal Transit Administration Highway and Rail Transit Tunnel Inspection Manual,” 2005 edition, available in electronic format at <http://www.fhwa.dot.gov/bridge/tunnel/management/>, is incorporated by reference herein.

[FR Doc. 2010–17787 Filed 7–21–10; 8:45 am]

BILLING CODE 4910–22–P

## 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. 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; solicitation of comments.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau requests public comments on standards that have been proposed to distinguish between pipe tobacco and roll-your-own tobacco for Federal excise tax purposes based upon certain physical characteristics of the two products. We also request comments on any other physical characteristics that may be used for such purposes.

**DATES:** We must receive written comments on or before September 20, 2010.

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

- <http://www.regulations.gov> (via the online comment form for this advance notice as posted within Docket No. TTB–TTB–2010–0004 at “Regulations.gov,” the Federal e-rulemaking portal);
- *Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or
- *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 advance 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 advance notice, selected supporting materials, and any comments we receive about this proposal at <http://www.regulations.gov> within Docket No. TTB–2010–0004. 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. 106. You also may view copies of this advance notice, any 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 R. Greenberg, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau (202–453–2099).

#### SUPPLEMENTARY INFORMATION:

##### Background

##### *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 in, 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.

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 regulations are administered by the Alcohol and Tobacco Tax and Trade Bureau (TTB).

##### *Children’s Health Insurance Program Reauthorization Act of 2009*

On February 4, 2009, the President signed into law the Children’s Health Insurance Program Reauthorization Act of 2009, Public Law 111–3, 123 Stat. 8 (“the Act”).

Section 701 of the Act amended the IRC to increase the Federal excise tax rates on tobacco products and cigarette papers and tubes, effective as of April 1, 2009. The tax rates on pipe tobacco and roll-your-own tobacco, which had both previously been \$1.0969 per pound, were raised to \$2.8311 per pound for pipe tobacco and \$24.78 per pound for roll-your-own tobacco. See 26 U.S.C. 5701(f) and (g), respectively. On March 31, 2009, TTB published in the **Federal Register** (T.D. TTB-75, 74 FR 14479) a temporary rule to amend the TTB regulations to reflect the section 701 changes. In the same issue of the **Federal Register**, TTB also published a notice of proposed rulemaking (Notice No. 93, 74 FR 14506) inviting comments on the temporary regulations.

On June 22, 2009, TTB published a temporary rule in the **Federal Register** (T.D. TTB-78, 74 FR 29401) to implement certain additional changes made to the IRC by section 702 of the Act. In the same 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.

In an additional temporary rule, published in the **Federal Register** on September 24, 2009 (T.D. TTB-81, 74 FR 48650), TTB amended certain temporary provisions set forth in T.D. TTB-78 by extending the length of time packages of roll-your-own tobacco and pipe tobacco that did not comply with new regulatory requirements could still be used. This temporary rule also was published concurrent with a notice of proposed rulemaking in the same issue of the **Federal Register** (Notice No. 99, 74 FR 48687) soliciting comments on the revision.

#### *Distinguishing Between Pipe Tobacco and Roll-Your-Own Tobacco in T.D. TTB-78*

Temporary rule T.D. TTB-78 included new provisions regarding the expansion of the statutory definition of roll-your-own tobacco generally to include cigar wrapper and filler, and regarding the packaging and labeling of pipe tobacco and roll-your-own tobacco to better differentiate, on the basis of the packaging and labeling, between these two types of taxable products. In T.D. TTB-78, TTB noted that the tax rate increases adopted in section 701 of the Act resulted in a significant difference between the rate of tax imposed on roll-your-own tobacco (\$24.78 per pound) and the rate of tax imposed on pipe tobacco (\$2.8311 per pound). Prior to the amendments made by the Act, the two tax rates were the same.

The Bureau further noted that the existing TTB regulations contained no standards to differentiate between roll-your-own tobacco and pipe tobacco beyond a repeat of the statutory definitions. In T.D. TTB-78, we amended these definitions to incorporate the definitional changes contained in the Act. These definitional changes did not include any language which provides objective standards to readily distinguish between roll-your-own tobacco and pipe tobacco. Section 5702(o) of the IRC, as amended by the Act, defines the term “roll-your-own tobacco” as “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 or cigars, or for use as wrappers thereof.” The term “pipe tobacco” is defined at 26 U.S.C. 5702(n) as “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 to be smoked in a pipe.”

TTB recognizes that the similarity of roll-your-own tobacco and pipe tobacco and the much lower rate on pipe tobacco resulting from the tax rate changes made by the Act created an incentive for persons who roll their own cigarettes to use pipe tobacco. In T.D. TTB-78, the agency noted that there is now a heightened need for more regulatory detail to clarify the difference between the two products. Because both the definition of roll-your-own tobacco and the definition of pipe tobacco require consideration of the packaging and labeling of the product in order to determine the appropriate tax classification and because additional regulatory standards regarding the packaging and labeling were available, TTB amended the regulations to more clearly distinguish between the two products on those bases. With regard to the products’ other defining characteristics, TTB stated that it was evaluating analytical methods and other standards that may lead to future rulemaking proposals.

#### *Comments Received*

As a result of our rulemaking actions, TTB received six written submissions from four industry members and one consumer organization suggesting specific standards that could be used to distinguish between roll-your-own tobacco and pipe tobacco. According to some of these commenters, such standards are urgently needed because, they allege, the new packaging and labeling regulations are not sufficient to

prevent the misrepresentation of roll-your-own tobacco as pipe tobacco.

A representative for Altadis USA, Inc., a manufacturer and importer of pipe tobacco, submitted the most detailed proposal regarding physical standards in comments to Notice No. 95, which were repeated in a separate letter to TTB’s Administrator. Stating that it believes the new packaging requirements outlined in Notice No. 95 are only marginally helpful in dealing with the “misclassification problem,” Altadis USA, Inc. proposes that TTB establish standards of physical characteristics for pipe tobacco. It asserts that examination of physical characteristics is necessary to determine whether the product, by virtue of its “appearance” and “type,” is “suitable for use” as tobacco to be smoked in a pipe, as described in the statutory definition of pipe tobacco at 26 U.S.C. 5702(n), or as tobacco for making cigarettes or cigars, as described in the statutory definition of roll-your-own tobacco at 26 U.S.C. 5702(o). This commenter therefore proposes that processed tobacco in its finished form be classified as pipe tobacco only if it meets at least one of the following:

- At least 18% of its weight consists of reducing sugars;
- Moisture content exceeds 22% of its weight;
- Its cut tobacco exceeds 1/8 inch in width;
- At least 10% of its weight consists of Latakia, Perique, or Black Tobacco (USDA Type 37) or a combination thereof; or
- At least 20% of its weight consists of flavoring, casing, or other non-tobacco content.

According to the commenter, any processed tobacco product that does not meet any of these criteria cannot be legitimately classified as pipe tobacco and must be classified as roll-your-own tobacco.

TTB notes that this commenter also proposes that TTB take into consideration pre-existing or established brands for pipe tobacco and roll-your-own tobacco. The commenter states that prior to the introduction of the relevant tobacco tax legislation in Congress in January 2009, there were no “crossover brands”, that is, “brands associated with both pipe tobacco and roll-your-own tobacco.” The commenter therefore urged TTB to deem any processed tobacco regularly sold under a pre-existing brand name, trade name, or trademark predominantly associated with roll-your-own tobacco, prior to January 1, 2009, as roll-your-own tobacco. Similarly, any processed tobacco regularly sold under a pre-

existing brand name, trade name, or trademark predominantly associated with pipe tobacco prior to January 1, 2009, should be deemed pipe tobacco.

A representative of Top Tobacco L.P., a manufacturer of roll-your-own-tobacco, specifically addresses the above commenter's proposed standards for pipe tobacco in a letter to TTB's Administrator. Although the company states that it agrees with the general statement of facts in the submission, it disagrees with the proposed criterion regarding the width of the cut of the tobacco. This commenter states that it does not believe that the width factor can be a reliable indicator of whether or not a product is intended for consumption as roll-your-own tobacco or pipe tobacco because, according to the commenter, tobacco cut at  $\frac{1}{8}$  of an inch can be rolled into cigarettes and, further, consumers can use basic kitchen or hardware appliances to grind wider cut tobacco into a size suitable for use as roll-your-own tobacco. The commenter goes on to assert that width standards proposed in Germany were not successful.

In response to Notice No. 95, the Pipe Tobacco Council, Inc. (PTC) submitted a comment proposing that pipe tobacco products sold as such prior to January 1, 2009, be exempt from the proposed labeling and packaging regulations. The PTC proposes that manufacturers with such products certify that the products were on the market prior to January 1, 2009, and that TTB create and maintain a database of such certifications. Manufacturers wishing to market any products as pipe tobacco that would be sold to consumers for the first time on or after January 1, 2009, would be required to submit a sample of the finished product to TTB along with a "valid reason why the product should be considered pipe tobacco." Such reasons could include the product's cut size, casing and flavoring rates, tobacco grades used, cut style, and moisture. Finally, PTC proposes that any brand name or trademark that was ever sold as either a roll-your-own tobacco product or cigarette brand produced and sold after January 1, 2009, should not be classified as pipe tobacco.

A representative of the National Tobacco Company LP (NTC), a manufacturer of both pipe tobacco and roll-your-own tobacco, in a comment to Notice No. 95, states that the constituent tobacco materials used in various tobacco products often overlap in terms of their type and appearance. Therefore, NTC believes that the type of tobacco and the appearance of the tobacco product are not always reliable guides to the product's suitable and intended use.

Nonetheless, the commenter does suggest a number of characteristics that could be used to identify pipe tobacco, such as the inclusion of substantial amounts of Cavendish, Latakia, or Perique tobacco, the appearance of a broad-leaf cut tobacco blend, high moisture content, dense packing, burn inhibitors, and block or flake cut. NTC states that the presence of menthol flavoring and the use of blending components such as expanded stem, expanded leaf tobacco, or reconstituted sheet tobacco could indicate that a tobacco product is intended for use as roll-your-own tobacco.

In a comment to Notice No. 99 (74 FR 48687), Extension of Package Use-Up Rule for Roll-Your-Own Tobacco and Pipe Tobacco, the consumer organization Campaign for Tobacco-Free Kids states that the proposed packaging regulations do not do enough to prevent the mislabeling of roll-your-own tobacco as pipe tobacco. It urges TTB to establish clear criteria to distinguish between those types of tobacco that may be labeled as pipe tobacco and those that may not. The group suggests that one possibility is to require that any loose tobacco consisting primarily of flue-cured or burley tobacco be labeled and taxed as roll-your-own tobacco.

#### *TTB Response*

We are aware that additional regulatory standards to distinguish between roll-your-own tobacco and pipe tobacco, based on physical characteristics, would be beneficial. It is our primary concern that any regulatory distinction drawn between these products be objective and enforceable. To that end, TTB continues to conduct research on the physical characteristics of the products that may be used to effectively distinguish between the two products for tax purposes. We also believe that soliciting comments from the public may assist us in developing objective, enforceable, and not easily subverted distinctions. Accordingly, in this document we are requesting comments on the proposals set forth above, and any additional comments, on the distinguishing physical characteristics of the two products.

#### **Public Participation**

##### *Comments Invited*

We invite comments from interested members of the public on whether the physical standards discussed above under the heading "Comments Received" are appropriate and sufficient for distinguishing between pipe tobacco and roll-your-own tobacco. We also request comments on any additional

physical characteristics that could also be used to distinguish between these two tobacco products for tax classification purposes. Furthermore, we invite comments on any particular combination(s) of physical characteristics which would distinguish between pipe tobacco and roll-your-own tobacco. If a commenter can identify a specific list of differentiating physical characteristics, we invite the commenter to opine on what number of the physical characteristics should be present in order for the product to be classified as "pipe tobacco" (e.g., 2 of 5, 3 of 6). In addition, we request comments providing objective methods for analyzing whether or not a tobacco product meets the physical characteristics discussed in this notice or any additional physical characteristics suggested by the commenter. In particular, we invite commenters to provide objective methods for determining the percentage of Cavendish, Latakia, Perique, or Black Tobacco in a tobacco product, and for determining the percentage of casings and flavorings on a tobacco product.

##### *Submitting Comments*

You may submit comments on this advance 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 advance notice 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 available under Notice No. 106 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. 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. 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 advance notice, selected supporting materials, and any electronic or mailed comments we receive about this proposal. A direct link to the Regulations.gov docket containing this advance 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. 106. You may also reach the docket containing this advance 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 advance notice, any related 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.

#### Drafting Information

Jennifer Berry of the Regulations and Rulings Division drafted this advance notice.

Signed: April 28, 2010.

**John J. Manfreda,**

*Administrator.*

Approved: May 26, 2010.

**Timothy E. Skud,**

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

[FR Doc. 2010-17957 Filed 7-21-10; 8:45 am]

**BILLING CODE 4810-31-P**

### PENSION BENEFIT GUARANTY CORPORATION

#### 29 CFR Parts 4003 and 4903

#### Debt Collection

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise the Pension Benefit Guaranty Corporation's regulation on debt collection to conform to the Debt Collection Improvement Act of 1996, the Federal Claims Collection Standards and other legal requirements applicable to the collection of non-tax debts owed to PBGC. This proposed rule would add salary offset and administrative wage garnishment to the collection methods allowed under the current regulation and make other changes to strengthen PBGC's debt collection program.

**DATES:** Comments must be received by September 20, 2010.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the Web site instructions for submitting comments.

- *E-mail:* [reg.comments@pbgc.gov](mailto:reg.comments@pbgc.gov).

- *Fax:* 202-326-4224.

- *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026.

Comments received, including personal information provided, will be posted to <http://www.pbgc.gov>. Copies of comments may also be obtained by writing to Disclosure Division, Office of General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, or calling 202-326-4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-

free at 1-800-877-8339 and ask to be connected to 202-326-4040.)

#### FOR FURTHER INFORMATION CONTACT:

Margaret E. Drake, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026; 202-326-4400 (extension 3228). (For TTY/TDD users, call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4400 (extension 3228)).

**SUPPLEMENTARY INFORMATION:** This proposed rule will revise and replace the PBGC's debt collection regulations found at 29 CFR part 4903 to conform to the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104-134, 110 Stat. 1321, 1358 (April 26, 1996), the revised Federal Claims Collection Standards, 31 CFR chapter IX (parts 900 through 904), and other laws applicable to the collection of non-tax debt owed to the Government.

#### Background

In 1994, PBGC adopted a regulation on debt collection to provide procedures to implement administrative offset, as authorized by the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3701, *et seq.*), and in accordance with regulations issued by the Department of Justice and the General Accountability Office. In 1995, PBGC adopted a regulation on debt collection to provide procedures to implement tax refund offset, as required for participation in the Federal tax refund offset program authorized by 31 U.S.C. 3720A and in accordance with regulations issued by the Treasury Department. Together, these regulations comprise PBGC's current debt collection regulation (29 CFR part 4903) providing procedures for debt collection through administrative offset and tax refund offset. Administrative offset allows PBGC to request that debts owed to PBGC by a debtor (e.g., in connection with government contractual obligations) be offset by amounts another Federal agency may owe to the debtor. Likewise, other Federal agencies may request the collection of debts owed to them be offset by amounts PBGC may owe the debtor. Tax refund offset allows PBGC to request that debts owed to PBGC by a debtor be offset by amounts the Government may owe to the debtor. The Debt Collection Improvement Act of 1996 (DCIA) fundamentally changed the manner in which the Federal Government is required to manage the collection of its delinquent debts. Under DCIA, Congress directed that the management of