

DEPARTMENT OF THE TREASURY

ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

Supporting Statement – Information Collection Request

OMB Control Number 1513-0068

TTB REC 5210/1 - Records of Operations – Manufacturer of Tobacco Products or Processed Tobacco

A. Justification

1. What are the circumstances that make this collection of information necessary and what legal or administrative requirements necessitate the collection?

Tobacco products have historically been a major source of excise tax revenues for the Federal government. In order to safeguard these taxes, tobacco products manufacturers are required to maintain a system of records designed to establish accountability over the tobacco products produced. On February 4, 2009, President Obama signed into law the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. 111-3, 123 Stat. 8 ("the Act"). Section 702 of the Act included amendments to the Internal Revenue Code of 1986 (IRC) to extend permit, inventory, reporting, and recordkeeping requirements to manufacturers of processed tobacco even though such processed tobacco is not subject to excise tax under the IRC. 26 U.S.C. 5741 states that every manufacturer of tobacco products, processed tobacco, or cigarette papers and tubes is required to keep such records as the Secretary of the Treasury prescribes by regulation.

The regulation that contains the recordkeeping requirement for manufacturers of tobacco products is codified as 27 CFR 40.181. It requires that tobacco products manufacturers maintain a record system showing the information specified in more detail in the related regulations 27 CFR 40.182 - 40.186 and 27 CFR 40.201. This includes records of processed tobacco received, shipped or delivered, lost, and destroyed; records of tobacco products that show the quantities manufactured, received in bond or received by return to bond, removed by whatever means, consumed or otherwise used, or disclosed as an inventory loss or gain; records in support of removals subject to tax; records in support of transfers in bond; and inventory records. In many cases, commercial records that would normally be maintained as usual and customary business records are used by the manufacturers to satisfy these requirements. Where the commercial records are not adequate for that purpose, the manufacturer must keep records utilizing TTB forms, and must keep

the supplemental and auxiliary records used to compile those records. The regulation that contains the recordkeeping requirement for manufacturers of processed tobacco is being added by the temporary rule implementing certain provisions of the Act as 27 CFR 40.521. It requires that processed tobacco manufacturers maintain records of daily operations and transactions showing total quantity of processed tobacco on hand, used in the manufacture of tobacco products, processed, received, removed from the factory for shipment to a person holding a TTB permit, removed from the factory for shipment to a person not holding a TTB permit, removed from the factory for export, removed for any other purpose, lost, or destroyed.

27 CFR 40.524, also being added by the temporary rule, requires that every manufacturer of processed tobacco retain all records and reports required under this subpart, including copies of permits, authorizations, inventories, and reports, for three years following the close of the calendar year in which filed or made, or in the case of an authorization, for three years following the close of the calendar year in which the operation under such authorization is concluded. Such records shall be made available for inspection by the appropriate TTB officer upon request.

The comprehensive record system is essential in enabling TTB officers to trace tobacco product and processed tobacco transactions and determine that tax liabilities have been accurately determined and discharged by the manufacturer, and that no diversion has occurred which would jeopardize the revenue. The records thus tie in with one another to form an inclusive system that provides a high degree of accuracy regarding the determination of tax liabilities.

2. How, by whom, and for what purpose is this information used?

These records are used by TTB personnel during field tax compliance examinations to verify that all tobacco products and processed tobacco can be accounted for, thus ensuring that tax revenues are protected.

3. To what extent does this collection of information involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology? What consideration is given to use information technology to reduce burden?

We have approved and will continue to approve, on a case-by-case basis, the use of improved information technology for the maintenance of required records.

4. What efforts are used to identify duplication? Why can't any similar information already available be used or modified for use for the purposes described in Item 2 above?

This information collection request require only records that are pertinent to each manufacturer's specific operation. As far as we can determine, similar information is

not available elsewhere.

5. If this collection of information impacts small businesses or other small entities, what methods are used to minimize burden?

This recordkeeping requirement is considered to be the minimum necessary to ensure compliance. The record contains the minimum amount of information necessary to maintain accountability within the system; any less information would jeopardize collection of the revenue. This collection of information is not susceptible to reduced requirements for small business.

6. What consequences to Federal program or policy activities and what, if any, technical or legal obstacles to reducing burden will occur if this collection is not conducted or is conducted less frequently?

Without this recordkeeping requirement, there would be a significant gap in the audit trail which would make it difficult or impossible to trace these transactions. As a result, there would be no way to ensure that proper amounts owed in taxes were determined and paid, or that diversion resulting in failure to pay the appropriate tax had not occurred.

7. Are there any special circumstances associated with this information collection?

There are no special circumstances associated with this information collection.

8. What effort was made to notify the general public about this collection of information?

The general public will be notified of this information collection in a temporary rule and notice of proposed rulemaking published in the Federal Register. The notice will solicit comments from the general public.

9. What decision was made to provide any payment or gift to respondents, other than reenumeration of contractors or grantees?

No payment or gift is associated with this collection.

10. What assurance of confidentiality was provided to respondents and what was the basis for the assurance in statute, regulations, or agency policy?

These records are maintained at the premises of the regulated individual. Additionally, 26 U.S.C. 6103 protects the confidentiality of tax information obtained by the Government from regulated individuals.

11. What justification is there for questions of a sensitive nature?

We ask no questions of a sensitive nature.

12. What is the estimated hour burden of this collection of information?

TTB estimates that 193 manufacturers of tobacco products and processed tobacco would be required to prepare and retain records of operations. Thus, the reporting burden is calculated as follows:

Records of Operations

193 respondents x 1 year = 193 responses

@ 2 hours per response = 386 hours

Total Hours = 386

13. What is the estimated total annual cost burden to respondents or recordkeepers resulting from this collection of information?

No cost is associated with this collection.

14. What is the annualized cost to the Federal government?

There is no cost to the Federal government.

15. What is the reason for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I?

The program change reported in Items 13 of the OMB Form 83-I is made in the implementation of the Act. There is an increase in the number of respondents, with the addition of the Processed Tobacco Manufacturers, but a decrease in the number of hours needed to prepare this recordkeeping requirement, due to a reevaluation of annual burden hours.

16. Outline plans for tabulation and publication for collections of information whose results will be published.

The results of this collection will not be published.

17. If seeking approval to not display the expiration date for OMB approval of this information collection, what are the reasons that the display would be inappropriate?

It would be inappropriate to display the expiration date for OMB approval because this is a recordkeeping requirement and unlike the form there is no medium on which to display the date.

18. What are the exceptions to the certification statement?

There are no exceptions to the certification statement.

**B. Collection of Information Employing Statistical Methods**

This collection does not employ statistical methods.