

U.S. Department of the Treasury
Alcohol and Tobacco Tax and Trade Bureau

Supporting Statement

OMB Control Number: 1513-0129

Tobacco Products and Cigarette Papers and Tubes, 2009 Tax Increase and Floor Stocks Tax

(RIN No. 1513-AB70; T.D. TTB-85; Re: T.D. TTB-75 and Notice No. 93)

Summary of Action

CURRENT ACTION: At this time, TTB is issuing a final rule and removing temporary regulations established in 2009, with no changes to the burden currently approved.

We are submitting this ICR action to OMB as a revision, which would allow us to identify this rule under the “associated rulemaking information” section of ROCIS. This option is not available via non-material, non-substantive change because this rulemaking section is “grayed-out” and unavailable.

The acutely identifying this rulemaking action and incorporate it into this ICR, we are submitting this request as a revision.

Supporting Statement - Information Collection Request

OMB Control Number 1513-0129

- **TTB F 5000.28T09**, 2009 Floor Stocks Tax Return – Tobacco Products and Cigarettes Papers and Tubes
- 2009 Floor Stocks Tax Inventory and Return Filing Instructions (includes record retention instructions)

A. JUSTIFICATION

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

The Children's Health Insurance Program Reauthorization Act of 2009 (Public Law 111-3, "the Act") was signed into law on February 4, 2009. Sections 701(a) through 701(g) of the Act raised the tax rates on tobacco products and cigarette papers and tubes. Section 701(h) of the Act imposed a floor stocks tax (consisting of the difference between the old rate and the new rate) on all tobacco products (except large cigars), cigarette papers, and cigarette tubes ("taxable articles") held for sale on April 1, 2009. This tax applies to wholesalers, retail dealers, manufacturers, and importers holding for sale taxpaid or tax determined tobacco products or cigarette papers or tubes.

Liability for the floor stocks tax is determined on the basis of an inventory of taxable articles held for sale. Each person is required to make a record of the physical or record (book) inventory supported by the appropriate source records. The inventory must be taken between March 26, 2009, and April 10, 2009.

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

TTB staff will examine the returns that are filed to protect the revenue by determining whether the return was timely filed; whether the return is mathematically correct; and whether the taxpayer has paid the amount due.

TTB staff may also examine the inventory records retained at taxpayer premises to determine if all taxable articles were inventoried and if the floor stocks tax liability was accurately reported on the tax return. If no return is filed, and information from other sources indicates a return should have been filed, TTB will contact persons who did not file and will conduct examinations as appropriate.

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?

Since we do not prescribe an inventory format, persons may use their existing automated inventory and accounting systems to generate an inventory record in lieu of taking an actual physical inventory. The tax return form is available online in a fillable *.pdf format, and all taxpayers have the option of remitting tax by electronic fund transfer. Since it is a one-time tax, we have not set up a system to receive the tax return forms electronically.

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 floor stocks tax is a one-time tax applied to tobacco products and cigarette papers and tubes held for sale as of April 1, 2009. Inventory information necessary to collect this tax is not available from any other source. This information collection is needed to implement a unique tax collection program.

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

The floor stocks tax applies to all businesses, whether large or small and without exception. The Act provides no basis for minimizing the burden on small entities.

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?

The inventory and tax return required by this collection constitute the minimum amount of information necessary to account for taxable articles on the floor stocks tax date. Any less information would destroy the integrity of the system by effectively preventing the collection of the revenue for the floor stocks tax. Without these recordkeeping requirements, records necessary to verify the amounts of tobacco products on hand on the date of the floor stocks tax would not exist. Eliminating these records would leave a significant gap in the audit trail by making it difficult or impossible to establish liability for the tax.

Without this form and recordkeeping requirement, the Federal floor stocks tax filing and payment requirements imposed by statute would not be enforced. This burden will be imposed only once, as necessary to adhere to statutory requirements.

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

TTB may require, in writing, a person to maintain records more than 3 years. This would only be done in very limited cases where we had learned just before the 3 years expired that a person should have paid the tax but did not file a tax return or had underpaid by a substantial amount.

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

News coverage of Public Law 111-3 includes information about the tax increase and floor stocks tax. TTB posted information on its web site www.ttb.gov to notify persons holding for sale taxable articles on April 1, 2009 of the inventory and floor stocks tax requirements. TTB mailed the tax return and instructions to persons believed to have stocks of taxable articles. TTB published implementing regulations in the Federal Register (74 FR 14479) on March 31, 2009 and a corresponding Notice of Proposed Rulemaking the same day. The NPRM generally solicited comments and no comments were received pertaining to this collection of information. A 60-day notice was published in the Federal Register (74 FR 26920) on Thursday, June 4, 2009, informing the public that we intend to submit this information collection to OMB for renewal of the 6-month approval. The notice solicited comments from the general public. TTB received no comments in response to this notice.

9. What decision was made to provide any payment or gift to respondents, other than remuneration 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?

The confidentiality of tax returns and tax return information is protected by section 6103 of the Internal Revenue Code of 1986.

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

Responses of a sensitive or private nature are not required.

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

Based on past experience and approvals, we estimate the number of respondents as 250,000. This is a one-time tax, so each respondent will complete one inventory and tax return. We estimate that 90% of the respondents will be small businesses and require an average of 4 hours to conduct an inventory, record the inventory results, and prepare the return. We estimate the remaining 10% of the respondents will be large businesses and require an average of 12 hours to conduct an inventory, record the inventory results, and prepare the return.

$$(225,000 \times 4 \text{ hours}) + (25,000 \times 12 \text{ hours}) = 1,200,000 \text{ hours}$$

There are 3 ICs because there are different "Affected Publics."

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

The cost estimate of \$ 24,250,000 for taking an inventory and filing a return for this one-time tax is based on:

- No capital startup cost – equipment used (computers for instance) would already be in place before this requirement.
- 1,200,000 hours as noted above at an average salary of \$20 per hour
- 250,000 returns at \$1 per return for mailing and filing.
- No overhead cost associated with the inventory or return.

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

Estimates of cost to the Federal government of this one-time collection are based on (1) prior experience with a similar floor stocks tax and (2) costs of lockbox services.

Printing & distribution	\$ 550,000
Clerical (filing and imaging returns)	\$ 35,000
Other Salary (Audit, investigation, and taxpayer assistance)	\$ 570,000
Lockbox services	\$ 105,000
Total	\$ 1,260,000

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

There is an adjustment associated with the collection. Previously we estimated the number of respondents based on prior Floor Stocks Taxes to be 200,000. Now that we have processed the returns and based on the number of returns that we still have to process we increased our projected number of respondents by 50,000. As a result, the burden in item 13, of the OMB Form 83-I, has increase by 240,000 and item 14 by 4,850.

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

The amount of money collected and the number of persons who filed returns will be summarized and published for statistical purposes. However, this information collection is not for statistical purposes but to collect the revenue due.

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?

We are not requesting an exemption from displaying the expiration date for OMB approval of the information for this collection.

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.