

DEPARTMENT OF THE TREASURY
ALCOHOL TOBACCO TAX AND TRADE BUREAU

Supporting Statement - Information Collection Request

OMB Control Number 1513-0101

TTB REC 5210/13 - Marks and Notices on Packages of Tobacco Products

A. JUSTIFICATION

1. What are the circumstances that make this collection of information necessary and what legal or administrative requirements necessitate the collection? Also include the following: Align the information collection to Treasury's Strategic Goals, Line of Business/Sub-function, and IT Investment, if one is used.

This submission covers the requirement to obtain information for revenue protection by having the manufacturer, or exporter place a mark and notice indicating the tax classification and quantity on packages, cases, or containers.

Statutory authority for labeling and marking requirements pertaining to tobacco products is set forth in 26 U.S.C. 5723.

Regulatory requirements pertaining to this statutory authority are set forth in:

27 CFR 40.25	
27 CFR 40.212	27 CFR 41.73
27 CFR 40.213	
27 CFR 40.214	
27 CFR 40.215	
27 CFR 40.216	
27 CFR 40.216a	
27 CFR 40.216b	
27 CFR 44.184	27 CFR 45.42
27 CFR 44.185	27 CFR 45.43
27 CFR 44.186	27 CFR 45.44
27 CFR 44.187	27 CFR 45.45
27 CFR 44.251	27 CFR 45.45a
27 CFR 44.252	27 CFR 45.45b
27 CFR 44.253	27 CFR 45.46.
27 CFR 44.254	

The emergency approval request specifically concerns changes that were made to the TTB regulations in 27 CFR in the temporary rule (T.D. TTB-78) published in the Federal Register on June 22, 2009. As explained in T.D. TTB-78, all of the changes resulted from new requirements set forth in the Children's Health Insurance Program

Reauthorization Act of 2009 (CHIPRA - P.L. 111-3). CHIPRA changed the tax rates on tobacco products and created a significant difference between the tax rates on pipe tobacco and roll-your-own tobacco. The definition of pipe tobacco in the Internal Revenue Code of 1986, as amended, is “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.”

In T.D. TTB-78, TTB set forth package notice requirements applicable to pipe tobacco and roll-your-own tobacco that affects the tax classification of those products. (See 27 CFR 40.25 and 41.30, 40.216a, 40.216b, 41.72a, 41.72b, 45.45a, and 45.45b) TTB also amended the terms that are acceptable as notices on pipe tobacco and roll-your-own tobacco products. In the temporary rule, we allowed for an adjustment period to mitigate the one-time costs of meeting the new notice requirements on the affected products. In 27 CFR 40.216c, 41.72c, and 45.45c we provided a use-up period for manufacturers and importers to use existing packaging during the transition to new packaging.

On June 22, 2009, TTB also published in the Federal Register a corresponding Notice of Proposed Rulemaking (NPRM – Notice No. 95) soliciting comments from the public regarding the temporary regulations. Based on comments received from the public, TTB published another temporary rule (T.D. TTB-81, 74 FR 48650) on September 24, 2009, to further mitigate the effects pertaining to the tax classification determinations of certain tobacco products. The temporary rule cross-referenced a NPRM (Notice No. 99, 74 FR 48687) on the same day. The published temporary rule (1) extended the use-up period for existing packaging; and (2) provided for a delay in the application of the new classification rule.

This information collection is aligned with:

Treasury Strategic Goal: US & World Economies Perform at Full Performance Potential.

Line of Business/Sub-function: Law Enforcement/Substance Control.

IT Investment: Regulatory Major Application Systems.

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

TTB needs this information on packages of tobacco products to assure effective administration of the Federal excise taxes imposed on tobacco products. TTB is responsible for the collection of the tax on tobacco products and in conjunction with that function TTB uses the mark and notice to ensure that taxes paid or liability on tobacco products may be verified. TTB also uses the notice requirement as a means of determining the classification of certain tobacco products, where the definition includes a consideration of how a product is likely to be offered to or purchased by consumers. Collection of the tax on imported tobacco products and the protection of the revenue on exported tobacco products are facilitated by the required package information.

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?

The information collection involves a third party disclosure that is affixed on packages and containers, and therefore the use of automated electronic or other forms of information technology is generally not applicable. TTB will approve, on a case-by-case basis, the use of improved information technology to affix labels.

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?

To avoid duplication, the marks and notices on containers are specific to each container. As far as we can determine, similar information is not available any where else.

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

This collection of information does not have a significant impact on a substantial number of small businesses or other small entities. It is information that is maintained by the manufacturer as part of cost and quality control measures, and the amount required to be displayed is minimal.

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 mark and notice requirement is considered to be the minimum necessary to ensure compliance and tax classify the products in accordance with the statutory definitions. The marks and notices contain the minimum amount of information necessary to maintain accountability within the system; any less information would make the requirement meaningless. Less frequent collection of this information would pose jeopardy to the revenue.

7. Are there any special circumstances associated with the information collection that would require it to be conducted in a manner inconsistent with OMB guidelines?

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? Summarize the public comments that were received and describe the action taken by the agency in response to those comments.

T.D. TTB-78, which contained a change in the information collection, was published in the Federal Register (74 FR 29401) on June 22, 2009, along with a corresponding Notice of Proposed Rulemaking (Notice No. 95; 74 FR 29533) which solicited comments on the regulatory proposals contained in T.D. TTB-78. In response to Notice No. 95, we received two comments raising concerns regarding the classification and notice provisions described in this notice, which we believe warrant immediate consideration. TTB published a new temporary rule (T.D TTB-81, 74 FR 48650) on September 24, 2009, in response to those comments. A NPRM was also published on that day (Notice No. 99, 74 FR 48687) that cross-referenced T.D. TTB-81.

The commenters were from Kellie L. Newton, who submitted a comment on behalf of the Pipe Tobacco Council, Inc. ("PTC"), and Harold N. Bynum, who submitted a comment on behalf of John Middleton Co. ("JMC"). Both commenters requested an extension of the comment period as well as other individual comments. See T.D. TTB-81 "Comments Received" section for specific comments.

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 provided to respondents.

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

This collection is a third party disclosure on packages and containers to which assurances of confidentiality are not applicable.

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

We do not ask questions of a sensitive nature.

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

Although there are 120 respondents there is only 1 burden hour since placing marks and notices on packaging is an activity that the respondent performs in the normal course of doing business.

13. What is the estimated total annual cost burden to respondents or recordkeepers resulting from this collection of information (excluding the value of the burden hours in Question 12 above)?

There is no cost 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?

**A revision is being submitted at this time because the preapproval granted on August 27, 2009, was not activated before its expiration.*

There are no program changes or adjustments associated with this collection. We note that changes made in T.D. TTB-78, and T.D. TTB-81 will mitigate the one-time costs of meeting the new notice requirements on the affected products. Accordingly, this ICR contains no effective change in the number of respondents and the annual cost burden of such respondents.

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

The results of this collection of information 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 labeling requirement that is affixed by the respondent, and unlike a form, there is no medium for us to display the date.

18. What are the exceptions to the certification statement?

These are notices and markings which do not have a retention period and is unlikely to employ employee information technology techniques.

B. Collection of Information Employing Statistical Methods.

This collection of information does not employ statistical methods.