

DEPARTMENT OF THE TREASURY
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU
Supporting Statement -- Information Collection Request
OMB Control Number 1513-0064

Information Collection Request Title: Importers Records and Reports (TTB REC 5170/1).

A. Justification

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

The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers chapter 51 (distilled spirits, wine, and beer), chapter 52 (tobacco products, processed tobacco, and cigarette papers and tubes), and sections 4181-4182 (firearms and ammunition excise taxes) of the Internal Revenue Code of 1986, as amended (IRC, 26 U.S.C.). TTB also administers the Federal Alcohol Administration (FAA) Act, at 27 U.S.C. 201 *et seq.* TTB administers these laws pursuant to section 1111(d) of the Homeland Security Act of 2002, as codified at 6 U.S.C. 531(d). In addition, the Secretary of the Treasury has delegated certain IRC and FAA Act administrative and enforcement authorities to TTB through Treasury Department Order 120-01.

TTB regulates, among other things, the production, bottling, packing, labeling, taxation, and importation of distilled spirits, wine, and malt beverages pursuant to the FAA Act (27 U.S.C. 201 *et seq.*). TTB also administers the provisions of the IRC with respect to the taxation and importation of distilled spirits, wine, beer, tobacco products, processed tobacco, and cigarette papers and tubes (26 U.S.C. chapters 51 and 52). These statutory provisions are the basis of TTB regulations that require importers of these products to obtain permits and to submit certain information upon importation.

The International Trade Data System (ITDS) is an interagency program to establish an electronic "single window" through which importers and exporters may submit electronically the data required by Federal government agencies for clearing imports or exports. Section 405 of the Security and Accountability for Every Port Act of 2006 (SAFE Port Act) (Pub. L. 109-347) mandates participation in ITDS by all agencies that require documentation for clearing or licensing the importation and exportation of cargo. In addition, on February 19, 2014, the President issued E.O. 13659, "Streamlining the Export/Import Process for America's Businesses, which mandated that agencies be able to utilize ITDS by December 31, 2016.

Currently, importers and exporters that are regulated by multiple agencies or that import or export commodities regulated by multiple agencies must submit data to those agencies through various channels, often in paper form. Through the implementation of ITDS, importers will electronically enter data into the Automated Commercial Environment (ACE) system, operated by U.S. Customs and Border Protection, and then

that data will be electronically transferred to each relevant government agency that participates in ITDS.

Proposed Rule

To implement the SAFE Port Act and E.O. 13659, TTB published a proposed rule, Notice No. 159, in the Federal Register of June 21, 2015, at 81 FR 40404, titled “Amendments to Streamline Importation of Distilled Spirits, Wine, Beer, Malt Beverages, Tobacco Products, Processed Tobacco, and Cigarette Papers and Tubes and Facilitate Use of the International Trade Data System.” In Notice No. 159 TTB proposed to amend the TTB regulations governing the importation of distilled spirits, wine, beer and malt beverages, tobacco products, processed tobacco, and cigarette papers and tubes. The proposed amendments are intended to clarify and streamline import procedures, and support the implementation of ITDS and the filing of import information electronically in conjunction with an electronic import filing with U.S. Customs and Border Protection (CBP). The proposed amendments include providing the option for importers to file import-related data electronically when filing entry or entry summary data electronically with CBP, as an alternative to the current TTB requirements that importers submit paper documents to CBP upon importation. Under the proposed rule, the information collection approval for many of these electronic submissions will be placed under this OMB control number 1513–0064, Importer's Records and Reports (TTB REC 5170/1).

Sections 26.331, 27.208, 27.209, and 27.221 are currently listed under 1513-0064, but are also amended under the proposed rule and will remain under 1513-0064. Under the proposed rule, and under existing regulations that were are not a part of the proposed rule, the following TTB regulations in 27 CFR chapter I will contain information collection requirements related to the submission of information related to the import of TTB-regulated commodities under this OMB control number, 1513–0064:

§ 1.58	§ 4.27	§ 4.40	§ 4.45	§ 4.53	§ 4.70
§ 5.45	§ 5.51	§ 5.52	§ 5.56	§ 7.31	§ 26.52
§ 26.112a	§ 26.163	§ 26.200	§ 26.205	§ 26.222	§ 26.272
§ 26.273a	§ 26.276	§ 26.292	§ 26.294	§ 26.296	§ 26.301
§ 26.318	§ 26.331	§ 27.48	§ 27.76	§ 27.77	§ 27.133
§ 27.137	§ 27.138	§ 27.140	§ 27.172	§ 27.208	§ 27.209
§ 27.221	§ 31.225	§ 31.226	§ 41.81	§ 41.86	§ 41.204
§ 41.265.					

For a detailed discussion of TTB’s authority and the regulatory, reporting, and recordkeeping changes associated with this information collection, see the Notice No. 159.

Final Rule

TTB is issuing a Final Rule titled “Amendments to Streamline Importation of Distilled Spirits, Wine, Beer, Malt Beverages, Tobacco Products, Processed Tobacco, and Cigarette Papers and Tubes and Facilitate Use of the International Trade Data System,”

which will finalize, with minor clarifying changes, the amendments proposed in Notice No. 159. While none of the seven comments TTB received in response to Notice No. 159 specifically addressed revisions to this information collection, two comments requested that TTB implement a method to submit electronically proof of an importer's authorization to use another importer's Certificate of Label Approval. Submission of such documentation, which may be required in satisfaction of §§ 4.40, 5.51, and 7.31, is provided for in the proposed rule and in ITDS. In addition, such submissions were captured in the estimated burden hours listed in the information collection approval request submitted to OMB in conjunction with the publication of Notice No. 159 in June 2016. However, the two comments indicate that TTB did not adequately explain this in Notice No. 159. TTB is clarifying this issue in the ITDS final rule document. See Question 8 below for a detailed discussion of the relevant comments and the TTB response to those comments.

This information collection is aligned with:

Line of Business/Sub-function: General Government/Taxation Management.

IT Investment: None.

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

At the time of importation, or during field audits, the information collected under the existing and proposed regulatory requirements associated with this information collection is used by CBP and TTB personnel to ensure that: (1) Persons engaged in business as importers are operating under the permit required by Federal law to engage in such operations; (2) applicable taxes are paid; (3) commodities released from customs custody without payment of tax for transfer in bond are eligible for such release, are sent to eligible bonded facilities, and are not diverted; and (4) labels applied to containers of imported alcohol beverages comply with FAA Act requirements. Also, the letterhead applications and notices approved under this information collection are necessary to ensure that an importer's proposed alternative method will provide equal protection to the revenue and will not pose a burden to TTB in administering 27 CFR parts 26 and 27. These letterhead applications and notices help to protect the revenue.

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?

CBP's International Trade Data System (ITDS) is an interagency program to establish an electronic "single window" through which importers and exporters may submit electronically the data required by Federal government agencies for clearing imports or exports. Using ITDS, importers may electronically submit TTB required data regarding the importation of TTB-regulated commodities in lieu of paper submissions.

In cases where the TTB regulations require importers to keep records supporting the data submitted via ITDS, such records are maintained by the regulated industry members at their business premises and may be inspected by TTB personnel. The regulated industry members may keep the required records in paper or electronic formats at their discretion.

4. *What efforts are used to identify duplication? Can similar information already available be used or modified for use for the purposes described in Item 2 above?*

This collection requires information that is pertinent and unique to each importer's specific operations, specifically the importation of TTB-regulated commodities such as alcohol beverages and tobacco products. 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?*

These recordkeeping and reporting requirements are considered to be the minimum necessary to ensure compliance and protect the revenue. The standards cannot be reduced on the basis of the size of the respondent.

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?*

Not collecting or less frequent collection of this information would leave a significant gap in the audit trail by making it more difficult to trace transactions in imported alcohol and tobacco products, which would pose jeopardy to the revenue.

7. *Are there any special circumstances associated with this 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.*

To solicit comments from the general public, TTB published a proposed rule titled "Amendments to Streamline Importation of Distilled Spirits, Wine, Beer, Malt Beverages, Tobacco Products, Processed Tobacco, and Cigarette Papers and Tubes and Facilitate Use of the International Trade Data System," in the Federal Register on June 21, 2016, at 81 FR 40404.

Comments

While none of the seven comments TTB received in response to Notice No. 159 specifically addressed revisions to this information collection, two comments requested that TTB implement a method to submit electronically proof of an importer's authorization to use another importer's Certificate of Label Approval, which does concern this information collection. Submission of such documentation, which may be required in satisfaction of §§ 4.40, 5.51, and 7.31, is provided for in the proposed rule and in ITDS. In addition, such submissions were captured in the estimated burden hours listed in the information collection approval request submitted to OMB in conjunction with the publication of Notice No. 159 in June 2016. However, the two comments indicate that TTB did not adequately explain this in Notice No. 159. TTB is clarifying this issue in the

soon-to-be published ITDS final rule document. The two relevant comments and TTB response to them are discussed below:

In its comment, the Distilled Spirits Council of the United States (DISCUS) notes that the proposed amendments to 27 CFR 5.51 would provide that no person may remove bottled distilled spirits from customs custody unless the person “has obtained and is in possession of a certificate of label approval (COLA).” DISCUS explains that importers that are the holders of the COLA for a brand often will have imported product delivered directly to a domestic wholesaler; i.e., a “direct import.” DISCUS notes that in direct import transactions, the domestic wholesaler often does not have in its possession the COLA applicable to the imported products. DISCUS requests that TTB implement in ACE a “drop-down” box where the wholesaler could indicate that it is in the possession of a letter from the importer authorizing the wholesaler’s use of the importer’s COLA, or submit such a letter. DISCUS states that this feature would provide all interested stakeholders with the confidence that only appropriate parties are clearing customs for the appropriate brands. DISCUS also states that requiring the person removing the product from customs custody to be in possession of the COLA could disrupt current supply chain dynamics and efficiencies, without any commensurate benefit.

In its comment, National Association of Beverage Importers (NABI) states that direct imports are a component of a secure supply chain, and encourages TTB to work with the importer and brokerage communities to assure that COLAs are only used by authorized partners in the international supply chain. NABI explains that direct import transactions involve beverage wholesalers acting as agents of authorized importers. NABI states that the authorized importer is the holder of the COLA and, in the case of a direct import by the importer’s business partner, a letter of authorization is issued to facilitate the release of cargo from CBP. NABI concludes that these letters of authorization must be incorporated into ACE to assure that there is no interruption in CBP release of products.

TTB Response

The TTB regulations at 27 CFR 4.40, 5.51, and 7.31 currently state that no bottled wine, distilled spirits, or malt beverages, respectively, shall be released from customs custody for consumption unless an approved COLA covering the label of the product has been deposited with the appropriate customs officer at the port of entry. Pursuant to ATF Ruling 84–3, TTB has allowed, under certain specified circumstances, the use of a COLA by an importer that is not the importer to which the COLA was issued if: (1) The importer to which the COLA was issued has authorized such use, (2) each bottle or individual container bears the name (or trade name) and address of the importer to which the COLA was issued and (3) the importer to which the COLA was issued maintains records of the companies he has authorized to use his certificate. TTB notes that, under current regulations, an importer importing products using a COLA issued to another entity must possess the COLA to meet the requirement of §§ 4.40, 5.51, and 7.31 to deposit the COLA with the appropriate customs officer at the port of entry.

The amendments proposed in Notice No. 159 to §§ 4.40, 5.51, and 7.31 would provide, in pertinent part, that bottled wine, distilled spirits, or malt beverages, respectively, are not eligible for release from customs custody, and no person may remove such products from customs custody for consumption, unless “the person removing the [products] has obtained and is in possession of a certificate of label approval (COLA)”. The proposed amendment would also require that any person removing such products from customs

custody for consumption “must first apply for and obtain a COLA covering the [products] from the appropriate TTB officer.”

TTB understands DISCUS’s concern that these amendments appear to foreclose the current practice, explicitly provided for in ATF Ruling 84–3, that an importer other than the importer to which the COLA was issued may be authorized by the importer named on the COLA to import products covered by the COLA. TTB agrees that the proposed amendments to §§ 4.40, 5.51, and 7.31 failed to capture this practice, which was not TTB’s intent. Accordingly, in the regulatory text finalized in the Final Rule, TTB has changed the amendments §§ 4.40, 5.51, and 7.31 to clarify that bottled wine, distilled spirits, or malt beverages may be released to an importer who is authorized by a COLA holder to import products covered by the COLA. TTB notes that these amendments do not supersede ATF Ruling 84–3 or its holding that the COLA holder remains responsible for the imported product and its distribution in the United States.

Both commenters requested that TTB implement a method in ACE for a domestic wholesaler to indicate that it is in the possession of a letter from the importer authorizing the wholesaler’s use of the importer’s COLA, or submit such a letter, in order to ensure that only authorized entities are entering products subject to the COLA requirements. TTB believes it is necessary to clarify certain aspects of this request. First, the provisions of §§ 4.40, 5.51, and 7.31 are applicable to the importer of the products, that is, the entity under whose FAA Act basic permit the products are released. Under the amended regulations, an importer filing electronically must file with CBP, at the time of filing the customs entry, the TTB-assigned identification number of the valid COLA covering the label on the alcohol beverages being imported. If the importer is not filing electronically, the importer must provide a copy of the COLA to CBP at time of entry. In neither scenario is a wholesaler to whom the products may ultimately be shipped required by TTB regulations to provide information or documentation for the products to be released. In general, a wholesaler is not required to submit information or documentation into ACE for the release of bottled wine, distilled spirits, or malt beverages unless that wholesaler is itself the importer.

Second, in situations where an importer imports products covered by a COLA issued to another entity (with the authorization of the entity to which the COLA was issued), there is no requirement in the TTB regulations that a COLA authorization letter be submitted to CBP in order for such products to be released. However, the amended regulations clarify that proof of such authorization must be made available to TTB or CBP upon request. Where an importer is authorized to import products covered by another importer’s COLA, the importer importing the products must have a copy of the COLA, and as a result will also have the COLA identification number, either of which may be used to satisfy the initial release eligibility requirements of §§ 4.40, 5.51, and 7.31. If CBP or TTB requests that an importer submit proof of their authorization to use another person’s COLA, any supporting documentation may be uploaded into ACE through the DIS module, or submitted in paper. More information regarding the submission of data using the DIS module is available in the “ACE Filing Instructions for TTB-Regulated Commodities” at Docket No. TTB–2016–0004 on Regulations.gov (www.regulations.gov).

TTB appreciates the commenters’ input regarding the need to ensure that all alcohol beverages imported into the United States comply with the labeling provisions of the FAA Act. TTB is considering the enforcement efficacy of implementing an indicator in the TTB PGA Message Set through which importers would indicate that they are using a COLA

held by another entity. If TTB determines that these steps would be valuable for purposes of enforcing §§ 4.40, 5.51, and 7.31, they will be implemented in a separate action.

9. *Was any payment or gift given to respondents, other than remuneration of contractors or grantees? If so, why?*

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?*

No specific assurance of confidentiality is provided for this information collection. However, Federal law at 5 U.S.C. 552 protects the confidentiality of proprietary information obtained by the Government from regulated businesses and individuals, and 26 U.S.C. 6103 prohibits disclosure of tax returns and tax-related information unless disclosure is specifically authorized by that section.

11. *What is the justification for questions of a sensitive nature? If personally identifiable information (PII) is being collected in an electronic system, identify the Privacy Impact Assessment (PIA) that has been conducted for the information collected under this request and/or the Privacy Act System of Records notice (SORN) issued for the electronic system in which the PII is being stored.*

This information collection contains no questions of a sensitive nature. In addition, this information collection does not collect personally identifiable information (PII) in an electronic system. Therefore, no Privacy Impact Assessment (PIA) or System of Records Notice (SORN) is required for this collection.

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

With the adoption of the final rule regarding the electronic submission of import data to TTB via the ITDS/ACE system, TTB estimates that 10,521 respondents will be required to submit information under this information collection approval. TTB estimates that each respondent will respond to this information collection an average of 6 times per year, for a total of 63,126 annual responses, at an estimated burden of 20 minutes per response (0.333 hours), for a total of 21,042 estimated annual burden hours. While TTB has clarified §§ 4.40, 5.51, and 7.31 in response to two comments received in response to Notice No. 159, the burden estimate remains unchanged from the initial estimate provided with Notice No. 159.

(10,521 respondents X 6 responses per year = 63,126 annual responses X 20 minutes per response = 1,262,520 minutes / 60 minutes per hour = 21,042 annual burden hours.)

13. *What is the estimated annual cost burden to respondents or record keepers resulting from this information collection request (excluding the value of the hour burden in Question 12 above)?*

This information collection covers import-related information submitted electronically to TTB via ITDS, which would otherwise be submitted on paper as part of the import entry process. Therefore, TTB believes that respondents face no additional annual costs resulting from this information collection.

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

There are no costs to the Federal Government associated with this information collection. ITDS and the Partner Government Agency Message Set are being developed independently of this information collection. Therefore, this information collection imposes negligible marginal costs on TTB.

15. What is the reason for any program changes or adjustments reported?

Program Changes

The International Trade Data System (ITDS) is an interagency program to establish an electronic “single window” through which importers and exporters may submit electronically the data required by Federal government agencies for clearing imports or exports. Section 405 of the Security and Accountability for Every Port Act of 2006 (SAFE Port Act) (Pub. L. 109–347) mandates participation in ITDS by all agencies that require documentation for clearing or licensing the importation and exportation of cargo. In addition, on February 19, 2014, the President issued E.O. 13659, “Streamlining the Export/Import Process for America’s Businesses,” which mandated that agencies be able to utilize ITDS by December 31, 2016.

To implement the SAFE Port Act and E.O. 13659, TTB published a proposed rule, Notice No. 159, in the Federal Register of June 21, 2015, at 81 FR 40404, titled “Amendments to Streamline Importation of Distilled Spirits, Wine, Beer, Malt Beverages, Tobacco Products, Processed Tobacco, and Cigarette Papers and Tubes and Facilitate Use of the International Trade Data System.” TTB is now finalizing that proposed rule.

Under the regulatory amendments contained in the final rule, importers of TTB-regulated commodities will be able to submit TTB-required information regarding those imports electronically through ITDS. The proposed rule will place existing and new information collection requirements for such electronic submissions under this information collection approval, OMB control number 1513–0064. The specific regulatory sections proposed for addition to this information collection are: 27 CFR 1.58, 4.27, 4.40, 4.45, 4.53, 4.70, 5.45, 5.51, 5.52, 5.56, 7.31, 26.200, 26.205, 26.273a, 26.276, 26.292, 26.294, 26.296, 26.301, 26.318, 27.48, 27.76, 27.77, 27.137, 27.138, 27.140, 27.172, 41.81, 41.86, 41.204, and 41.265.

Several of the proposed amendments would allow importers to file information required at importation electronically via ITDS, rather than on paper. In many cases, the proposed regulations require information that the importer would already file as part of its customs entry or entry summary in order to meet CBP requirements and, in such cases, the information submitted to CBP to meet CBP requirements would also satisfy the TTB requirements. In some cases, new information is required to be submitted at importation. Regardless of whether the information is currently required or a new requirement, the

importer has the option of filing the TTB data electronically with CBP, and the importer must retain and provide the information upon request.

A complete discussion of the proposed program changes is available in the preamble of the proposed rule, including within the Paperwork Reduction Act discussion in that document.

Adjustments

Adoption of the final rule's regulatory amendments will increase the number of respondents to this information collection from 500 to 10,521, an increase of 10,021 respondents, and the number of responses per respondent will increase from 1 per year to 6 per year, an increase of 5 responses per year. The estimated total annual burden hours will increase from 251 hours to 21,042 hours, an increase of 20,791 hours. These increases are due to the program changes noted above, which will place new or relocate existing information collection requirements to this information collection approval in order to facilitate use of the ITDS system of importers of TTB-regulated commodities.

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

TTB will not publish the results of this collection.

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?

This information collection consists of import data elements submitted electronically to TTB via CBP's International Trade Data System, the documenting and supporting import records for that data kept by regulated industry members at their business premises, and it also includes occasional letterhead applications and notices. As such, there is no prescribed TTB form for this collection, and, therefore, there is no medium for TTB to display the OMB approval expiration date.

18. What are the exceptions to the certification statement?

(c) See item 5 above.

(g) This information collection consists of import data elements submitted electronically to TTB via CBP's International Trade Data System and the documenting and supporting import records for that data kept by regulated industry members at their business premises, and it also includes occasional letterhead applications and notices. As such, there is no medium for TTB to inform respondents of the information called for under 5 CFR 1320.8(b)(3).

(i) No statistics are involved.

B. Collections of Information Employing Statistical Methods.

This collection does not employ statistical methods.