

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

Information Collection Request Title: Tax Class Statement Required on Hard Cider Labels.

**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.), 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 administrative and enforcement authorities to TTB through Treasury Department Order 120-01.

The IRC at 26 U.S.C. 5041 imposes six excise tax rates on wine, which correspond to the six tax classes listed in sections 5041(b)(1) through (6). This includes the hard cider tax rate of \$0.226 per wine gallon, which is listed in section 5041(b)(6). The IRC at 26 U.S.C. 5368(b), also provides, in part, that wine shall be removed in such containers bearing such marks and labels evidencing compliance with 26 U.S.C. chapter 51, as the Secretary may by regulation prescribe.

The TTB regulations governing the labeling and marking of wine containers for tax purposes are found in 27 CFR Part 24, Wine, Subpart L, Storage, Treatment and Finishing of Wine, which encompasses §§ 24.240 through 24.260. Specifically, § 24.257 requires that the proprietor of a wine premises label each bottle or other container of beverage wine prior to removal for consumption or sale, and § 24.257(a)(4)(iv) requires that a wine's statement of composition include enough information to identify the wine tax class when viewed with the alcohol content.

On December 18, 2015, the President signed into law the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), Pub. L. 144-113. Section 335(a) of the PATH Act amends the Internal Revenue Code of 1986 (IRC) at 26 U.S.C. 5041 by modifying the definition of hard cider for purposes of applying the hard cider excise tax rate. Pursuant to section 335(b) of the PATH Act, the amendment of the definition of hard cider applies to such products removed after December 31, 2016. The PATH Act does not change the tax rate applicable to wine eligible for the hard cider tax rate; rather, it broadens the range of products to which the hard cider tax rate applies. Among other things, beginning January 1, 2017, the percentage of alcohol by volume and the amount of carbon dioxide allowed in hard cider tax-class products will increase. While the IRC currently allows only products

made primarily from apples or apple juice and water to be labeled as hard cider, the PATH Act also provides that wine eligible for the hard cider tax rate may include products derived primarily from apples or pears or from apple juice concentrate or pear juice concentrate and water.

The TTB regulations in 27 CFR Part 4, Labeling and Advertising of Wine, which are based on TTB's authorities under the Federal Alcohol Administration Act (27 U.S.C. 201 *et seq.*), allow for the use of the term "hard cider" on wine labels but with a broader meaning in the industry and among consumers than the definition given for tax purposes in the IRC. As a result, TTB allows the use of the term "hard cider" on labels of products that are not eligible for the hard cider tax class, as long as other information on the label allows for the identification of the appropriate wine tax class.

In response to the PATH Act, TTB is issuing a temporary rule (and a concurrent notice of proposed rulemaking) titled "Implementation of Statutory Amendments Requiring the Modification of the Definition of Hard Cider." In light of the broader definition of "hard cider" allowed under the FAA Act, the temporary rule will amend § 24.257 by requiring a tax class statement on labels of wine claiming the hard cider tax rate provided for in the IRC at 26 U.S.C. 5041(b)(6). Specifically, the new information collection in new section § 24.257(a)(4)(v) will require that industry members who remove wine on which the hard cider tax rate applies place a specific statement, "Tax class 5041(b)(6)," on containers of such wine, in order to adequately identify the applicable tax rate. For imported wines claiming the hard cider tax rate, a new § 27.59(b) will cross-reference the tax class statement labeling requirement contained in amended § 24.257.

TTB has determined that this new information collection regarding the tax class statement is necessary to protect the revenue and demonstrate compliance with the IRC's statutory requirements regarding products eligible for the hard cider tax rate. The tax class statement ensures the proper identification of the content of the wine container, protects the Federal government's revenue interest prior to removal of the wine from bonded premises, and identifies the wine at the time of its removal from bond coverage in order to ensure that the correct Federal excise tax will be collected. TTB believes that this label statement is the simplest and clearest way to identify such products in order to avoid confusion with other, higher-rate tax classes of wine, and this regulatory amendment does not require any other changes to label statements that wine industry members use or may wish to use to identify their products.

Under §§ 24.257(a)(4)(v)(B), the new requirement is imposed on such wine removed on or after January 1, 2018. The delayed effective date provides sufficient time for affected industry members to bring their labels into compliance with the new requirement.

(The records maintained by wine premises proprietors to support the accuracy of the other IRC-based marks and labels required on wine containers for tax classification purposes are approved under OMB control number 1513-0092, Marks on Wine Containers, TTB REC 5120/3.

This information collection, 1513-NEW, 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?*

The regulatory requirement to display the excise tax class for wine that is eligible for the hard cider tax rate is necessary to protect the revenue, particularly since, under TTB's FAA Act-based labeling regulations, the term "hard cider" may be used on products not otherwise eligible for the hard cider tax class. Through the display of this mark, TTB ensures accurate identification of the tax class of the product in the container for Federal excise tax revenue collection purposes when the products are ultimately removed from the bonded premises. TTB personnel may examine this mark during audits or investigations of winery premises.

*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 required tax class statement is a third party disclosure made on a product's label. This mark is displayed or applied by the regulated industry members at their business premises. Wine industry members may use improved technology to comply with the requirements for marking wine containers as they see fit.

*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?*

The required tax class label statement for products eligible for the hard cider tax rate is specific to each product and manufacturer. 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?*

Proprietors label containers of wine, including wines eligible for the hard cider tax rate, during the normal course of business. We consider the tax class statement on containers of wine eligible for the hard cider tax rate to be the minimum necessary to ensure compliance with TTB administered laws and regulations. Waiver or reduction of this recordkeeping requirement, simply because the respondent's business is small, would jeopardize the revenue.

*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?*

Under existing TTB regulations, proprietors are required to mark their containers of wine in a manner that properly identifies the appropriate tax class. The proposed tax class statement for wine that is eligible for the hard cider tax rate will ensure the proper identification of the content of the wine container, protect the Federal government's revenue interest prior to removal of the wine from bonded premises, and identify the wine at the time of its removal from bond coverage in order to ensure that the correct Federal excise tax will be collected. These marks are applied or changed only as needed to identify the contents of the

container. Not requiring this tax class statement on wine that is eligible for the hard cider tax rate, or requiring it less frequently, would jeopardize the revenue and could result in the distribution of incorrectly identified wines.

*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?*

No special circumstances are 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 regarding this new information collection, TTB will publish in the Federal Register a notice of proposed rulemaking in conjunction with the publication of the temporary rule referenced above in this supporting statement. The notice of proposed rulemaking will be open for public comment for 60 days.

*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?*

The required tax class statement for wine that is eligible for the hard cider tax rate is applied to wine containers at a proprietor's premises or is otherwise under the control of the respondent. While the tax class statement is intended for display for TTB officials, the statement also will be visible to the public on such products' containers. Therefore, as a third party disclosure, no assurance of confidentiality is provided for this information collection.

*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, which consists of tax class marks applied by industry members at their business premises, contains no questions of a sensitive nature. In addition, this information collection does not collect personally identifiable information (PII) in a government 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?*

In 2015, 457 domestic manufacturers removed wine eligible for the hard cider tax rate from their premises. TTB estimates that an additional 20 percent of those manufacturers (91) may be interested in removing such wine from their premises given the new provisions applicable in 2017, for a total of 548 domestic manufacturer respondents to this information collection.

Additionally, in 2015, according to U.S. Customs and Border Protection entry data, TTB determined that 191 importers obtained release from customs custody of products that were identified as cider under the Harmonized Tariff Schedule of the United States (HTSUS). TTB estimates that an additional 20 percent of those importers (38) may be interested in importing products that fall under that HTSUS code starting in 2017, for a total of 229 importer respondent to this information collection.

Accordingly, TTB estimates that there will be 777 total wine industry members who will be required to comply with the hard cider tax class labeling requirement. TTB estimates that it will take each industry member a one-time burden of one hour for their hard cider tax rate-eligible wines to come into compliance with this information collection, but that the continued compliance burden will be negligible. Therefore, TTB estimates that these 777 respondents will respond an average of once per year to this information collection, for a total estimated annual burden of 777 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)?*

Because the labeling of consumer products such as hard cider beverages is a normal business practice, we do not believe respondents bear any additional capital or start-up costs or any increased operation or maintenance costs as a result of this information collection requirement. The one year delayed effective date for the tax class statement requirement will allow proprietors to use up existing label stocks. The addition of the tax class statement to future label orders should be very minimal.

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

There is no cost to the Federal Government for this information collection, which consists of marks applied or maintained by respondents at their business premises.

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

As for program changes, TTB is revising 27 CFR 24.257(a)(4), by requiring the placement of the tax class statement "Tax class 5041(b)(6)" on containers of wine that are eligible for the hard cider tax rate. This requirement will be cross-reference for imported products in new 27 CFR 27.59(b). In addition, TTB believes that there would be a one-time burden of one hour for wines that are eligible for the hard cider tax rate to come into compliance with this information collection, but that the continued compliance burden will be negligible. (This is a new collection; therefore, there are no adjustments.)

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 the hard cider tax class statement placed on labels of wine containers that respondents display or apply at their business premises during the normal course of business. 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.
- (f) This is not a recordkeeping requirement.
- (g) This information collection consists of a third party disclosure placed certain wine labels by respondents at their premises. As such, there is no prescribed medium for TTB to inform respondents of the information called for under 5 CFR 1320.8 (b)(3).
- (i) No statistics are involved.
- (j) See item 3 above.

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

This collection does not employ statistical methods.