

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: Record of Carbon Dioxide Measurement in Effervescent Products Taxed as Hard Cider.

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).

- (1) \$1.07 per wine gallon for still wines containing not more than 14 percent alcohol by volume;
- (2) \$1.57 per wine gallon for still wines containing more than 14 percent but not more than 21 percent alcohol by volume;
- (3) \$3.15 per wine gallon for still wines containing more than 21 percent but not more than 24 percent alcohol by volume;
- (4) \$3.40 per wine gallon for champagne and other sparkling wines;
- (5) \$3.30 per wine gallon for artificially carbonated wines; and
- (6) \$0.226 (22.6 cents) per wine gallon for hard cider.

In addition, the IRC at 26 U.S.C. 5368(b) 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.

On December 18, 2015, the President signed into law the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), Pub. L. 114-113. 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 on or after January 1, 2017. 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 wine that falls within the hard cider tax-class will increase. Also, while the IRC previously defined hard cider as a product made primarily from apples or apple juice concentrate and water, the PATH Act 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.

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." The temporary rule will amend 27 CFR 24.302 by adding a new paragraph (k) to require industry members to record the amount of carbon dioxide in their artificially carbonated hard cider or naturally sparkling hard cider. TTB has determined that this recordkeeping requirement is necessary to protect the revenue and demonstrate compliance with the revised statutory requirements regarding products eligible for the hard cider tax rate because:

- (1) The PATH Act raises the allowable carbon dioxide in hard cider tax rate-eligible products from no more than 0.392 gram per 100 milliliters to no more than 0.64 gram per 100 milliliters; and
- (2) The tax-rate differential between hard cider, at \$0.226 per wine gallon, and that of artificially carbonated wine, at \$3.30 per wine gallon, and that of champagne and other naturally sparkling wines, at \$3.40 per wine gallon, is substantial (see 26 U.S.C. 5041(b)(4)) through and (b)(6). Artificially and naturally carbonated wines not statutorily eligible for the hard cider tax rate but tax paid at the hard cider tax rate by their producers would cause a substantial tax loss for the Government—amounting to \$30,740 per 10,000 gallons for artificially carbonated wines and \$31,740 for champagne or other naturally sparkling wines.

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 record the amount of carbon dioxide in artificially carbonated hard cider and sparkling hard cider is necessary to protect the revenue and demonstrate compliance with the revised statutory requirements regarding products eligible for the hard cider tax rate. TTB personnel will examine these records during audits or investigations of winery premises to ensure that wine products tax-paid at the hard cider tax rate meet the IRC's statutory definition of a hard cider product.

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?

Wine industry members may use improved technology to comply with the requirements of this information collection as they see fit. The TTB regulations do not specify the format of the required carbon dioxide measurement record.

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 carbon dioxide content of an artificially carbonated hard cider or sparkling hard cider 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?

We consider the measurement and recording of carbon dioxide levels in artificially carbonated hard cider and sparkling hard cider 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, will jeopardize the revenue due to the significant tax rate differentials between hard cider (\$0.226 per wine gallon) and those for artificially carbonated wine (\$3.30 per wine gallon), and champagne and other naturally sparkling wines (\$3.40 per wine gallon); see 26 U.S.C. 5041(b)(4) through and (b)(6).

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 report how much still wine is converted into artificially carbonated or sparkling wine, as well as the final volume of artificially carbonated and sparkling wine. Because the tax class for hard cider provides a limit as to how much carbon dioxide a hard cider product may contain, the proposed recordkeeping requirement for wine that is eligible for the hard cider tax rate will help ensure compliance with TTB administered laws and regulations and protect the Federal government's revenue interest. These measurements and records are made once artificially carbonated hard cider and sparkling hard cider are produced. Not requiring this recordkeeping requirement for wine that is eligible for the hard cider tax rate, or requiring it less frequently, will jeopardize the revenue.

TTB continues to believe that carbon dioxide levels in artificially carbonated hard cider (CO₂ is artificially injected into the wine) and sparkling hard cider (CO₂ is derived from the secondary fermentation of the wine in closed containers) need to be recorded for each batch of such wine produced in order to protect the revenue, due to the significant tax rate differentials between hard cider (\$0.226 per wine gallon) and those for artificially carbonated wine (\$3.30 per wine gallon), and champagne and other naturally sparkling wines (\$3.40 per wine gallon); see 26 U.S.C. 5041(b)(4) through and (b)(6).

As noted in Question 1 of the Supporting Statement, section 335(a) of the PATH Act amended the definition of hard cider to broaden the range of products to which the hard

cider tax rate applies—hard cider can now be derived primarily from pears as well as apples (previously limited to primarily apples), can contain no more than 0.64 grams of carbon dioxide per 100 milliliters (up from no more than 0.392 grams), and can range in alcohol content from 0.5 percent to less than 8.5 percent alcohol by volume (up from less than 7 percent). TTB notes that the carbon dioxide content for still wine remains at no more than 0.392 grams per 100 milliliters – wines other than wine eligible for the hard cider tax rate that contain more than 0.392 gram per 100 milliliters of wine are taxed at the higher tax rates set forth in section 5041(b)(4) or (5).

As such, TTB notes that there is a tax-rate differential of \$3.074 per wine gallon between the hard cider tax rate and the artificially carbonated tax rate. The tax rate differential between the hard cider tax rate and the naturally sparkling wine tax rate is \$3.174. Given these significant tax rate differentials, TTB believes that the potential for tax fraud, by claiming the hard cider tax rate when the wine should be taxed at the artificially carbonated or naturally sparkling wine tax rate, cannot be ignored—the tax differential leads to tax savings of \$30,740 per 10,000 gallons for artificially carbonated wines and \$31,740 for naturally carbonated and sparkling wines. To protect the revenue, TTB believes that producers should be required to record the carbon dioxide levels for each batch of artificially and naturally carbonated wine that the hard cider tax rate is claimed on in order to document that the product in question qualifies for the significantly lower hard cider tax rate.

At this time, TTB continues to believe that a less frequent recordkeeping requirement for carbon dioxide levels in artificially carbonated hard cider and sparkling hard cider will not provide adequate protection to the revenue. TTB also believes that this requirement is not overly burdensome on small entities. Such entities likely produce hard cider only on a seasonal basis and produce a small number of batches, not all of which will be artificially carbonated or naturally sparkling and thus subject to the carbon dioxide level recordkeeping requirement. TTB believes that most large producers already or will have equipment to measure the amount of carbon dioxide added to hard cider during the production of artificially carbonated hard cider sparkling hard cider and can therefore easily keep the required records.

TTB also notes that the current per-batch recordkeeping requirement is part of a temporary rule concerning the statutory changes to the definition of hard cider. TTB notes that it will reopen the comment period for the related notice of proposed rulemaking (Notice No. 168), and that it will consider any comments submitted by industry members related to the carbon dioxide level recordkeeping requirement and its required frequency.

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 recordkeeping requirement.

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 temporary rule and a concurrent notice of proposed

rulemaking titled "Implementation of Statutory Amendments Requiring the Modification of the Definition of Hard Cider" in the Federal Register. 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 carbon dioxide measurement record for products tax paid as hard cider are made and kept at a proprietor's premises or are otherwise under the control of the respondent. As such, 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 any personally identifiable information (PII). 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?*

The new recordkeeping requirement will require domestic proprietors who produce artificially carbonated hard cider and sparkling hard cider to maintain a record of the amount of carbon dioxide contained in the wine. This new requirement is imposed on such wine removed on or after January 1, 2017.

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. TTB is also estimating that each domestic manufacturer will perform this recordkeeping requirement for an average of 25 batches annually, for a total of 13,700 annual responses to this information collection.

TTB's Scientific Services Division estimates that it will take each of these 548 industry members an average of 4 hours to test the level of carbon dioxide in hard cider products,

and an additional 0.25 hour (15 minutes) to record the level of carbon dioxide in the product for a total of 4.25 hours to test and record the carbon dioxide level in each batch of artificially carbonated hard cider or sparkling hard cider. As such, the estimated burden for this information collection is 106.25 hours per respondent and 58,225 total burden hours.

(548 respondents x 25 annual responses = 13,700 annual responses x 4.25 hours per response = 58,225 estimated 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)?*

Under the revised regulation in 27 CFR 24.302, to claim the hard cider tax rate for a given product, industry members are required to record the level of carbon dioxide in the product. Such industry members may elect to have a third party conduct the test necessary to determine the carbon dioxide level in the product or they may elect to conduct such testing themselves.

For industry members who elect to employ third-party testing, TTB understands that the cost for one wine sample to be tested for carbon dioxide levels by an outside lab is approximately \$45.00 for one such test.¹ Therefore, the annual cost for testing 50 such samples would be approximately \$2,250.

For industry members who elect to conduct such testing themselves, TTB estimates the following start-up and continuing costs based on the enzymatic and titrimetric testing methods used by TTB's Scientific Services Division:

Testing costs for the first year:

pH meter with electrode:	\$800.00
Miscellaneous glass ware-burette, pipette, flasks:	\$800.00
Refrigerator for samples:	\$150.00
Enzyme for approximately 25 tests/100 mg	\$5,600.00
Degasser –starting at lowest model	\$700.00
Reagents for titration	\$200.00
Buffer solutions	\$100.00
Total First Year Costs:	\$8,350.00

Testing costs for subsequent years:

Electrode for the pH meter (yearly replacement):	\$260.00
Enzyme for approximately 25 tests/100 mg	\$5,600.00
Degasser – starting at lowest model	\$700.00
Reagents for titration	\$200.00
Buffer solutions	\$100.00

¹ Source: <https://www.etslabs.com/analyses>.

Total Annual Cost in Subsequent Years \$6,860.00

Therefore, total annual costs resulting from this information collection range from a low of \$2,250 to \$8,350 per respondent, depending on circumstances.

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

There is no cost to the Federal Government for this information collection, which is conducted and maintained by proprietors at their business premises.

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

As for program changes, due to the increase in the amount of carbon dioxide allowed in products eligible for the IRC's hard cider tax rate under section 335 of the PATH Act, and thus to protect the revenue due to the significant tax-rate differential between hard cider and other artificially and naturally carbonated wines, TTB is revising § 24.302 to require that the amount of carbon dioxide in artificially carbonated hard cider or naturally sparkling hard cider be included in the effervescent wine record. (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 records that respondents maintain on their premises. 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 records kept 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.