

DEPARTMENT OF THE TREASURY
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU
Supporting Statement -- Information Collection Request
OMB Control Number 1513-0101

Information Collection Request Title:

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

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. 5701 imposes a Federal excise tax on domestically-produced and imported tobacco products and cigarette papers and tubes, and, under that section, each type of product—cigars, cigarettes, smokeless tobacco (snuff and chewing tobacco), pipe tobacco, roll-own-own tobacco, cigarette papers, and cigarette tubes—is taxed at a different rate. The IRC, at 26 U.S.C. 5702, defines these products for tax purposes, and, at 26 U.S.C. 5703, places liability for these taxes, in general, on a product's manufacturer or importer. In addition, the IRC at 26 U.S.C. 5723(b) requires that all packages of tobacco products or cigarette papers and tubes shall, before removal, bear the marks and notices that the Secretary by regulation prescribes.

Under the authority of 26 U.S.C. 5723(b), to protect the revenue, the TTB regulations require that certain marks and notices be placed on packages (or containers of packages under some circumstances) of tobacco products or cigarette papers and tubes before removal from internal revenue bond for sale or use in the United States, or before removal for exportation.

In particular, the TTB regulations require that packages of domestically-manufactured tobacco products bear certain marks to identify the manufacturer and the factory that produced the product. The regulations also require that packages (or containers of packages under some circumstances) of domestically-manufactured or imported tobacco products bear certain notices to identify the type and tax class of the product and the quantity or weight of the product, depending on the basis of the tax.

In addition, the TTB regulations require the placement of certain notices on packages of tobacco products intended for export since such products are removed without payment of tax or, if tax-paid, may be eligible upon exportation for drawback (credit or refund) of the taxes paid. The TTB regulations also require manufacturers and/or export warehouse proprietors to place distinguishing numbers on containers of packages of tobacco products or cigarette papers and tubes intended for export. Similarly, the TTB regulations require the placement of certain notices on packages of tobacco products removed for use of the United States since such products also are removed without payment of tax. These requirements protect the revenue by ensuring that such tax-exempt products are readily identifiable in order to prevent their diversion into the domestic market.

The TTB regulatory requirements pertaining to this statutory authority are set forth in:

- 27 CFR Part 40, Manufacture of Tobacco Products, Cigarette Papers and Tubes, and Processed Tobacco, at §§ 40.25a, 40.212, 40.213, 40.214, 40.215, 40.216, 40.216a, 40.216b, and 40.217;
- 27 CFR Part 41, Importation of Tobacco Products, Cigarette Papers and Tubes, and Processed Tobacco, at §§ 41.30, 41.72, 41.72a, 41.72b, 41.73, and 41.74;
- 27 CFR Part 44, Exportation of Tobacco Products and Cigarette Papers and Tubes, Without Payment of Tax, or with Drawback of Tax, at §§ 44.181, 44.184, 44.185, 44.186, 44.187, 44.222, 44.224, 44.248, 44.251, 44.252, 44.253, and 41.254; and
- 27 CFR Part 45, Removal of Tobacco Products and Cigarette Papers and Tubes, Without of Payment of Tax, for Use of the United States, at §§ 45.42, 45.43, 45.44, 45.45, 45.45a, 45.45b, and 45.46.

In addition, ATF Ruling 73–22 describes the criteria for determining whether a tobacco product is a cigar or cigarette for tax purposes. Among other things, these criteria include certain markings on packages of cigars.

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?

This information collection is a third-party disclosure, which consists of marks and notices printed on or affixed to packages of tobacco products or to containers of tobacco products or cigarette papers and tubes. These marks and notices may be examined by tobacco industry members, retailers, Federal, State, and local government officials, and the general public. In particular, TTB personnel may use the information conveyed through the marks and notices to identify the manufacturer and/or the tax classification of the product.

The information required by these mark and notice requirements is necessary to protect the revenue and ensure effective administration of the IRC's tobacco excise tax-related provisions. For domestic products, the conveyed information indicates who is liable for the excise tax, and, for domestic and imported products, the amount of that liability, based on the product's tax class and quantity or weight. For exported products and products removed

for use of the United States, the required tax-exempt notices or labels ensure that the products are readily identifiable if they should be diverted into domestic commerce.

Also, the required information is a means of determining the classification of certain tobacco products, such as pipe tobacco and roll-your-own tobacco, where the product's definition under the IRC at 26 U.S.C. 5702 requires TTB to consider how a product is likely to be offered to or purchased by consumers.

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?

This information collection is a third-party disclosure, which consists of marks and notices printed on or affixed to packages of tobacco products or to containers of tobacco products or cigarette papers and tubes. Tobacco industry members may use automated, electronic, or mechanical technologies of their choice to print or affix the required marks and notices to such packages and containers.

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 information required by this third-party disclosure is specific to the content of each package or container of packages of tobacco products or cigarette papers and tubes. As far as TTB can determine, similar third-party disclosure 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?

All entities, regardless of size, are required by the TTB regulations to place certain marks and notices on packages (or containers) of tobacco products or cigarette papers and tubes. However, TTB believes that the required third-party disclosures of information do not have a significant impact on a substantial number of small businesses or other entities because the placement of information on a product's package disclosing the product's manufacturer, identity, and quantity (or weight) is done during the normal course of business.

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?

Disclosure to the public of a product's manufacturer, identity, and contents (quantity or weight) is a usual and customary practice undertaken during the normal course of business, regardless of any regulatory requirement to do so. As such, TTB considers this third-party disclosure of information concerning the manufacturer and place of manufacture (in the case of domestically-produced products), identity, and package contents to be the minimum necessary to properly identify tax liabilities. Not requiring the disclosure of such information, requiring less frequent disclosure, or requiring the disclosure of less information would jeopardize the revenue by allowing products of unclear or unknown tax class or liability, or products on which tax has not been paid, to enter the market place.

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 “60-day” comment request notice for this information collection in the Federal Register on July 13, 2017, at 82 FR 32441. TTB received no comments on this information collection in response.

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?*

This information collection is a third-party disclosure, which consists of marks and notices printed on or affixed to packages of tobacco products or to containers of tobacco products or cigarette papers and tubes. As such, no assurance of confidentiality is provided for this information collection requirement.

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 is a third-party disclosure, which consists of marks and notices printed on or affixed to packages of tobacco products or to containers of tobacco products or cigarette papers and tubes. As such, this information collection does not contain any questions of a sensitive nature. In addition, as a third-party disclosure of the name of the business manufacturing the product (in the case of domestically-produced products), product identity, and content information, this collection does not collect 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?*

According to data provided by TTB’s National Revenue Center, TTB currently regulates an estimated 724 tobacco industry members subject to this information collection requirement: 200 tobacco product manufacturers, 5 cigarette papers and tubes manufacturers, 66 export

warehouse proprietors, and 453 tobacco importers. (In the case of importers, the importer is not required to mark packages or containers, as this is generally done by the foreign manufacturer, but the importer must ensure that the TTB marking requirements are met before importation, and the importer may mark packages before removal from customs custody if needed to meet the marking requirements.)

Disclosure to the public of a product's manufacturer and type, and a package's contents (quantity or weight) is a usual and customary practice that is undertaken during the normal course of business, regardless of any regulatory requirement to do so.

Therefore, as a usual and customary business practice, this information collection imposes no burden on respondents as defined by 5 CFR 1320.3(b)(2). As such, the total annual burden for all 724 current tobacco industry members subject to this information collection requirement is estimated to be one hour (represents a place holder not an actual estimate of burden).

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 is a third-party disclosure, which consists of marks and notices printed on or affixed by respondents to packages of tobacco products, or to containers of tobacco products or cigarette papers and tubes, during the normal course of business. As such, there are no additional costs to respondents resulting from this information collection.

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

This information collection is a third-party disclosure, which consists of marks and notices printed on or affixed by respondents to packages of tobacco products, or to containers of tobacco products or cigarette papers and tubes, during the normal course of business. As such, there are no costs to the Federal government associated with this information collection.

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

There are no program changes associated with this collection. As for adjustments, TTB is increasing the number of reported respondents to this information collection in order to reflect an increase in tobacco industry members and to account for all tobacco industry member types that may be required to place marks and/or notices on packages of tobacco products or on containers of packages of tobacco products or cigarette papers and tubes.

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

TTB does not publish the results of this information collection. This information collection is, however, a third-party disclosure of information to the public of product information that is undertaken by respondents during the normal course of business, regardless of any regulatory requirement to do so.

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 is a third-party disclosure, which consists of marks and notices printed on or affixed by respondents to packages of tobacco products, or to containers of tobacco products or cigarette papers and tubes, during the normal course of business. As such, there is no prescribed TTB form or other collection instrument for this information 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.
- (i) No statistics are involved.
- (j) See item 3 above.

B. Collections of Information Employing Statistical Methods.

This collection does not employ statistical methods.