

DEPARTMENT OF THE TREASURY

ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

Supporting Statement -- Information Collection Request

OMB Control Number 1513-0110

Information Collection Request Title:

Recordkeeping for Tobacco Products Removed in Bond from a Manufacturer's Premises for Experimental Purposes – 27 CFR 40.232(e).

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 (the Secretary) has delegated certain IRC administrative and enforcement authorities to TTB through Treasury Order 120–01.

The IRC at 26 U.S.C. 5701 imposes a Federal excise tax on domestically-produced and imported tobacco products (cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco) and cigarette papers and tubes, and, under 26 U.S.C. 5703, the manufacturer or importer of such articles is originally liable for that excise tax. However, the IRC at 26 U.S.C. 5704(a) allows a manufacturer of tobacco products to furnish tobacco products for experimental purposes without payment of the Federal excise tax, "in such manner as the Secretary shall by regulation prescribe."

Therefore, under the authority of 26 U.S.C. 5704(a), the TTB regulations at 27 CFR 40.232, Experimental purposes, provide that, under certain conditions, manufacturers of tobacco products may use tobacco products for experimental purposes inside a factory, or remove tobacco products for experimental purposes outside of a factory, without determination and payment of tax. Under § 40.232(e), Record of use, manufacturers that remove tobacco products, without payment of tax, for experimental use outside a factory must prepare and maintain a record containing: (1) The name and address of the consignee, (2) the kind and quantity of tobacco products removed, (3) a description of the tobacco product's packaging (if any), (4) a description of how and when the consignee will use the tobacco products, and (5) the disposition of any remaining tobacco products after the consignee's use.

The recordkeeping requirement stipulated under § 40.232(e) is necessary to protect the revenue. These records document the amount of tobacco products removed without payment of tax for experimental purposes outside a factory, which allows TTB to account for

the disposition of such nontaxpaid products. Accounting for these removals helps TTB prevent or detect the diversion of nontaxpaid tobacco products into the market.

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?

Under this information collection, approved under OMB control number 1513–0110, the records required under § 40.232(e) concerning tobacco products removed without payment of tax for experimental purposes outside a factory provide supporting documentation for the amount of such removals reported on form TTB F 5210.5, Report—Manufacturer of Tobacco Products or Cigarette Papers and Tubes, which is approved under OMB control number 1513–0033 (see Item 15(f) on that form). The required records accounting for removals for experimental purposes are maintained by tobacco product manufacturers at their business premises, and they may be inspected by TTB personnel during audits or field investigations.

TTB personnel use the information in these records: (1) To verify the kind and amount of tobacco products removed without payment of tax for experimental purposes outside a factory, (2) to determine to whom such removals were consigned, (3) to determine if the removed tobacco products were used for legitimate experimental purposes, and (4) to determine the disposition of the removed tobacco products. Accounting for such removals is necessary to protect the revenue as this assists TTB in preventing or detecting diversion of such nontaxpaid tobacco products into the market.

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 records are maintained by the regulated industry members at their business premises and may be inspected by TTB personnel. No specific form or format is required for these records, and respondents may keep the required records in paper or electronic formats at their discretion. These records must be maintained for 3 years and must be accessible to TTB personnel during that time.

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?

Each nontaxpaid removal of tobacco products for experimental purposes outside a factory is unique in its identity, quantity, and purpose. As far as TTB can determine, there are no comparable records available to the agency to describe and account for such removals.

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

Recordkeeping regarding tobacco products removed without payment of tax for experimental purposes outside the factory is required to protect the revenue, and this recordkeeping requirement cannot be waived simply because the respondent's business is small. TTB believes that this recordkeeping is minimal and cannot be further minimized because each such shipment is unique.

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?

In the absence of this recordkeeping requirement, TTB could not accurately verify removals of tobacco products without payment of tax for experimental purposes outside the factory. Lack of such verification would jeopardize the revenue and prevent TTB from preventing or detecting diversion of nontaxpaid tobacco products into the market.

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? (See 5 CFR 1320.5(d)(2).)

There are no special circumstances associated with this information collection that would require it to be inconsistent with OMB guidelines.

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 October 7, 2019, at 84 FR 53569. 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 information 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, which consists of records maintained by regulated industry members at their business premises. 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 related information unless disclosure is specifically authorized by the IRC.

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 records maintained 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?

Based on the number of tobacco product manufacturer permits currently in effect, TTB estimates that 235 respondents are subject to this recordkeeping requirement, and TTB further estimates that each respondent makes one annual response to this information collection.

TTB has determined that this information collection involves usual and customary business records, such as invoices, shipping records, and correspondence documenting the shipment, use, and disposition of tobacco products removed for experimental purposes that a regulated industry member would keep at its premises during the normal course of business, even without the TTB regulatory requirement to keep such records.

Therefore, in accordance with the Office of Management and Budget (OMB) regulations at 5 CFR 1320.3(b)(2), there is no respondent burden associated with this information collection because it consists of usual and customary records kept by respondents at their premises during the normal course of business.

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 consists of usual and customary business records that respondents keep at their premises during the normal course of business. As such, and in accordance with 5 CFR 1320.3(b)(2), there is no cost burden to respondents associated with this information collection.

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

There is no cost to the Federal Government for the maintenance of usual and customary business records kept by regulated industry members at their premises.

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

There are no program changes associated with this information collection. As for adjustments, TTB is removing the one hour of respondent burden previously reported for this information collection as a place holder. As noted above, under the OMB regulations at 5 CFR 1320.3(b)(2), there is no respondent burden associated with information collections

that consist of usual and customary records kept by respondents at their premises during the normal course of business.

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

TTB will not publish the results of this information 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 usual and customary business records that tobacco product manufacturers keep at their premises during the normal course of business. As such, there is no prescribed TTB form for this collection and there is no medium for TTB to display the information collection's OMB approval expiration date.

18. What are the exceptions to the certification statement?

- (c) See item 5 above.
- (i) No statistics are involved.
- (j) See item 3 above.

B. Collections of Information Employing Statistical Methods.

This information collection does not employ statistical methods.