

DEPARTMENT OF THE TREASURY

ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

Supporting Statement -- Information Collection Request

OMB Control Number 1513-0139

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

The IRC at 26 U.S.C. 5041 imposes six excise tax rates on wine, which vary by the alcohol and carbon dioxide content of the wine.¹ As set forth in section 5041(b)(6), the lowest wine tax rate is \$0.226 (22.6 cents) per wine gallon for “hard cider,” which, as defined for tax purposes in section 5041(g), may not contain more than 0.64 gram of carbon dioxide per 100 milliliters of wine.² Effervescent hard ciders exceeding that carbon dioxide limit are taxed at \$3.40 per wine gallon if naturally sparkling or at \$3.30 per wine gallon if artificially carbonated, per sections 5041(b)(4) and (5).

Given the substantial tax rate differential between hard cider and those for carbonated wines—amounting to \$31,740 per 10,000 gallons for naturally sparkling wines and \$30,740 per 10,000 gallons for artificially carbonated wines—the TTB wine regulations at 27 CFR 24.302(k) require wine premises proprietors to record the amount of carbon dioxide in the naturally sparkling or artificially carbonated hard ciders that they produce or receive in bond. TTB has determined that this recordkeeping requirement is necessary to protect the

¹ As listed in 26 U.S.C. 5041(b)(1) through (6), the six excise tax rates per wine gallon are: (1) \$1.07 for still wines containing not more than 14 percent alcohol by volume; (2) \$1.57 for still wines containing more than 14 percent but not more than 21 percent alcohol by volume; (3) \$3.15 for still wines containing more than 21 percent but not more than 24 percent alcohol by volume; (4) \$3.40 for champagne and other sparkling wines; (5) \$3.30 for artificially carbonated wines; and (6) \$0.226 (22.6 cents) for hard cider. Per 26 U.S.C. 5041(a), “still wines” are those containing not more than 0.392 gram of carbon dioxide per 100 milliliters of wine.

² Under 26 U.S.C. 5041(g), as amended by section 335(a) of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act, Pub. L. 144-113), wines removed after January 1, 2017, are eligible for the hard cider tax rate if they contain no more than 0.64 gram of carbon dioxide per 100 milliliters (previously limited to 0.392 gram per 100 milliliters), are derived primarily from apples or pears or from apple juice concentrate or pear juice concentrate and water, contain no fruit or fruit flavoring other than apple or pear (previously limited to apple-based products), and are between 0.5 and 8.5 percent alcohol by volume (previously limited to between 0.5 and 7 percent alcohol by volume).

revenue and demonstrate compliance with the statutory requirements for products eligible for the hard cider tax rate.

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?

TTB requires wine premises proprietors to record the amount of carbon dioxide in wines for which they claim the hard cider excise tax rate because that rate is significantly lower than those for other types of wines, particularly those taxed as naturally or artificially carbonated wines. Therefore, to protect the revenue, TTB personnel examine the required records during audits or investigations of winery premises to verify that wines for which respondents claim the hard cider tax rate do, in fact, meet the IRC's statutory definition of hard cider.

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?

Respondents 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 records for products taxed as hard cider.

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 a naturally sparkling or an artificially carbonated hard cider is specific to each product and producer. As far as TTB 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?

TTB considers it regulatory requirement to keep carbon dioxide measurement records for wines for which the hard cider tax rate is claimed to be the minimum necessary to ensure compliance with the IRC's statutory provisions regarding hard cider. Waiver or reduction of this recordkeeping requirement, simply because the respondent's business is small, would jeopardize the revenue due to the significant tax rate differentials between wines defined as hard cider and other naturally or artificially carbonated wines. 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 naturally sparkling or artificially carbonated and thus subject to the carbon dioxide level recordkeeping requirement.

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 the definitions and excise tax rates set forth in the IRC at 26 U.S.C. 5041, hard cider is taxed at \$0.226 (22.6 cents) per wine gallon, while naturally sparkling wine is taxed at \$3.40 per wine gallon, and artificially carbonated wine is taxed at \$3.30 per wine gallon. Given the substantial tax rate differentials between hard cider and those for naturally and artificially carbonated wines, TTB believes that the potential for tax fraud by persons claiming the hard cider tax rate for wines that do not qualify for that rate cannot be ignored. Therefore, the TTB regulations require hard cider producers to record the carbon dioxide content for each batch of naturally and artificially carbonated wine for which they will claim the hard cider tax rate. That requirement is necessary to ensure that the wine in question meets the IRC's statutory definition of hard cider for tax purposes and thus qualifies for the significantly lower hard cider tax rate set forth in the IRC. Not collecting the required information or collecting it less frequently would pose substantial 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? (See 5 CFR 1320.5(d)(2).)*

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 May 7, 2020, at 85 FR 27272. TTB received no comments regarding 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?*

The hard cider carbon dioxide measurement records required under this collection are made and kept at the respondent's premises or are otherwise under the respondent's control. As such, TTB provides no specific assurance of confidentiality 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?*

Estimated burden: Based on recent data, TTB estimates that, annually, 820 respondents will test hard cider products for carbon dioxide content and keep the required measurement records. TTB further estimates that each respondent will complete 25 responses to this information collection, and that each response will require up to 4.25 hours to complete (4 hours for testing and 0.25 hour for recordkeeping). Therefore, TTB estimates that the estimated total annual burden for this information collection request is 20,500 responses and 87,125 hours.

Record retention: Per the TTB regulations at 27 CFR 24.300(d), all records required under part 24, which includes this information collection, must be retained for at least 3 years after the record date.

Estimated respondent labor costs: Of the estimated 820 annual respondents to this information collection, TTB estimates that 200 will conduct the required carbon dioxide measurement tests in their own “in-house” laboratories, while 620 will employ outside laboratories. Therefore, based on recent wage data for the positions noted in the table below, TTB estimates respondent labor costs for this information collection as follows:

<i>Respondent Type</i>	<i>Cost per Response (Hours per Response x Fully Loaded Labor Rates³)</i>	<i>Respondent cost for 25 annual responses</i>	<i>Annual respondents</i>	<i>Total Respondent Cost</i>
In-house Laboratory Chemist	4.25 hours (testing & recordkeeping) @ \$50.70/hour = \$215.48 per response.	\$5,387.00	200	\$1,077,400
In-house staff using an outside laboratory	1.25 hours (in-house staff preparing samples & shipments, keeping and maintaining records) @ \$29.59/hour = \$36.99 per response	\$924.75	620	\$573,345
<i>Average Respondent Labor Cost / Total Cost</i>		\$2,013.10	820	\$1,650,745

³ For the private sector, Fully-Loaded Labor Rate = Hourly wages x 1.44 (to account for benefit costs). Per the most recent U.S. Dept. of Labor, Bureau of Labor Statistics, National Industry-Specific Occupational Employment and Wage Estimates for NAICS 312100—Beverage Manufacturing, the average fully-loaded labor rate for chemists is \$50.70 (\$35.21/hour + \$15.49 benefit costs). For office and support function personnel, the fully-loaded labor rate is \$29.59 per hour (\$20.55 wages + 9.04 benefit costs). See https://www.bls.gov/oes/current/naics4_312100.htm.

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 TTB regulation at 27 CFR 24.302(k), to claim the hard cider excise tax rate for a given product, wine industry members are required to record the level of carbon dioxide in the product. Of the estimated 820 annual respondents to this information collection, TTB estimates that 200 will conduct the required carbon dioxide measurement tests in their own “in-house” laboratories, while 620 will employ outside laboratories. Therefore, TTB estimates respondent costs for this information collection as follows:

START UP COSTS	<i>Cost per Response</i>	<i>Annualized Costs Per Respondent for 25 Tests</i>	<i>Total Annualized Costs</i>
Total Start Up Costs for 200 Respondents Using In-House Laboratories	\$334	\$8,350	\$1,670,000.00

ANNUALIZED COSTS	<i>Cost per Response</i>	<i>Annualized Costs Per Respondent for 25 Tests</i>	<i>Total Annualized Costs</i>
200 Respondents Using In-House Laboratories:	\$247	\$6,175	\$1,235,000
620 Respondents Using Outside Laboratories:			
Outside laboratory CO2 Test	\$45 ⁴	\$1,125	\$697,500
Shipping costs & supplies	\$20	\$500	\$310,000
Total Annualized Costs for 620 Respondents Using Outside Labs	\$65	\$1,625	\$1,007,500
TOTAL ANNUALIZED COSTS FOR 820 RESPONDENTS:	(\$109.39)*	(\$2,734.76)*	\$2,242,500

* Averages rounded to the nearest cent.

TTB believes that the start-up and annualized costs shown above likely are lower than estimated as many respondents with in-house laboratories already have the required equipment and purchase many of the required supplies as part of a usual and customary quality control and product testing program. TTB also believes that many respondents using outside laboratories already send product samples for testing as part of a usual and customary quality control and product testing program.

⁴ Source: <https://www.etslabs.com/analyses>.

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

There is no annualized cost to the Federal Government for this information collection, which consists of records kept and maintained by respondents at their business 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, due to changes in agency estimates resulting from continued growth in the number of hard cider producers in the United States, TTB is increasing the estimated number of annual respondents to this information collection, from 548 to 820. In turn, this increases this collection's estimated number of annual responses, from 13,700 to 20,500, and the burden hours, from 58,225 to 87,125. In addition, TTB is now accounting for, and is increasing due to changes in agency estimates, the estimated annualized costs to respondents associated with this information collection. As such, TTB is increasing its annualized respondent cost estimate from \$1,716,740 to \$2,242,500.

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 records kept and maintained by respondents at their business premises. As such, there is no prescribed TTB form or other medium for TTB to display the collection's 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.