

**DEPARTMENT OF THE TREASURY**

**ALCOHOL AND TOBACCO TAX AND TRADE BUREAU**

**Supporting Statement — Information Collection Request**

**OMB Control Number 1513–0101**

**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 (the Secretary) 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 Federal excise taxes on domestic and imported tobacco products—cigars, cigarettes, smokeless tobacco (snuff and chewing tobacco), pipe tobacco, and roll-your-own tobacco—and on cigarette papers and tubes. The tax rate varies by the type of article. The IRC, at 26 U.S.C. 5702 and 5703, defines those articles for tax purposes and, in general, places liability for those taxes on the article'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 prescribes by regulation.

Under the authority of 26 U.S.C. 5723(b), the TTB regulations require manufacturers, importers, and export warehouse proprietors to place certain marks and notices on packages of tobacco products and cigarette papers and tubes, or, in certain circumstances, on containers of such packages, before an article's removal from bond or customs custody for sale or use in the United States, or before removal for export.

In particular, the TTB regulations require that packages of domestic tobacco products bear certain marks to identify their manufacturer and the factory that produced the product. The regulations also require that packages of such articles, and packages of imported tobacco products, bear certain notices to identify the type and tax class of the article and its quantity or weight, 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 because respondents may remove such products without payment of tax or, if tax-paid, may be eligible for drawback (credit or refund) of the taxes paid upon exportation. The TTB regulations also require manufacturers and/or export

warehouse proprietors to place distinguishing numbers on containers of packages of tobacco products and cigarette papers and tubes intended for export. Similarly, the TTB regulations require the placement of certain notices on packages of tobacco products and cigarette papers and tubes removed for use of the United States because respondents also remove such products without payment of tax.

The marks and notices required on tobacco-related articles are necessary to protect the revenue. The required disclosures identify an article's producer and place of production, the type, kind, amount or weight of the article, its tax class or status, and the responsible taxpayer. In addition, the required notices on tax-exempt articles prevent their diversion into the taxable 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, 40.211, 40.212, 40.213, 40.214, 40.215, 40.216, 40.216a, 40.216b, 40.217, and 40.441.
- 27 CFR Part 41, Importation of Tobacco Products, Cigarette Papers and Tubes, and Processed Tobacco, at §§ 41.30, 41.71, 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 44.254.
- 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 §§ 45.41, 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 consisting of marks and notices printed on or affixed to packages or containers of tobacco products and cigarette papers and tubes. Federal, State, and local government officials, tobacco industry members, wholesalers, retailers, and consumers may examine the required marks and notices for various purposes. In particular, TTB uses the required marks and notices to protect the revenue. The disclosed information allows TTB to identify an article's manufacturer, place of production, tax class and status, and responsible taxpayer. The notices required on articles removed for export or use of the United States, which are tax-exempt, allows TTB to readily identify such articles and prevent or detect their diversion into the taxable domestic 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?*

Tobacco industry members may use automated, electronic, or mechanical technologies of their choice to print or affix the required marks and notices to tobacco-related article 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 marks and notices required on tobacco-related packages and containers are specific to the content of each such article's producer, importer, or exporter and to each package or container. 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?*

The IRC and the TTB regulations require all entities, regardless of size, to place marks and notices on packages and containers of tobacco-related articles identifying the products, their tax class or status, and the responsible taxpayer. However, TTB believes those requirements do not have a significant impact on a substantial number of small businesses because the placement of most of the required information is a usual and customary practice undertaken by respondents during the normal course of business, regardless of any regulatory requirement to do so.

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?*

TTB considers this third-party disclosure of information to be the minimum necessary to identify tobacco-related articles, their tax class or status, and the responsible taxpayers. Not requiring the disclosure of such information, requiring less frequent disclosure, or requiring the disclosure of less information would jeopardize the revenue by allowing articles of unclear or unknown tax class or liability, or articles on which tax has not been paid, to enter the domestic 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 public, TTB published a "60-day" comment request notice for this information collection in the Federal Register on November 3, 2020, at 85 FR 69680. 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?

TTB provides no assurance of confidentiality for this information collection because it consists of publically disclosed marks and notices placed on packages and containers of tobacco products and cigarette papers and tubes.

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 third party disclosure of information on tobacco-related article packages and containers does not collect personally identifiable information (PII) in a government system. As such, 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 Respondent Burden:* Based on recent data, TTB estimates the annual burden for this information collection as follows: 724 respondents each making one annual response, at one hour per response, results in 724 annual responses and 724 hours in total burden.

*Estimated Respondent Labor Costs:* Based U.S. Department of Labor wage estimates for tobacco industry occupations, TTB estimates respondent labor costs as follows:

<b>NAICS 312200 –Tobacco Product Manufacturing: Management Occupations – Fully-loaded Labor Rate Per Hour<sup>1</sup> = \$94.35*</b>					
Per Response Burden	Labor Cost / Response	Responses / Respondent	Labor Costs / Respondent	Total Responses	Total Labor Costs
1 hour	\$94.35	1	\$94.35	724	\$68,309.40

\* Labor costs rounded to the nearest cent.

<sup>1</sup> Private Sector Fully-loaded Labor Rate = Hourly wage rate x a factor of 1.44 to account for benefit costs. Per the most recent U.S. Department of Labor, Bureau of Labor Statistics (BLS), data for National Industry-Specific Occupational Employment and Wage Estimates for NAICS 312200—Tobacco Product Manufacturing, the average fully-loaded labor rate for Management Occupations (11-0000) is \$94.35 (\$65.52 in wages plus \$28.83 in benefit costs). See the BLS website at [https://www.bls.gov/oes/current/naics4\\_312200.htm](https://www.bls.gov/oes/current/naics4_312200.htm).

*Respondent Record Retention:* There is no specific record retention requirement prescribed for this third party disclosure information collection.

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 largely of usual and customary marks and notices placed by respondents on packages and containers of tobacco-related articles during the normal course of business. Because the non-usual and customary marks and notices required by TTB are printed or placed on such packages and containers using the same processes and equipment as those placed during the normal course of business, TTB believes that there are no additional costs to respondents associated with this information collection.

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

This information collection consists of marks and notices placed by respondents on tobacco-related article packages and containers. As a third-party disclosure, 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 information collection. As for adjustments, TTB previously reported that, as a usual and customary business practice, the placement of marks and notices on packages and containers of tobacco-related articles placed no additional burden on respondents, per the OMB regulations at 5 CFR 1320.3(b) (2). However, TTB has determined that the placement by respondents of marks and notices noting the tax-exempt status of articles intended for export or the use the United States is not a usual and customary business practice. As such, TTB is now reporting 1 hour of burden per respondent for this information collection, resulting in an estimated total annual burden of 724 hours. TTB previously reported 1 hour of total burden as a placeholder, so the total increase in reported burden is 723 hours.

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

As a third-party disclosure consisting of marks and notices placed on packages and containers of tobacco-related articles, respondents disclose the required information to the public during the normal course of business.

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 consisting of marks and notices placed by respondents on packages and containers of tobacco-related articles. As such, there is no medium for TTB to display this information collection's 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 information collection does not employ statistical methods.