

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

Changes Since Last Approval

Changes made to the Supporting Statement since this collection's last approval:

- In Question 8, TTB is updating the 60-day notice publication information for this information collection.
- In Question 12, TTB is revising the respondent burden and labor costs reported for this collection due to a decrease in its estimated number of respondents.
- In Question 13, TTB is revising the non-labor respondent costs for this collection due to a decrease in the estimated number of respondents.
- TTB is revising Question 15 to discuss adjustments to this information collect resulting from the decrease in its estimated respondent burden.

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. 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

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.

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 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?

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. 114–113), 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).

TTB considers its 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 believes this requirement is not overly burdensome on small entities as 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 subject to this information collection.

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 for wines 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 and artificially carbonated wines are taxed at \$3.40 and \$3.30 per wine gallon, respectively. Given the substantial tax rate differentials between hard cider and carbonated wines, TTB believes it cannot ignore the potential for tax fraud by persons claiming the hard cider tax rate for wines that do not qualify for that rate. 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 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 public, TTB published a "60-day" comment request notice for this information collection in the Federal Register on July 21, 2023, at 88 FR 47235. TTB received no comments regarding this information collection in response to that notice.

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 specific assurance of confidentiality for this information collection, which consists of hard cider carbon dioxide measurement records kept by respondents at their 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 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 respondent burden: Based on recent data, TTB estimates that, annually, 100 respondents will test hard cider products for carbon dioxide content and keep the required measurement records, and that each respondent will complete 4 responses, resulting in 400 annual responses. TTB also estimates that each response will require up to 2.5 hours to complete (2 hours for testing and 0.5 hour for recordkeeping), resulting in an estimated annual burden of 10 hours per respondent and 1,000 hours in total burden.

Estimated respondent labor costs: Of the estimated 100 annual respondents to this information collection, TTB estimates that 20 will conduct the required carbon dioxide measurement tests in their own “in-house” laboratories, while 80 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 4 Annual Responses</i>	<i>Annual Respondents</i>	<i>Total Respondent Cost</i>
In-house Laboratory Chemist	2.5 hours (testing & recordkeeping) @ \$56.02/hour = \$140.05 per response.	\$560.20	20	\$11,204.00
In-house staff using an outside laboratory	1 hour (in-house staff preparing samples & shipments, & keeping & maintaining records) @ \$32.92/hour = \$32.92 per response	\$131.68	80	\$10,534.40
Totals		(avg. \$217.384)	100	\$21,738.40

³ For the private sector, the 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 (BLS), wage estimates for NAICS 312100—Beverage Manufacturing, the average fully-loaded labor rate for chemists is \$56.02/hour (based on average wage of \$38.90/hour). For office and administrative occupations, the fully-loaded labor rate is \$32.92/hour (based on average wage of \$22.86/hour). See BLS wage estimates at https://www.bls.gov/oes/current/naics4_312100.htm.

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.

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)?

Of the estimated 100 annual respondents to this information collection, TTB estimates that 2 respondents using “in-house” laboratories will be new to this information collection and will therefore have start-up costs. TTB also estimates that of the 100 total respondents, 20 will conduct the required carbon dioxide measurement tests in their own “in-house” laboratories, while 80 will employ outside laboratories. Therefore, TTB estimates the respondent non-labor costs for this information collection as follows:

START UP COSTS	<i>Start-up Costs per Respondent</i>		<i>Total Start-up Costs for 2 Respondents</i>
Start Up Costs for Respondents Using In-House Laboratories (Equipment & Supplies)	\$10,000		\$20,000
ANNUALIZED COSTS	<i>Cost per Response</i>	<i>Annualized Costs for 4 Responses per Respondent</i>	<i>Total Annualized Costs</i>
20 Respondents Using In-House Laboratories:	\$50	\$200	\$4,000
80 Respondents Using Outside Laboratories:			
Outside laboratory CO2 Test	\$48 ⁴	\$192	\$15,360
Shipping costs & supplies	\$40	\$160	\$12,800
Total Annualized Costs for 80 Respondents Using Outside Labs	\$88	\$352	\$28,160
TOTAL ANNUALIZED COSTS FOR 100 RESPONDENTS:	(avg. \$80.40)	(avg. \$321.60)	\$32,160

* 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.

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.

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

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

There are no program changes associated with this information collection at this time. As for adjustments, due to changes in agency estimates based on recent data, TTB is decreasing the estimated number of annual respondents to this information collection, from 820 to 100, is decreasing the estimated number of annual responses per respondent, from 25 to 4, and is decreasing the time required to complete one response, from 4.25 hours to 2.5 hours. Because this information collection is relatively new, TTB previously over-estimated the number of hard cider producers required to respond to this collection, the number of annual responses made by each respondent, and the time required to complete a response. In turn, those adjustments decrease this collection's estimated number of annual responses, from 20,500 to 400, and, in turn, decrease its estimated burden hours, from 87,125 to 1,000. Those decreases in burden also lower TTB's estimate of respondent labor and non-labor costs for this information collection, as noted above in Questions 12 and 13.

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 information collection does not employ statistical methods.