

DEPARTMENT OF THE TREASURY

ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

Information Collection Request Supporting Statement

OMB Control Number 1513-0138

Tax Class Statement Required on Hard Cider Labels

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 establishes six Federal excise tax classes and rates for wine, which, as described in that section, vary by the wine's alcohol and carbon dioxide content. As set forth in section 5041(b)(6), the lowest wine excise tax rate is \$0.226 per wine gallon for "hard cider," which is defined for tax purposes in section 5041(g).¹ In addition, the IRC at 26 U.S.C. 5368(b) states that wine can be removed only in containers bearing the marks and labels evidencing compliance with chapter 51 of the IRC that the Secretary may prescribe by regulation.

Therefore, TTB's IRC-based regulations in 27 CFR parts 24 and 27 require that domestic and imported wines be marked so that a wine's tax class can be determined from its label information. However, TTB's wine labeling regulations in 27 CFR part 4, issued under the authority of the Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e), allow the term "hard cider" to appear on products that do not meet that term's IRC definition for tax purposes.

In light of the differing IRC- and FAA Act-based definitions of hard cider, to ensure adequate identification of wines for which the hard cider tax rate is claimed, the TTB regulations in 27 CFR 24.257(a)(4) require that the statement "Tax class 5041(b)(6)" appear on containers of domestic wine for which the hard cider tax rate is claimed, whether or not the product

¹ 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 (subject to tolerances prescribed by regulation), 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, and are between 0.5 and 8.5 percent alcohol by volume.

requires label approval under TTB's FAA Act regulations.² For imported wines on which the hard cider tax rate is claimed, the TTB regulations in 27 CFR 27.59(b) cross-reference the tax class statement labeling requirement contained in § 24.257.

The placement of the required hard cider tax class statement on wine containers for which that tax rate is claimed is necessary to protect the revenue. The required label statement provides evidence of a taxpayer's compliance with the IRC's statutory requirements for hard cider, and it identifies wines for which a taxpayer is claiming 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?

Under TTB's FAA Act-based wine labeling regulations, the term "hard cider" may be used on products that are not otherwise eligible for the hard cider tax rate under that term's IRC definition for tax purposes. As such, TTB uses the hard cider tax class statement required on containers of wine for which that tax rate is claimed to provide evidence of the taxpayer's compliance with the requirements of chapter 51 of the IRC, and to identify wines for which a taxpayer is claiming the hard cider tax rate.

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 hard cider tax class statement is a third party disclosure made on a wine's label by its bottler, which is applied at the bottler's premises. Bottlers may use improved technology as they see fit to comply with the tax class statement marking requirement for containers of wine on which the hard cider tax rate is claimed.

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?

Respondents place the required tax class statement on wines for which they claim the hard cider tax rate, which pertinent and specific to each such product and its bottler. 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 labeling of wines, including those eligible for the hard cider excise tax rate, is a usual and customary practice undertaken by respondents during the normal course of business, and TTB considers the tax class statement required on containers of wine for which the hard cider tax rate is claimed to be the minimum necessary to ensure compliance with the IRC's

² The hard cider tax class statement is mandatory for wines removed on or after January 1, 2019, but was optional for wines removed on or after January 1, 2017, and prior to January 1, 2019.

requirements regarding such wine. As such, TTB believes this information collection does not have a significant impact on a substantial number of small entities. In any event, waiver or reduction of the hard cider tax class labeling requirement, simply because a respondent's business is small, would jeopardize the revenue.

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 uses the hard cider tax class statement required on containers of wine for which that tax rate is claimed to provide evidence of the taxpayer's compliance with the requirements of chapter 51 of the IRC, and to identify wines for which a taxpayer is claiming the hard cider tax rate. Not requiring the tax class statement on such wine, or requiring it less frequently, would jeopardize the revenue and could result in the distribution of wines with incorrectly identified wines for tax purposes.

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 Tuesday, January 7, 2020, at 85 FR 785. 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?

The labeling of wines for consumer purposes is a usual and customary practice undertaken by respondents during the normal course of business, and while the required hard cider tax class statement on wine containers for which that tax rate is claimed is intended to provide information to TTB officials for excise tax collection purposes, that statement is also visible to the public on the labeled such containers. Therefore, TTB provides no assurance of confidentiality for this information collection.

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. Also, the hard cider tax class labeling requirement does not collect personally identifiable information (PII) in a government electronic system. Therefore, this information collection does not require a Privacy Impact Assessment (PIA) or a System of Records Notice (SORN).

12. What is the estimated hour burden of this collection of information?

Burden estimate: Based on recent data, TTB estimates that, annually, 820 respondents will be required to place the hard cider tax class statement on wines for which they claim that tax rate. TTB further estimates each respondent will make one annual response to this collection, for a total of 820 annual responses, and that each response will take one hour, for an estimated total annual burden of 820 hours.

Labor cost estimate: As the labeling of wine containers is a usual and customary practice undertaken by respondents during the normal course of business for the purpose of identifying their products to consumers, TTB believes that respondents have very minimal one-time costs when making minor adjustments to certain product labels to incorporate the required hard cider tax class statement.

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)?

The labeling of wine containers for product identification purposes is a usual and customary practice undertaken by bottlers during the normal course of business. TTB also notes that it delayed for two years, until January 1, 2019, the mandatory placement of the hard cider tax class statement on containers of wine for which that tax rate is claimed in order to allow respondents to use up existing label stocks. As such, TTB believes that this minimal, one-time disclosure requirement does not place any additional capital, start-up, operational, or maintenance costs on respondents.

14. What is the annualized cost to the Federal Government for this information collection?

There is no cost to the Federal Government associated with this third-party disclosure made by respondents on the labels of wines for which they claim the hard cider tax rate.

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

There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only.

As for adjustments, due to changes in agency estimates resulting from continued growth in the number of respondents producing wines eligible for the hard cider tax rate as defined in

the IRC, TTB is increasing the estimated number of annual respondents, responses, and burden hours associated with this information collection from 777 to 820 each.

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. However, respondents place the required hard cider class tax statement on the labels of wines for which that tax rate is claimed, and the public may view that disclosure on such a product's label.

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?

Respondents place the required hard cider tax class statement on the labels of wines for which they claim that tax rate, and they do so at their premises during the normal course of business. As such, there is no prescribed TTB form or collection instrument for this third-party disclosure of information, and there is no medium for TTB to display its 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.
- (g) This information collection consists of a third party disclosure placed on certain wine labels 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.