

Town Code are consistent with 49 CFR 172.701 which proscribes only "minimum training requirements for the transportation of hazardous materials." Section 164-109 is in no way duplicative of the training requirements proscribed by 49 CFR parts 172, 174, 175, 176, and 177. Furthermore, 49 CFR parts 390 through 397, referenced by 49 CFR 177.804, do not specifically address the safety provisions that are tested for a certificate of fitness under Town Code 164-109. (see Exhibit #5) The federal code of regulations deals primarily with the operation of the transferring vehicle itself, i.e. brakes, lights, windshield wipers, and rules of the road. (see 49 CFR 392) However, the Town Code deals primarily with the handling of LPG, i.e. transporting cylinders and delivering cylinders. (see Exhibit #5) Therefore, no conflict exists between the federal code of regulations and the Town Code.

Section 164-152 lists the applicable fee for the initial certificate of fitness at one hundred fifty dollars and the renewal fee at seventy-five dollars. The applicable fees are payable upon the commencement of the application process. The application itself is a brief form. (Exhibit 2). This is followed by a written examination that tests the applicant's knowledge of the required safety standards, as provided in the Town's handbook. (Exhibit 3). Next, the applicant takes a practical test during which a fire marshal observes the applicant performing the necessary operations. (see Exhibit 4).

The exams are scheduled in advance, and are given on several occasions in order to accommodate the applicant's schedule. Because § 164-109(H) eliminates the investigation phase for the renewal process, applicants applying to renew a certificate of fitness are not required to take the written and practical examinations. Also, examinations are waived for applicants who possess a valid certificate of fitness from another jurisdiction. (see Exhibit 4).

The effect of section 164-109 of the Town Code is to ensure that individuals engaged in the proscribed activity are capable of conducting this activity safely. The certification process generally occurs well in advance of the delivery of LPG and, as such, does not create a delay in delivery. (see Exhibit 4).

The Obstacle Test

Because the HMTA does not address certificates of fitness and certificates of fitness are not included among the enumerated covered subjects in section 49 U.S.C. 5125(b), the "dual compliance test" and the "covered subject test" do not apply here. Therefore, the issue here is whether the submitted statutes pass the "obstacle test".

Town Code section 164-109 passes the obstacle test, as it does not create a significant delay in the transportation of LPG so as to conflict with 49 CFR 177.853(a), which prohibits "unnecessary delays" in the transportation of hazardous materials. First, this requirement does not explicitly pertain to the transporters of LPG, only to those who engage in filling, selling, and transferring LPG. It is true that, in practice, a transporter who delivers LPG must obtain a Type II

Certificate of Fitness; however, this requirement does not create an obstacle to cause a delay in LPG delivery. (see Exhibit 4)

For instance, in *New Hampshire v. Motor Transport Association, et. al. v. Flynn*, 751 F. 2d 43 (1st Cir. 1984), the U.S. Appeals Court considered whether a statute requiring transporters to obtain a license at a twenty-five dollar annual fee created an unnecessary delay in the transportation of hazardous materials. In that case, transporters seeking to obtain a license could only purchase the license during the week. The Court acknowledged that a delay in transportation would result for transporters who need to obtain a license for a weekend delivery. However, the court found that because transporters could anticipate this requirement, no significant delay should result. Therefore, the court held that the license requirement was not preempted by the HMTA.

Here, the extent to which sec. 164-109 is enforced against transporters of LPG is limited to those situations where the transporters of LPG were also engaged in the delivery of LPG. In these situations, transporters can anticipate the need to schedule the certification process in advance. (See Exhibit 4). Therefore, the fact that transporters consequently become involved, should not be a basis for determining that section 164-109 creates an obstacle to the accomplishment of the federal law.

For the foregoing reasons, the HMTA does not preempt Town Code Sections 164-108 and 164-109.

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995,

Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Usual and Customary Business Records Relating to Denatured Spirits.

DATES: Written comments should be received on or before October 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary Wood, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8185.

SUPPLEMENTARY INFORMATION:

Title: Usual and Customary Business Records Relating to Denatured Spirits.

OMB Number: 1512-0337.

Recordkeeping Requirement ID Number: ATF REC 5150/1.

Abstract: Denatured spirits are used for nonbeverage industrial purposes in the manufacture of personal household products. The records are maintained at the premises of the regulated individual and are routinely inspected by ATF personnel during field tax compliance examinations. These examinations are necessary to verify that all specially denatured spirits can be accounted for and are being used only for purposes authorized by laws and regulations. By ensuring that spirits have not been diverted to beverage use, tax revenue and public safety are protected. There is no additional recordkeeping imposed on the respondent as these requirements are usual and customary business records.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 3,111.

Estimated Time Per Respondent: 0.

Estimated Total Annual Burden

Hours: 1.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper

performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 27, 2001.

William T. Earle,

Assistant Director (Management) CFO.

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BILLING CODE 4810-31-P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Annual Firearms Manufacturing and Exportation Report of Semiautomatic Assault Weapons.

DATES: Written comments should be received on or before October 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Nancy Smith, Office of Firearms, Explosives and Arson, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8481.

SUPPLEMENTARY INFORMATION:

Title: Annual Firearms Manufacturing and Exportation Report of Semiautomatic Assault Weapons.

OMB Number: 1512-0543.

Form Number: ATF F 5300.11A.

Abstract: ATF F 5300.11A is intended to report the number of semiautomatic assault weapons made in the United States and entering into commerce. Since semiautomatic assault weapons may be constructed from foreign firearms and used firearms, the reporting instructions are different from those used in ATF F 5300.11, (Annual Firearms Manufacturing and Exportation Report). Record must be kept indefinitely for this information collection.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, Federal Government, State, Local or Tribal Government

Estimated Number of Respondents: 1,556.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 156.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity if the information to be collected (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 27, 2001.

William T. Earle,

Assistant Director (Management) CFO.

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BILLING CODE 4810-31-P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Tobacco Products Manufacturers—Supporting Records for Removals for the Use of the United States.

DATES: Written comments should be received on or before October 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Tom Crone, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8181.

SUPPLEMENTARY INFORMATION:

Title: Tobacco Products Manufacturers—Supporting Records for Removals for the Use of the United States.

OMB Number: 1512-0363.

Recordkeeping Requirement ID Number: ATF REC 5210/6.

Abstract: Tobacco products have historically been a major source of excise tax revenues for the Federal government. In order to safeguard these taxes, tobacco products manufacturers are required to maintain a system of records designed to establish accountability over the tobacco products and cigarette papers and tubes produced. However, these items can be removed without the payment of tax if they are for the use of the United States. Records shall be retained by the manufacturer for 3 years following the close of the year covered therein and shall be made available for inspection by any ATF officer upon his request.