

DEPARTMENT OF THE TREASURY

ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

Supporting Statement – Information Collection Requirement

OMB Control Number 1513-0067

TTB REC 5170/6 Wholesale Dealer Applications, Letterheads, and Notices Relating to Operations (Variations in Format or Preparation of Records)

A. Justification

1. What are the circumstances that make this collection of information necessary and what legal or administrative requirements necessitate the collection?

This reporting requirement pertains only to those wholesale liquor and beer dealers submitting applications for a variance from the regulations dealing with preparation, format, type, or place of retention of records of receipt or disposition for alcoholic beverages.

Records for which variances are submitted are required under 26 U.S.C. 5114, 5146, and 5555. Records of receipt and disposition are necessary to ensure that alcoholic beverages are only wholesaled to individuals authorized to receive them. Since these records relate to protection of the revenue and specific tax categories under the Internal Revenue Code, recordkeeping requirements are necessary to ascertain full compliance with the law.

If a wholesale dealer wants to prepare and/or maintain required records in another manner, format, or place of retention, not prescribed by regulations, 27 CFR 31.228, 31.229, and 31.236 provide for variations, upon the approval of the Director. The Alcohol and Tobacco Tax and Trade Bureau's review of these variances is necessary in order to determine that the variance would not unduly hinder the effective administration of 27 CFR Part 31, jeopardize the revenue, or be contrary to any provisions of law.

Because of changes in data processing equipment, business machines, and accounting procedures, without this reporting requirement, the regulations would constantly have to be revised to allow alternate methods or variations to be used.

The specific information contained in this request is not duplicated in any other information nor can it be obtained by modifying information already available. This information must be retained for 3 years.

2. How, by whom and for what purpose is this information used?

We use written applications to rule on proposed variations from standard requirements. TTB Investigators use copies of the approved variances to verify that permittee's operations have been properly approved.

Elimination of these variances would make permittees comply with regulatory requirements that may not be appropriate for their specific operation, or violate the regulations. It is not feasible for us to modify overall regulatory requirements to take into account non-recurring situations.

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?

27 CFR 31.229 authorizes "variations in the type and format of records of receipt and disposition, or in the methods of preparing such records, where it is shown that variations from the requirements are necessary in order to use data processing equipment, or other business machines, or existing accounting systems, and will not unduly hinder the effective administration of this part, jeopardize the revenue, or be contrary to any provision of law. A dealer who proposes to employ such a variation shall submit written application so to do, in triplicate, to the Director, National Revenue Center (NRC)." This application is then submitted to the Administrator along with the Director, NRC's findings and recommendation.

The legislative history of the Federal Alcohol Administration Act shows that Congress intended to bestow broad authority to determine whether a permittee was likely to conduct operations in conformity with the law. The findings of the Committee on Ways and Means expressly indicate the need for broad authority in order to further "protection of the public and adequate conservation of the revenue." The report states:

Enforcement of liquor is an exceptionally difficult enforcement problem. Many factors not common to other industries exist in the liquor industry and present enforcement difficulties not commonly met with in the enforcement of other laws.... The history of the enforcement of liquor laws in this country has been characterized by wide spread violations and evasions. The ease with which the products of the industry are adulterated, sophisticated, and misbranded; their relatively high value; the perishable character of many wines and malt beverages; the large distribution costs--all are extraordinary incentives to ignore requirements of law.

Against this background and the statutory language we must address your views that "The regulations at 27 CFR 31.229, 'Variations in format, or preparation of records,'

appear to be more restrictive than necessary to control the quality of variations in recordkeeping by wholesalers."

We have analyzed the alternatives and have not found any acceptable means other than reviewing and approving each variation. 27 CFR 31.229 is necessary in its present form for the proper performance of our functions; particularly, the protection of the revenue.

In practice, all first time applications for variations receive final approval in Bureau Headquarters by the office of primary interest. From then on, all similar variations are approved at the NRC. Basically, this approach maintains consistency throughout the country and simplifies the approval process while maintaining proper control over administration, revenue jeopardy, and other law requirement concerns.

The current penalties for failure to keep or file any record, return, report, summary, transcript, or other document, are found in 26 U.S.C. 5603(a) & (b). This section provides for a fine of not more than \$10,000 ((a) intent to defraud), \$1,000 ((b) otherwise than with intent to defraud) or imprisonment of not more than 5 years (a), 1 year (b), or both, for each such offense. We will continue to approve, on a case-by-case basis, the use of improved information technology for the submission of required reports.

4. What efforts are used to identify duplication? Why can't any similar information already available be used or modified for use for the purposes described in Item 2 above?

We terminated the Federal Information Locator System (FILS) Program for agency use. However, we search an agency subject classification system to identify duplication.

5. If this collection of information impacts small businesses or other small entities, what methods are used to minimize burden?

The collection of information does not have a significant impact on a substantial number of small businesses or other entities. We do not use any method to minimize the burden to small businesses since all entities, regardless of size, are required by statute to provide this information. This requirement cannot be waived simply because the respondent's business is small.

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?

Less frequent collection of this information would pose jeopardy to the revenue.

7. Are there any special circumstances associated with this information collection?

No special circumstances are associated with this collection of information.

8. What effort was made to notify the general public about this collection of information?

A 60-day Federal Register notice was published for this information collection on Tuesday, May 2, 2006, 71 FR 25889. The notice solicited comments from the general public. TTB received no comments.

9. What decision was made to provide any payment or gift to respondents, other than reenumeration of contractors or grantees?

No payment or gift is associated with this collection.

10. What assurance of confidentiality was provided to respondents and what was the basis for the assurance in statute, regulations, or agency policy?

Copies of these variances are maintained at the premises of the regulated individual. However, 26 U.S.C. 6103 and 5 U.S.C. 552 protects the confidentiality of proprietary information obtained by the government from regulated individuals.

11. What justification is there for questions of a sensitive nature?

We do not ask questions of a sensitive nature in this collection.

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

There is no change in burden from the previous submission. $1,029$ (respondents) \times 1 (number of times filed annually) = $1,029$ (number of responses) \times 30 minutes (processing time) = 515 (total burden hours).

13. What is the estimated total annual cost burden to respondents or recordkeepers resulting from this collection of information?

We do not associate any new cost with this collection.

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

There is no annualized cost to the Federal Government.

15. What is the reason for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I?

There are no adjustments or program changes associated with this collection.

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

The results of this collection will not be published.

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 does not apply. This is a recordkeeping requirement therefore, there is no form on which to place the expiration date.

18. What are the exceptions to the certification statement?

There are no exceptions to the certification statement.

B. Collection of Information Employing Statistical Methods

This collection does not employ statistical methods.