

DEPARTMENT OF THE TREASURY

ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

Supporting Statement – Information Collection Requirement

OMB Control Number – 1513-0077

TTB REC 5190/1 - Records of Things of Value to Retailers, and Occasional Letter Reports from Industry Members Regarding Information on Sponsorships, Advertisements, Promotions, etc., Under the Federal Alcohol Administration Act.

A. Justification

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

The Federal Alcohol Administration Act (the Act), 27 U.S.C. 201 et seq., prohibits a number of business practices which were deemed by the lawmakers to be unfair methods of competition. Some of these prohibitions are listed in 27 U.S.C. 205, and one of them, Section 205(b)(3) reads as follows: "(3) by furnishing, giving, renting, lending or selling to the retailer any equipment, fixtures, signs, supplies, money, services or other things of value, subject to such exceptions as the administration shall by regulation prescribe, having due regard for public health, the quantity and value of the article involved, established trade customs not contrary to the public interest and the purposes of this subsection." Therefore, these records (bills of sale, invoices, etc.) were prescribed by regulation primarily to ensure compliance with this provision of law. However, these records could also provide or lead to evidence of non-compliance with other provisions of the Act.

As required by the law quoted above, the Alcohol and Tobacco Tax and Trade Bureau (TTB) has set reasonable limitations on the value of things furnished to retailers. In order to ensure compliance with those limitations, wholesalers, importers, and producers are required by regulations (27 CFR § 6. 81) to keep records concerning things of value furnished by them to retailers. They are required to show:

- (1) The name and address of the retailer receiving the item;
- (2) The date furnished;
- (3) The item furnished;
- (4) The industry member's cost of the item(s) furnished;
- (5) Charges to the retailer for any item.

This collection of information includes an occasional reporting requirement on selected industry members, on a case-by-case basis, under 27 CFR §§ 6.5, 8.5, and 10.5 of the Act, and allows the appropriate TTB officer to require a letter report from industry members regarding information on sponsorships, advertisements, promotions, and other activities conducted by, on behalf of, or benefiting the industry member.

The FAA Act expressly authorizes the Administrator, as delegate of the Secretary of the Treasury, to require, in such manner and form as prescribed by regulations, such reports as are necessary to carry out the duties under the Act. This reporting requirement is written to be used on a case-by-case basis, rather than as a recurrent and periodic reporting requirement such as a monthly report of activities applying to all industry members.

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

TTB uses these records and reports to determine that items of value given to retailers do not exceed limitations in an attempt to gain an unfair trade advantage by establishing a tied-house arrangement or the purchase of stock-in-trade to the exclusion, in whole or in part, of other industry members. These activities are specifically prohibited by 27 U.S.C. 105.

These records may be examined by TTB personnel visiting the premises of licensed wholesalers and others who sell to retail liquor dealers. The information collected by TTB REC 5190/1 is used by TTB to verify that all items furnished to retailers meet the exception requirements of section 105(b)(3) of the Act.

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?

TTB has approved and will continue to approve, on a case-by-case basis, the use of improved information technology.

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?

The Federal Information Locator System (FILS) program has been terminated for agency use. However, we search an agency subject classification system to identify any duplication. Similar information is not available elsewhere for this information collection requirement.

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

This collection of information is not susceptible to reduced requirements for small business.

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 enforcement of 27 U.S.C. 105. Without this recordkeeping requirement, we would not be able to allow an industry member to claim eligibility for the allowed exceptions to section 105(b)(3) of the Act.

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

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?

A 60-day Federal Register notice was published for this information collection on Thursday, June 8, 2006, 71 FR 33335. 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?

No specific assurance of confidentiality is provided; however, 5 U.S.C. 552 protects the confidentiality of the information collected through this recordkeeping and reporting requirement.

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

We ask no questions of a sensitive nature.

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

In accordance with 5 U.S.C. 1320.7(b)(1), the total annual recordkeeping burden for all regulated individuals is estimated to be 1 hour. Commercial records or invoices may be, and customarily are, used to satisfy these record requirements. TTB believes that these are usual and customary business records that are normally kept in the course of business by wholesalers and others who furnish items of value to retailers. Therefore, we have determined the burden of complying with this requirement to be 0 hour per respondent per year. However, due to OMB guidelines, 1 burden hour is shown for this requirement.

The total annual reporting burden is estimated to be 50 hours. Consequently, the total annual burden for this information collection is estimated to be 51 hours. The number of respondents and the number of records filed annually by each are based on historical data provided by TTB field personnel who audit and process these records.

There is no change in burden hours from the last submission.  $12,665$  (respondents)  $\times$   $1$  (number of times filed annually) =  $12,665$  (number of responses)  $\times$   $.004$  hours (processing time) =  $51$  (total burden hours).

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

There is no cost associated with this collection.

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

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

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

We will not publish the results of this 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?

Displaying the expiration date for OMB approval would be inappropriate because this is a recordkeeping collection and occasional reporting requirement for which there are no approved forms.

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 of information does not employ statistical methods.