

DEPARTMENT OF THE TREASURY

ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

Supporting Statement -- Information Collection Request

OMB Control Number 1513-0077

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 (TTB REC 5190/1)

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 Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 201 *et seq.*, contains various provisions regulating the alcohol beverage industry, including prohibitions on a number of business practices that Congress found to be unfair methods of competition. In particular, the FAA Act at 27 U.S.C. 205(b)(3) prohibits alcohol beverage industry members (producers, importers, and wholesalers, and bottlers of distilled spirits) from inducing retailers to purchase the industry member's products to the exclusion of products sold or offered for sale by other persons in interstate or foreign commerce "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 Secretary of the Treasury shall by regulation prescribe, having due regard for public health, the quantity and value of the articles involved, established trade customs not contrary to the public interest and the purposes of this subsection."

The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act and its related regulations pursuant to section 1111(d) of the Homeland Security Act of 2002, as codified at 6 U.S.C. 531(d). The Secretary of the Treasury also has delegated various authorities to TTB to administer and enforce the FAA Act through Treasury Order 120-01.

As authorized by the FAA Act at 27 U.S.C. 205(b)(3), the TTB regulations in 27 CFR Part 6, "Tied House," Subpart D, Exceptions, lists exceptions to the general FAA Act prohibition on offering inducements to retailers and sets reasonable limitations on the value of things furnished to retailers. In order to ensure compliance with these exceptions and limitations, the TTB regulation at 27 CFR 6.81(b) requires alcohol beverage industry members to keep records concerning things of value furnished by them to retailers, which must be retained for three years. Under this regulation, these records must show (1) The name and address of the retailer receiving such an item, (2) the date furnished, (3) the item furnished, (4) the industry member's costs for the item furnished (determined by the manufacturer's invoice price), and (5) charges to the retailer for any item. Under this regulation, alcohol industry members may use usual and customary business records to satisfy this recordkeeping requirement, if all the required information is shown.

This information collection also includes an occasional, case-by-case reporting requirement. Under 27 CFR 6.6(c), 8.6(c), and 10.6(c), the appropriate TTB officer may require, as part of a trade practice investigation, a letterhead report from a selected industry member regarding information on sponsorships, advertisements, promotions, and other activities conducted by, on behalf of, or benefiting the industry member.

This information collection is aligned with —

- Line of Business/Sub-function: Law Enforcement / Substance Control.
- IT Investment: None.

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

To enforce the trade practices provisions of the FAA Act at 27 U.S.C. 205, TTB personnel may examine the required records concerning things of value provided to retailers by alcohol beverage industry members who sell products to retail liquor dealers. TTB uses the required records to determine if things of value furnished to retailers by alcohol industry members exceed TTB regulatory limitations as part of an attempt to gain an unfair trade advantage by establishing a tied-house arrangement or by the purchase of stock-in-trade to the exclusion, in whole or in part, of other industry members. In addition, TTB personnel may require an alcohol industry member to submit letterhead reports regarding things of value furnished to retailers as part of a trade practice investigation in order to determine if the industry member is in compliance with the TTB regulations regarding such matters.

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. Under 27 CFR 6.81(b), industry members may use usual and customary business records, such as invoices, to satisfy this recordkeeping requirement if all the required information is shown, and they may use information technology at their discretion to keep the required records.

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 required records and reports provide information regarding things of value furnished to retailers that is specific to each alcohol industry member respondent and their operations. 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?

This collection of information is not susceptible to reduced requirements for small businesses. However, the TTB regulations allow all alcohol industry members to use usual and customary business records to satisfy the recordkeeping requirements, the keeping of which imposes no burden on respondents.

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 jeopardize TTB's enforcement of the FAA Act's prohibitions on unfair trade practices, particularly the Act's prohibition against the offering of inducements by alcohol beverage industry members to retailers to purchase the industry member's products to the exclusion of alcohol beverage products offered for sale by others in interstate or foreign commerce (see 27 U.S.C. 205).

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 that would require it to be inconsistent with OMB guidelines.

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 May 21, 2019, at 84 FR 23157. 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?*

No specific assurance of confidentiality is provided for this information collection, which largely consists of usual and customary business records maintained by regulated alcohol industry members at their business premises. The occasional letterhead reports submitted to TTB under this information collection are stored in secure office space and in password-protected computer systems. Moreover, 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 taxpayer information, unless disclosure is specifically authorized by law.

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 personally identifiable information (PII) in a government electronic system. 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?

This information collection contains two elements, a recordkeeping requirement and an occasional reporting requirement.

Recordkeeping: The recordkeeping requirement approved under this information collection involves usual and customary business records, such as commercial invoices, that would be kept by regulated industry members during the normal course of business, even without the TTB regulatory requirement to keep such records. Therefore, in accordance with the OMB regulations 5 CFR 1320.3(b)(2), there is no annual burden for the estimated 59,940 current alcohol industry members required to keep these records.

Reporting: As for the reporting requirement contained in this collection, during trade practices investigations, TTB notes that it requires occasional letterhead reports regarding an alcohol industry member's promotions, sponsorships, advertisements, and similar activities. TTB estimates that it will annually require 10 respondents to submit one such report per year for a total of 10 responses. TTB estimates that each respondent will require 8 hours to compile the required report from the usual and customary records kept under this information collection, for an estimated total reporting burden of 80 hours.

Therefore, TTB estimates that the annual total burden for the 59,950 total respondents to this information collection is 80 hours.

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)?

Because this information consists of usual and customary records kept during the normal course of business, there are no additional costs to the respondent associated with this collection.

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

There is no annualized cost to the Federal government associated with this collection.

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

There are no program changes associated with this information collection. As for adjustments, due to a change in agency estimates resulting from continued growth in the number of alcohol industry members, TTB is increasing the number of annual respondents

and responses to the recordkeeping portion of this information collection, from 25,000 to 59,940. However, because the required records are usual and customary records kept during the normal course of business, per the OMB regulations at 5 CFR 1320.3(b)(2), the total annual burden for the recordkeeping collection remains zero. (TTB is removing the 1 hour of annual burden previously reported as a place holder for this usual and customary record collection requirement.) As for adjustments to the reporting portion of this information collection, due to a change in agency estimates resulting from a TTB reevaluation of the time involved in compiling such reports, TTB is increasing the per-response burden for the occasional letterhead reports, from 2 hours per response to 8 hours. This increase results in an increase in the estimated total annual burden for this information collection request from 20 hours to 80. The number of annual respondents to the reporting portion of this collection remains the same at 10.

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 usual and customary business records that regulated industry members keep at their business premises, as well as occasional letterhead reports submitted to TTB. As such, there is no prescribed TTB form for this collection and thus no 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.
- (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.