

DEPARTMENT OF THE TREASURY

ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

Supporting Statement -- Information Collection Request

OMB Control Number 1513-0046

Formula for Distilled Spirits 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? 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 the Federal Alcohol Administration Act (FAA Act, 27 U.S.C. chapter 8) and portions of the Internal Revenue Code of 1986, as amended (IRC, 26 U.S.C. 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)), 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 FAA Act and IRC administrative and enforcement authorities to TTB through Treasury Order 120-01.

The FAA Act at 27 U.S.C. 205(e) authorizes the Secretary to issue regulations regarding the labeling of alcohol beverages to provide the consumer with adequate information as to the identity and quality of such products. That section also allows the Secretary to require a statement of composition for distilled spirits produced by blending or rectification, or if neutral spirits are used in the production of a distilled spirits product. In addition, the IRC at 26 U.S.C. 5222(c), 5223, and 5232 authorizes the Secretary to issue regulations regarding the removal and addition of extraneous substances to distilling materials, as well as the redistillation of domestic and imported distilled spirits. The IRC at 26 U.S.C. 5555 also authorizes the Secretary to issue regulations requiring persons subject to the Federal alcohol excise tax to, among other things, keep such records and render such statements as the Secretary may prescribe by regulation.

Under those statutory authorities, TTB regulations in 27 CFR parts 5, 19, and 26 require distilled spirits plant (DSP) proprietors to obtain TTB approval of formulas for distilled spirits produced through certain DSP operations, such as blending, mixing, purifying, refining, compounding, and treating, which change the character, composition, class, or type distilled spirits. Specifically, the TTB regulations at §§ 5.26, 5.27, 19.77, 26.50(a), 26.53, and 26.54 require DSP proprietors to file such distilled spirits formulas, which they may submit on form TTB F 5110.38, Formula for Distilled Spirits under the Federal Alcohol Administration Act. Under those regulations, a DSP proprietor must list on the form all ingredients and, in some cases, the process used to produce the distilled spirits in question.

This information collection is aligned with —

- Line of Business/Sub-function: Law Enforcement/Substance Control.
- IT Investment: Regulatory Major Application Systems.

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

As required by the TTB regulations, DSP proprietors use form TTB F 5110.38 to request approval of formulas for certain distilled spirits and distilled spirits products. DSP proprietors must list on the form all ingredients and, in some cases, the process used to produce the distilled spirits or product in question. TTB personnel use the information collected on TTB F 5110.38 to determine if a distilled spirits formula and the resulting product meet the applicable statutory and regulatory requirements for such formula products. The collected information allows TTB personnel to determine the class and type of the resulting distilled spirits and thus ensure that the product is properly labeled under the FAA Act. In addition, TTB field personnel may review a DSP proprietor's copy of an approved TTB F 5110.38 form to verify that a distilled spirits product is produced in accordance with its approved formula, and that the proprietor is paying the correct excise tax rate on the product.

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?*

Currently, TTB F 5110.38 is available on the TTB website as a fillable/printable form; see <https://www.ttb.gov/forms/5000.shtml#alcohol>. However, TTB intends to phase out the use of TTB F 5110.38 in favor of TTB's electronic Formulas Online (FONL) system and its paper equivalent, TTB F 5100.51, Formula and Process for Domestic and Imported Alcohol Beverages. FONL is accessed via the TTB website at <https://www.ttbonline.gov/ttbonline/>, while TTB F 5100.51 is available as a fillable/printable form on the TTB website at <https://www.ttb.gov/forms/5000.shtml#alcohol>.

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?*

TTB F 5110.38 contains information pertinent to each respondent and specific to a particular distilled spirits formula for which the respondent is seeking TTB approval. As far as TTB can determine, it does not collect duplicates of the provided formula information. However, TTB notes that, in lieu of TTB F 5110.38, DSP proprietors are increasingly using TTB's electronic FONL system or its paper equivalent, TTB F 5100.51, to file distilled spirits formulas. In the future, TTB plans to revise its regulations to discontinue the use of TTB F 5110.38 in favor of FONL and TTB F 5100.51.

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

This information collection does not have a significant impact on a substantial number of small businesses or other entities. The collected distilled spirits formula and process information protects the public from unsafe and mislabeled distilled spirits products, and, therefore, this collection's requirements cannot be waived due to the size of the respondent's 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?*

If TTB did not collect the required distilled spirits formula and process information, it could not determine if the distilled spirits in question meet the applicable statutory and regulatory requirements for formula products. The collected information allows TTB to determine the class and type of the resulting distilled spirits and thus ensure that the product is properly labeled under the FAA Act. TTB also may use the collected information to ensure that a distilled spirits product is produced in accordance with its approved formula, and that the proprietor is paying the correct excise tax rate on the product. In addition, as distilled spirits formulas are filed with TTB only on an as-needed basis, the frequency of this collection cannot be reduced.

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).)*

Per the instructions on TTB F 5110.38, TTB requires respondents to submit a copy of the form for each DSP at which the formula will be used, plus two copies for TTB's use. For respondents that will use the formula at more than one DSP, this requirement is inconsistent with 5 CFR 1320.5(d)(2)(iii), which provides that requiring respondents to submit more than an original and two copies of any document is a special circumstance. TTB believes that the requirement to maintain a copy of approved formulas at each DSP where the formula is used is necessary to facilitate on-site TTB inspections.

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. However, Federal law at 5 U.S.C. 552(b)(4) protects the confidentiality of proprietary information obtained by the Government from regulated businesses and individuals, and 26 U.S.C. 6103 prohibits disclosure of tax returns and related information unless disclosure is specifically

authorized by the IRC. TTB maintains the collected information in secure office space and computer systems with controlled access.

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 an 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?*

Based on recent experience, TTB estimates that 50 respondents per year will submit 1 response each on TTB F 5110.38 for a total of 50 annual responses. TTB also estimates that each respondent requires 1 hour to complete the form, resulting in an estimated total annual burden of 50 hours for this information collection.

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)?*

There is no cost to respondents associated with this information collection.

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

Estimates of annual cost to the Federal Government are:

Clerical costs	190
Other Salary costs (review, supervisory, etc.)	1,135
TOTAL COSTS	\$ 1,325

Printing and distribution costs to the Federal government have decreased to \$0.00 in TTB's cost estimate due to the availability of TTB forms to the public on the TTB website at <https://www.ttb.gov/>.

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

There are no program changes associated with this collection. However, due to a change in agency estimates resulting from improved accounting for the number of TTB F 5110.38 forms submitted, TTB is increasing the number of annual respondents and responses to this

information collection, from 30 to 50. This increase results in an increase in the estimated total annual burden for this information collection, from 30 hours to 50 hours. (The per-respondent burden of 1 hour remains unchanged.)

On form TTB F 5110.38, TTB is correcting typographical errors in the form's instructions and in its Paperwork Reduction Act Notice, and TTB also adding a reference in that notice to 27 U.S.C. 205(e) as TTB's legal authority to collect the required information. These changes are non-significant and do not affect the information collected or the collection's estimated annual burden.

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?

TTB will display the expiration date for OMB approval of this information collection on the form associated with the collection, TTB F 5110.38.

18. What are the exceptions to the certification statement?

- (c) See item 5 above.
- (f) This is not a recordkeeping requirement.
- (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.