

DEPARTMENT OF THE TREASURY

ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

Supporting Statement -- Information Collection Request

OMB Control Number 1513-0055

Offer in Compromise of Liability Incurred 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.

To prevent abuses within the alcohol beverage industry and protect the public, the Federal Alcohol Administration Act (FAA Act, 27 U.S.C 201 *et seq.*) regulates interstate and foreign commerce in distilled spirits, wine, and malt beverages (hereafter "alcohol beverages"). Specifically, sections 203 and 204 of the FAA Act authorize the Secretary of the Treasury (the Secretary) to require importers and wholesalers of alcohol beverages and those who produce, blend, bottle, rectify, or warehouse distilled spirits or wine to have or obtain permits to engage in business. Section 205 of the FAA Act prohibits certain unfair trade practices and deceptive or misleading labeling and advertising of alcohol beverages, while sections 206 and 208 regulate, respectively, bulk sales of distilled spirits and interlocking directorates within that industry. Section 207 specifies civil and criminal penalties for violations of the FAA Act, but that section also authorizes the Secretary to accept compromise of liabilities arising from such violations.

The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act 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 has delegated certain FAA Act administrative and enforcement authorities to TTB through Treasury Order 120-01.

Under the authority of section 207 of the FAA Act, the TTB regulations at 27 CFR 70.483 allow a proponent to submit a monetary offer in compromise to resolve alleged FAA Act violations using form TTB F 5640.2, Offer in Compromise of Liability Incurred Under the Federal Alcohol Administration Act, as Amended. That form identifies the proponent, the alleged violation(s) and their cause(s), amount of the compromise offer, and the reason(s) why TTB should accept the offer. TTB uses that information to evaluate the adequacy of the compromise offer in relation to the alleged violation(s) of the FAA Act and determines if it should accept the proponent's offer or pursue civil penalties or criminal prosecution against the alleged violator.

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?

Proponents who desire to submit FAA Act-related monetary offers in compromise to resolve alleged FAA Act violations complete form TTB F 5640.2. The information provided on the form identifies the proponent, the alleged violation(s) and their cause(s), amount of the compromise offer, and the reason(s) why TTB should accept the offer. TTB personnel examine each form to evaluate the adequacy of the proponent's compromise offer in relation to the alleged violation(s) of the FAA Act. This allows TTB to determine if it should accept the compromise offer or pursue civil penalties or criminal prosecution against the alleged violator, which may be more costly to, and carry greater litigation risks for, the Government.

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?

Given the specific and unique nature of the offer in compromise information provided by a proponent under this collection request, TTB believes that the use of advanced information technology for its submission and processing will not reduce its burden. Currently, TTB F 5640.2 is available to respondents as a fillable-printable form on the TTB website at <https://www.ttb.gov/forms>.

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 offer in compromise information collected on TTB F 5640.2 is specific and unique to the proponent's alleged FAA Act violation liabilities. 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 information collection is not susceptible to reduced requirements for small business. All businesses, regardless of size, and all individuals making FAA Act-related offers in compromise must provide the required information. TTB believes the collected information is the minimum necessary for TTB to determine if it should accept such offers.

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?

Proponents submit the required information only when they have an alleged FAA Act-related liability and seek to settle the case through an offer in compromise prior to any civil or criminal proceedings. As such, TTB cannot conduct this collection request less frequently. In addition, if TTB did not conduct this collection request, TTB would have to take action against proponents with such liabilities through civil or criminal proceedings, which may be more costly to, and carry greater litigation risks for, TTB.

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 public, TTB published a “60-day” comment request notice for this information collection in the Federal Register on November 16, 2021, at 86 FR 63448. 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?*

While no specific assurance of confidentiality is provided for this information collection, Federal law at 5 U.S.C. 552 generally protects the confidentiality of proprietary information (e.g., trade secrets, processes, operations, style of work, apparatus, or confidential data) obtained by the Government from regulated businesses and individuals. TTB maintains the submitted information in secure file rooms and computer systems with controlled access.

However, while information regarding pending and rejected FAA Act-related offers in compromise is not made public, the TTB regulations at 27 CFR 70.802(a) provide for public inspection of an “abstract and statement” for all accepted offers in compromise. To make this disclosure, TTB creates a record for each accepted compromise using form TTB F 5640.3, Abstract and Statement, which TTB posts on the Administrative Actions page of its website for public viewing (see <https://www.ttb.gov/fo/administrative-cases>). That record identifies the offer’s proponent, the facts regarding the offer and its amount, and TTB’s rationale for accepting the offer; however, TTB redacts any permit or taxpayer identification numbers from the posted statement.

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. As this request collects personally identifiable information, TTB has conducted a Privacy Impact Assessment (PIA) for that information as part of the Regulatory Major Application system. TTB’s PIAs are available on the TTB website at <https://www.ttb.gov/foia/privacy-impact-assessments>. TTB also has published a Privacy Act System of Records notice (SORN),

which includes that system, under “Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB) .001–Regulatory Enforcement System of Records.” TTB’s latest SORN appeared in the Federal Register on February 10, 2021, at 86 FR 8988.

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

Estimated Respondent Burden: Based on recent data, TTB estimates that 20 respondents annually submit one FAA Act-related offer in compromise each using TTB F 5640.2, resulting in 20 total annual responses. TTB additionally estimates that each response takes 2 hours to complete, resulting in an estimated total annual burden of 40 hours for this information collection.

Estimated Respondent Labor Costs: Based on the average fully-loaded labor rate for \$118.70 for lawyers employed in the beverage manufacturing industry, TTB estimates the annual per-respondent and total respondent labor costs for this collection as follows:¹

Respondent Labor Costs for OMB No. 1513–0055 (Lawyers in the Beverage Manufacturing Industry)					
Avg. Time / Response	Labor Cost / Response	Responses / Respondent	Labor Costs / Respondent	Total Responses	Total Labor Costs
2.0 hours	\$237.40	1	\$237.40	20	\$4,748.00

* Labor costs rounded to the nearest whole cent.

Recordkeeping Burden: There is no stated recordkeeping period 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 are no start-up, capital, or annual maintenance, operational or overhead costs associated with this occasional information collection request. As such, respondents only incur postage and mailing supply costs for the submission of this information collection, which TTB estimates to be \$2.00 per response, and \$40.00 in total annually.

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

TTB estimates of the annual cost to the Federal Government for this information collection as follows:

General costs: There are no TTB overhead costs associated with this information collection. In addition, there are no printing and distribution costs to TTB’s due to the availability of TTB forms to the public through the TTB website (see <https://www.ttb.gov/forms>).

¹ Private Sector Fully-loaded Labor Rate per Hour = Hourly wage rate multiplied by a factor of 1.44 to account for employee benefit costs. Per the most recent U.S. Department of Labor, Bureau of Labor Statistics, data for National Industry-Specific Occupational Employment and Wage Estimates for NAICS 312100—Beverage Manufacturing, the average fully-loaded labor rate per hour for lawyers is \$118.70 (\$82.43 in wages plus \$36.27 in benefit costs). See https://www.bls.gov/oes/current/naics4_312100.htm.

Labor costs: TTB estimates the annualized labor costs to the Federal Government for this information collection request as follows:

Labor Costs for Personnel at TTB's National Revenue Center in Cincinnati, Ohio, for OMB No. 1513-0112					
Position	Fully-loaded Labor Rate per Hour ²	Processing Time per Response	Labor Costs per Response	Total Responses	Total TTB Labor Costs
GS-5, Step 5, Clerk	\$33.27	0.2 hour	\$6.65	20	\$133.00
GS-15, Step 5, Deputy Ass't Administrator	\$120.85	4 hours	\$483.40		\$9,668.00
TOTALS	(\$116.6786)	4.2 hours	\$490.05	20	\$9,801.00

* Labor costs rounded to the nearest whole cent unless otherwise noted.

Total Costs: The total cost to TTB for this information collection is \$9,801.00.

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

There are no program changes or adjustments associated with this information collection. On form TTB F 5640.2, in the Paperwork Reduction Act Notice for this information collection, TTB is revising the title of the person to whom comments regarding the information collection and its burden are directed, from "Reports Management Officer," to "Paperwork Reduction Act Officer." In addition, in that notice on each form, TTB is adding a reminder to respondents not to mail completed forms to the comment submission address.

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

While information regarding pending and rejected FAA Act-related offers in compromise is not made public, the TTB regulations at 27 CFR 70.802(a) provide for public inspection of an "abstract and statement" for all accepted offers in compromise. To make this disclosure, TTB creates a record for each accepted compromise using form TTB F 5640.3, Abstract and Statement, which TTB posts on the Administrative Actions page of its website for public viewing (see <https://www.ttb.gov/fo/administrative-cases>). That record identifies the offer's proponent, the facts regarding the offer and its amount, and TTB's rationale for accepting the offer; however, TTB redacts any permit or taxpayer identification numbers from the posted statement.

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?*

² Federal Government Fully-loaded Labor Rate = Hourly wage rate x 1.63 to account for benefit costs. Per the most recent Office of Personnel Management (OPM) hourly wage data, the fully-loaded labor rates for Federal employees in the Cincinnati, Ohio, wage area are: (1) \$33.27 for GS-5 (step 5), and (2) \$120.85 for a GS-15 (step 5). See https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2022/CIN_h.pdf.

TTB will display the expiration date for OMB approval for this information collection on its related form, TTB F 5640.2, Offer in Compromise of Liability Incurred Under the Federal Alcohol Administration Act, as Amended.

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.