

**DEPARTMENT OF THE TREASURY**

**ALCOHOL AND TOBACCO TAX AND TRADE BUREAU**

**Supporting Statement – Information Collection Request**

**OMB Control Number 1513–0087**

**Labeling and Advertising Requirements under the Federal Alcohol Administration Act**

**Changes Since Last Approval**

Changes made to the Supporting Statement since this information collection's last approval:

- In Question 1, TTB has revised its response in light of the publication of two final rules, T.D. TTB–158 (April 2, 2020, 85 FR 18704) and T.D. TTB–176 (February 9, 2022, 87 FR 7526). The first final rule liberalized and clarified TTB's alcohol beverage labeling and advertising regulations, while the second reorganized those regulations for distilled spirits (part 5) and malt beverages (part 7). (The regulatory section numbers for 27 CFR part 4 (wine) remain the same for now.) In particular, as a result of T.D. TTB–176, the regulatory section numbers associated with this information collection in parts 5 and 7 have changed from those previously reported.
- In Question 8, TTB discusses the comments received in response to its alcohol beverage labeling and advertising proposed rule, Notice No. 176, which published on November 26, 2018 (83 FR 60562), and TTB's responses in the two related final rules, T.D. TTB–158 and T.D. TTB–176, published in the Federal Register as noted above.
- In Question 12, TTB is updating the estimated burden for this information collection and is providing an estimate of respondent labor costs.
- In Question 15, TTB explains the program changes to this information collection made by the two final rules cited above, as well as the adjustments to its estimated burden.
- Throughout the Supporting Statement, TTB is making minor editorial and grammatical changes for clarity.

**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, subchapter I) 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 administrative and enforcement authorities to TTB through Treasury Order 120–01.

The FAA Act at 27 U.S.C. 205(e) and (f) directs the Secretary to issue regulations regarding the labeling and advertising of wine, distilled spirits, and malt beverages (hereafter “alcohol beverages”). The FAA Act states that those regulations should, among other things, prohibit consumer deception and the use of misleading statements in the labeling and advertisement of alcohol beverages, and should provide consumers with adequate information as to the identity and quality of such products. The FAA Act’s legislative history shows that Congress intended to grant broad rulemaking authority to the Secretary to ensure that alcohol beverage labels and advertisements meet those legislative goals.

The TTB alcohol beverage and advertising regulations, issued under its delegated FAA Act authorities, are found in 27 CFR parts 4 (wine), 5 (distilled spirits), and 7 (malt beverages). Under those regulations and specific to this information collection, alcohol beverage bottlers and importers must provide certain mandatory information on the labels of and in the advertisements for such products. In particular, on alcohol beverage container labels and on sealed opaque cartons or coverings of wine and distilled spirits containers, the TTB regulations mandate disclosure of a product’s brand name, its identity by type and class (e.g. “Chardonnay,” “bourbon,” “stout”), its alcohol and net content, and its bottler, packer or importer by name and address. See 27 CFR 4.32, 4.38a, 5.62, 5.63, 7.62 and 7.63. The regulations also mandate disclosure of the presence of the coloring materials and potential allergens FD&C Yellow No. 5, cochineal, carmine, and aspartame.<sup>1</sup> For distilled spirits, section § 5.63 also requires the labels of certain products to disclose the use of neutral spirits, coloring, flavoring, and blending materials, and their age. For alcohol beverage advertisements, the regulations generally require disclosure of the responsible advertiser’s name and address, the product’s class, type, or distinctive designation as appropriate, and, for distilled spirits, alcohol content and certain information regarding the use of neutral spirits in the product. See 27 CFR 4.62, 5.233, and 7.233.

While not requiring disclosure or collection of information, the regulations in parts 4, 5, and 7 also require mandated label disclosures to meet certain presentation standards for legibility, govern voluntary disclosure of certain information, and prohibit certain labeling and advertising practices. In particular, the presentation standards require that mandated alcohol beverage label statements be legible, appear on a contrasting background, and meet certain type size requirements based on the size of the product’s container. See 27 CFR 4.38, 5.52–5.54, and 7.52–7.54. The regulations also require mandated statements in alcohol beverage advertisements, whether in print, graphic, or audiovisual media, be apparent to the viewer, of sufficient size to be conspicuous and readily legible, and placed as to be clearly part of, and not separate from, the advertisement. See 27 CFR 4.63, 5.234, and 7.234. Regulations governing voluntary disclosure of certain information on alcohol beverage labels or in advertisements, including the use of the terms “organic,” and “pure,” are found in §§ 4.101, 5.84–5.91, 7.81, and 7.84. Regulations regarding prohibited labeling and advertising practices are found in §§ 4.39, 4.64, 5.101–5.103, 5.121–5.130, 5.235, 5.236, 7.101–7.103, 7.121–7.130, 7.235, and 7.236.

As mandated by the FAA Act, disclosure of certain information regarding alcohol beverage products in conformity with the specified presentation standards is necessary to prevent consumer deception and the use of misleading statements on the labels of and in advertisements for such products, and to ensure that such labels and advertising provide consumers with adequate information as to the identity, quantity, and quality of alcohol beverages.

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<sup>1</sup> The regulations at 27 CFR 4.32(e), 5.63(c)(7), and 7.63(b)(3) also require the disclosure sulfites, which, as an information collection, OMB has approved under OMB Control No. 1513–0084.

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?*

TTB uses the alcohol beverage product label and advertisement information disclosure requirements approved under this collection request and the related presentation standards to ensure that the consumer information and protection provisions of the FAA Act are appropriately applied. In turn, consumers use the disclosed information when considering purchases of alcohol beverage products.

*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?*

The use of improved information collection technology is not applicable to the third-party disclosures made on alcohol beverage labels or in advertisements of such products.

*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 public disclosure of information regarding the content and identity of alcohol beverage products through their labels and advertisements is a usual and customary business practice that respondents undertake regardless of any regulatory requirement to do so. Therefore, identifying similar sources of such information is not applicable to this third-party disclosure information collection.

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

Under the FAA Act, all alcohol beverage bottlers and importers engaged in interstate commerce, regardless of size, are subject to the TTB regulations regarding the labeling and advertising of such products. However, TTB notes that public disclosure of information regarding the content and identity of consumer products such as alcohol beverages through product labels and advertisements is a usual and customary business practice undertaken by respondents regardless of any regulatory requirement to do so. Therefore, TTB has determined that this third-party disclosure information collection does not have a significant impact on a substantial number of small entities.

*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?*

TTB requires disclosure of the specified information on alcohol beverage labels and in advertisements, or regulates the voluntary disclosure of certain information, when a bottler

or importer introduces an alcohol beverage product into interstate commerce. If TTB did not require disclosure of such product identity and content information under the prescribed presentation standards, TTB could not meet the consumer protection requirements of the FAA Act. As such, TTB cannot conduct this collection on a less frequent basis.

*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?*

There are no special circumstances associated with this information collection that 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 February 18, 2022, at 87 FR 9420. TTB received no comments on this information collection in response.

In addition, TTB previously sought comments on this information collection in Notice No. 176, Modernization of the Labeling and Advertising Regulations for Wine, Distilled Spirits, and Malt Beverages, a proposed rule published in the Federal Register on November 26, 2018 (83 FR 60562). In that document, TTB proposed to comprehensively amend and reorganize its regulations governing the labeling and advertising of alcohol beverages in 27 CFR parts 4, 5, and 7 in order to improve understanding of the regulatory requirements and to make compliance easier and less burdensome for industry members.

In response to that proposed rule, TTB received over 1,000 comments, which TTB discusses and responds to in detail in T.D. TTB–158, published in the Federal Register on April 2, 2020 (85 FR 18704) and in T.D. TTB–176, published on February 9, 2022 (87 FR 7526). In summary, no comments specifically addressed this information collection, OMB No. 1513–0087, regarding mandatory information disclosures on alcohol beverage labels and advertisements. However, some comments expressed concern that certain proposals in Notice No. 176 would require changes to existing alcohol labels and advertisements, and would thus require industry members to submit new applications for certificates of label approval, which, as an information collection request, is approved under OMB control number 1513–0020.

In response, TTB did not adopt certain regulatory changes and clarified others. As a result, TTB has determined that none of the regulatory amendments finalized in T.D. TTB–158 or T.D. TTB–176 require changes to any existing alcohol beverage label or advertisement. In addition, the finalized regulations do not increase the requirements or estimated burden associated with this information collection, OMB No. 1513–0087. Rather, in T.D. TTB–158, TTB finalized certain proposed liberalizing and clarifying changes that could be implemented quickly and that would provide industry members greater flexibility in alcohol beverage labeling and advertising. Additionally, in T.D. TTB–176, TTB reorganized its labeling and advertising requirements for distilled spirits in 27 CFR part 5 and for malt beverages in 27 CFR part 7. (In the near future, TTB plans to issue a final rule reorganizing its wine labeling regulations in part 27 CFR part 4, and placing its alcohol beverage advertising regulations in a new part 14.)

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?

The public disclosure of information regarding the content and identity of consumer products such as alcohol beverages through product labels and advertisements is a usual and customary business practice undertaken by respondents regardless of any regulatory requirement to do so. As such, no assurance of confidentiality is possible for this third-party information collection, and TTB provides none for it.

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 requirement contains no questions of a sensitive nature. In addition, this collection requires or governs disclosure to consumers of product identity and content information through alcohol beverage labels and advertisements. As such, this collection does not collect personally identifiable information (PII) in an electronic system, and no Privacy Impact Assessment (PIA) or System of Records Notice (SORN) is required for the required third-party disclosures.

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

Estimated Burden Hours: Based on recent data, TTB estimates that 13,000 alcohol beverage bottlers and importers will respond once annually to this information collection, for a total of 13,000 responses. While the public disclosure of information regarding the content and identity of alcohol beverage products through their labels and advertisements is a usual and customary business practice and is thus exempt from burden hour calculations under the OMB regulations at 5 CFR 1320.3(b)(2), TTB has determined that respondents may require up to one hour per response to verify that regulated label and advertisement statements conform to TTB's prescribed presentation standards. Therefore, TTB estimates that this information collection results in an estimated total annual burden of 13,000 hours.

Estimated Respondent Labor Costs: Based on the average fully-loaded labor rate of \$49.62 per hour for compliance officers in the beverage manufacturing industry (NAICS 312100), TTB estimates the per-respondent and total respondent labor costs for this information collection as follows:<sup>2</sup>

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<sup>2</sup> The Private Sector Fully-loaded Labor Rate = Hourly wage rate x 1.44 to account for employee benefit costs. Per the most recent U.S. Department of Labor, Bureau of Labor Statistics (BLS), data for National Industry-Specific Occupational Employment and Wage Estimates for NAICS 312100—Beverage Manufacturing, the average fully-loaded labor rate for Compliance Officers (occupation code 13-1041) is \$49.62 per hour. See the BLS website at [https://www.bls.gov/oes/current/naics4\\_312100.htm](https://www.bls.gov/oes/current/naics4_312100.htm).

Respondent Labor Costs for OMB No. 1513-0087					
Beverage Manufacturing - Compliance Officers Average Fully-Loaded Labor Rate = \$49.62/hour*					
Avg. Time / Response	Fully-loaded Labor Rate / Response	Responses / Respondent	Labor Costs / Respondent	Total Responses	Total Labor Costs
1.00 hour	\$49.62	1 per year	\$49.62	13,000	<b>\$645,060.00</b>

\* The fully-loaded labor rate and respondent labor costs rounded to the nearest whole cent.

Recordkeeping: There is no stated recordkeeping requirement associated with this information collection.

13. *What is the estimated annual cost burden to respondents or recordkeepers resulting from this information collection request (excluding the value of the hour burden in Question 12 above)?*

The public disclosure of information regarding the content and identity of alcohol beverage products through their labels and advertisements is a usual and customary business practice undertaken by respondents regardless of any regulatory requirement to do so. As such, under the OMB regulations at 5 CFR 1320.3(b)(2), TTB has determined that this information collection does not impose any start-up, capital, maintenance, or operational costs on respondents.

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

There are no costs to the Federal Government associated with this third-party disclosure information collection.

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

Program Changes: As summarized below, as a matter of agency discretion, TTB recently amended its alcohol beverage labeling and advertising regulations in 27 CFR parts 4, 5, and 7, and then reorganized the regulations in 27 CFR parts 5 and 7. TTB did so in order to improve understanding of the regulatory requirements and to make compliance easier and less burdensome for industry members. The amendments made do not require alcohol beverage industry members to make changes to any existing alcohol beverage label or advertisement. In addition, the finalized regulations do not increase the requirements or estimated burden associated with this information collection.

In T.D. TTB-158, published in the Federal Register on April 2, 2020 (85 FR 18704), TTB finalized certain proposed liberalizing and clarifying changes that could be implemented quickly and that would provide industry members greater flexibility in alcohol beverage labeling and advertising, particularly concerning the location of certain information on labels or in advertisements. In T.D. TTB-176, published on February 9, 2022 (87 FR 7526), TTB reorganized its labeling and advertising requirements for distilled spirits in 27 CFR part 5 and for malt beverages in 27 CFR part 7. As a result of that second final rule, the regulatory section numbers in parts 5 and 7 associated with this information collection have changed from those previously reported. (TTB plans to issue a further final rule reorganizing its wine

labeling regulations in part 27 CFR part 4, and placing all of its alcohol beverage advertising regulations in a new part 14.)

Adjustments: Due to changes in agency estimates, TTB is increasing the number of annual respondents, responses, and burden hours associated with this information collection, from 11,500 for each to 13,000. These increases are due to continued growth in the number of alcohol beverage producers (bottlers) and importers in the United States and continued growth in the number of alcohol beverage products introduced into interstate commerce.

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

TTB does not publish the results of this information collection. While this collection requires disclosure of certain product identity and content information to the public through alcohol beverage labels and advertisements, such disclosures are usual and customary business practices undertaken by respondents regardless of any regulatory requirement to do so.

*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 certain product identity and content information disclosed to consumers through alcohol beverage labels and advertisements. As such, there is no prescribed TTB form for this information collection, and there is no medium for TTB to display its OMB approval expiration date.

*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. Collection of Information Employing Statistical Methods.**

This information collection does not employ statistical methods.