DEPARTMENT OF THE TREASURY
Alcohol and Tobacco Tax and Trade Bureau

Industry Circular
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Voluntary Disclosure Program

To: Members of All Regulated Industries

What is the purpose of this Industry Circular?

This Industry Circular defines the Alcohol and Tobacco Tax and Trade Bureau (TTB) policy on voluntary disclosures of violations of the laws and regulations that we administer. It also addresses eligibility requirements and procedural guidelines that pertain to voluntary disclosures. The Voluntary Disclosure Program encourages compliance with TTB laws and regulations and benefits industry members who voluntarily identify instances of non-compliance.

What is voluntary disclosure?

We define voluntary disclosure as the intentional disclosure to authorized TTB officials of material facts by industry members regarding their non-compliance with the laws and regulations TTB administers.

How do voluntary disclosures differ from other disclosures of information by industry members?

Industry members initiate voluntary disclosures of non-compliance with TTB laws and regulations as well as any irregularities they find in their operations that are potential violations of law or regulations. These disclosures are distinct from disclosures that are required by law or regulation, such as required submissions of reports of operations or formulas for alcohol beverages.

What is TTB's policy regarding voluntary disclosures?

TTB's voluntary disclosure policy is the same as that of our predecessor agencies. We require members of the regulated industries to comply with all provisions of the laws and regulations we enforce and welcome cooperative, voluntary compliance efforts. We encourage the regulated community to voluntarily disclose violations upon discovery. Voluntary disclosures will mitigate what actions we take, if any, in response to violations. Examples of violations that may give rise to voluntary disclosures include but are not limited to:

1. Avoiding paying or underpaying tax;
    1. Violating the Federal Alcohol Administration Act (FAA Act) (such as labeling and product formulation, direct payment of slotting fees [or indirect payment such as

   2. a purported payment for scan data], exclusive outlets, and commercial bribery provisions); and
2. Failing to maintain and produce required information or records.

What are the benefits of voluntary disclosures?

Voluntary disclosures provide several benefits to industry members. They–

1. Reduce costs (time and money);
2. Will result in reduced penalties or other special considerations when and if TTB proposes administrative action;
3. Provide an incentive for detecting and correcting errors early;
4. Allow the opportunity to obtain special guidance on future compliance; and
5. Demonstrate credibility, good faith, trust, and confidence that foster goodwill and a positive working relationship with TTB.

Voluntary disclosures also benefit TTB. They–

1. Achieve results at reduced cost to the Agency;
2. Promote compliance;
3. Foster cooperative relationships between TTB and the regulated industries; and
4. Enhance our ability to educate industry members on compliance issues and reduce future irregularities.

Voluntary disclosures protect the public by ensuring that the revenue that is rightfully due is collected, that labels and advertisements of alcohol are truthful and non-misleading, and that the marketplace is free of unlawful trade practices.

When should industry members make voluntary disclosures?

Industry members should make voluntary disclosures as soon as possible after they discover any non-compliance with the law, such as tax deficiencies, labeling or advertising violations, or other irregularities. Depending on the size and scope of the irregularities, industry members may need more time to assemble necessary information. In such cases, they may request time to complete the voluntary disclosures. We will not act until we receive all relevant information.

When does TTB accept voluntary disclosures?

TTB considers and may accept voluntary disclosures when industry members–

1. Disclose **BEFORE** we–
   1. Discover irregularities;
   2. Begin a formal audit or investigation in which irregularities fall within the scope of the audit or investigation; or
   3. Find irregularities that fall outside the scope of a formal audit or investigation.
2. Provide information on noncompliant activities, to include details, circumstances, and attempts to prevent recurrences;
3. Take steps to remedy the irregularities;
4. Pay the correct amounts of tax, if the irregularities involved underpayments or nonpayments of tax; and
5. Disclose the irregularities in writing.

Where should industry members send written voluntary disclosures?

Industry members should direct written voluntary disclosures to:

Alcohol and Tobacco Tax and Trade Bureau
Field Operations (Attn: Voluntary Disclosure)
1310 G Street NW, Suite 200 West
Washington, DC 20220

Industry members may also make oral disclosures to appropriate TTB officials if they follow up in writing within 10 days.

When do formal audits or investigations start?

1. **A FORMAL AUDIT** begins on the date of the engagement letter that a TTB official sends to the industry member.
2. **A FORMAL INVESTIGATION** begins either on the date of the letter by which a TTB officer notifies an industry member of an investigation or, in the case of an unannounced investigation, the date on which TTB investigators arrive without notice at the premises of the industry member.

Does TTB corroborate information provided by industry members as part of voluntary disclosures?

Yes. In some voluntary disclosure situations, TTB may conduct independent inquiries to verify information provided in disclosures. We decide to take such actions on a case-by-case basis.

How long do industry members have to pay tax if voluntary disclosures involve a tax underpayment or nonpayment?

Industry members should submit any tax underpayments or unpaid tax and interest when they disclose irregularities. If they are unsure of the exact tax liability at the time of disclosure, they may elect to have us calculate the tax liability and interest. In such cases, industry members must pay the TTB-calculated tax and interest within 30 days of notice.

Does TTB always allow special consideration for voluntary disclosures?

Not always. Industry members are not eligible if irregularities:

1. Involve fraud or represent willful violations of law that may be referred for criminal investigation; or
2. Exist as part of a pattern that involves the same type of conduct that resulted in an earlier voluntary disclosure.

Does TTB confirm receipt of voluntary disclosures and notify industry members if disclosures are acceptable for consideration?

Yes. TTB confirms, in writing, receipt of voluntary disclosures and notifies industry members whether or not we accept the disclosures for consideration.

How does TTB handle accepted voluntary disclosures?

TTB senior management discusses such matters with responsible industry representatives before deciding on administrative actions in response to disclosed irregularities. We take into account the–

1. Nature and extent of tax deficiencies or other irregularities;
2. Timing and completeness of disclosures and industry members' cooperation;
3. Prior compliance history of industry members;
4. Actions taken by industry member to prevent future non-compliance; and
5. Contributing factors, mitigating or otherwise.

What types of administrative action may TTB take?

TTB may–

1. Keep written records of the circumstances for our files, without issuing warning letters;
2. Issue admonitory or warning letters that document irregularities;
3. Approve offers-in-compromise of civil liabilities;
4. Accept payment of full penalties in cases of tax deficiencies;
5. Suspend industry members' permits; or
6. Revoke permits.

When no aggravating factors exist and full cooperation and disclosure are evident, we are not likely, although it is possible, to suspend or revoke a permit. We will be more lenient in these cases made through voluntary disclosure.

Does TTB maintain a record of voluntary disclosures?

Yes. Since TTB treats accepted voluntary disclosures as admissions of noncompliance with laws or regulations, we maintain records of such matters for future reference.

Does TTB consider completed voluntary disclosures as first violations in future permit actions?

No. TTB does not consider such completed actions as first violations.

What action will TTB take on a voluntarily disclosed willful violation?

TTB will take appropriate action on voluntarily disclosed violations up to and including a recommendation of criminal prosecution where it is warranted. Examples where criminal prosecution may be recommended include bribery of public officials, involvement in organized criminal activities, previous obstruction of justice, and particularly flagrant violations of the FAA Act.

Are voluntary disclosures privileged communications?

No. Oral and written statements of voluntary disclosure of non-compliance are not privileged communications.

Signed by
Arthur Libertucci

Arthur J. Libertucci
Administrator
Alcohol and Tobacco Tax and Trade Bureau