



ADMINISTRATOR

DEPARTMENT OF THE TREASURY  
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU  
WASHINGTON, D.C. 20005

October 30, 2020

The Honorable Nita M. Lowey  
Chairwoman, Committee on Appropriations  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairwoman Lowey:

I write in response to House Reports 115-792 and 116-122, which directed the Alcohol and Tobacco Tax and Trade Bureau (TTB) to report to the Committees on Appropriations of the House and Senate on how it used the \$5 million appropriated in Fiscal Years (FY) 2019 and 2020 to increase enforcement efforts for industry trade practice violations to bolster enforcement, including through forensic audits and investigations, particularly at known points in the supply chain that are susceptible to illegal activity. Additionally, House Report 116-122 directed TTB to report on how the funding has been used to increase education activities and accessibility to permit holders in all 50 states. House Report 116-122 further directed TTB to submit to the Committee a report on TTB's use of negotiated settlements in lieu of permit actions, and to make the report publicly available on its website. As directed, this report describes the process used during settlement negotiations, including the criteria for determining the amount of an appropriate settlement.

1. Funds Used for Investigation, Education, and Outreach.

TTB has used the \$5 million in two-year appropriations for FY 2019 and 2020 for expanded investigations and educational outreach on the trade practice provisions of the Federal Alcohol Administration Act (FAA Act). With regard to investigations, TTB has continued to fund its Office of Special Operations, which it established in 2017, for the principal purpose of expanding its trade practice program. The Office of Special Operations is staffed with TTB's most experienced investigators, who lead TTB's National Response Teams, which are multi-disciplinary teams of experts that TTB deploys to coordinate and administer large-scale, complex cases involving multiple locations.

In addition to investigations, TTB invests a substantial amount of the dedicated trade practice funding on education and outreach, which is TTB's primary strategy to facilitate voluntary compliance. For example, during FY 2019, TTB conducted 8 trade practice seminars held in partnership with state authorities at strategic locations across the country, bringing the total to date to 16. These seminars explain the elements of a trade practice violation, provide examples of violations that TTB has found in actual cases,

and provide a forum to respond to industry or other participant questions. One frequent area of inquiry centers on whether particular conduct violates the trade practice rules. Because the elements of most trade practice violations require proof of a requirement or inducement that results in exclusion of competitor products, TTB cannot offer bright lines in advance as to whether a particular requirement or inducement will in fact result in a violation of the law. However, by sharing examples from actual cases, TTB provides concrete indicators that industry can use to assess whether a particular activity they may be considering is prohibited.

TTB's trade practice seminars have been well received, but are inherently limited to the audience attending the particular seminar. Therefore, to expand its reach to the broadest possible audience, in early FY 2020, TTB replaced the seminars with educational videos that are available online and on demand for all industry members and retailers across the country. The videos, along with other relevant educational resources, are easily accessed on a dedicated trade practices web page on TTB.gov ([www.ttb.gov/trade-practices](http://www.ttb.gov/trade-practices)).

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In addition to educating industry stakeholders, TTB has engaged our state law enforcement partners to share information and multiply resources to detect and address trade practice violations. TTB maintains ongoing partnerships with state counterparts in Illinois, New Jersey, New York, Pennsylvania, and Delaware, and has presented on trade practice issues at state regulator conferences at the November 2019 National Liquor Law Enforcement Association Conference and at the October 2019 National Association of Alcohol Beverage Control State Administrator's Conference. These partnerships help streamline and focus enforcement through information sharing and developing joint federal and state cases across the country.

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## 2. Increased Cases and Results.

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Of the 39 cases that TTB has resolved, 18 cases involved only wholesalers, 15 cases involved only suppliers, and 6 cases involved both wholesalers and suppliers. While we found that retailers are involved in the prohibited activity as frequently as wholesalers and suppliers, TTB has limited authority over retailers.

TTB has carried out investigations around the country. In addition to cases TTB has investigated on its own, TTB has partnered with state law enforcement counterparts on investigations in Florida, Illinois, California, New York, Iowa, Kentucky, and Washington.

## 3. Negotiated Settlements.

The FAA Act provides for settlements to resolve trade practice violations in lieu of civil and criminal remedies that otherwise would be required.<sup>2</sup>

TTB has two types of negotiated settlements available to resolve trade practice violations: an OIC or a stipulated suspension. An OIC is a payment offered by an industry member to TTB to compromise the violations.<sup>3</sup> A stipulated suspension is a written agreement between TTB and the industry member in which the industry member acknowledges the alleged violation(s) and accepts a suspension, waiving its right to a

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<sup>2</sup> Section 204(e) of the FAA Act provides that TTB shall revoke or suspend a basic permit, after due notice and opportunity for hearing, if its holder willfully violates the permit's conditions. TTB generally initiates revocation or suspension of a basic permit when it determines that: 1) the evidence is conclusive and the nature of the violation is of a continuing character that necessitates immediate action to protect the public interest; 2) a negotiated settlement will not ensure future compliance with the laws and regulations; 3) the permit holder has not approached TTB seeking a negotiated settlement; 4) the circumstances otherwise preclude a negotiated settlement; or 5) efforts to negotiate a settlement failed. Revoking or suspending a basic permit serves both punitive and remedial purposes to deter future violations. TTB initiates enforcement action by serving the permit holder with an Order to Show Cause as to why the permit should not be revoked or suspended. After TTB serves the Order to Show Cause, the permit holder can either agree with TTB's allegations or request a hearing before an administrative law judge.

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hearing. Through the agreement, the industry member accepts a suspension of its permit for an agreed upon number of days.<sup>4</sup>

In determining whether an OIC or stipulated suspension is the more appropriate form of negotiated settlement, TTB considers the severity of the violations, the industry member's compliance history, and any steps the industry member has taken to prevent the violations from recurring.

When determining whether to accept an industry member's negotiated settlement offer/proposal, TTB considers a variety of factors, including:

- Number of alleged violations;
- Type of violations;
- Evidence of the industry member's willfulness in connection with the violations;
- Cooperation of the industry member;
- Compliance history of the industry member; and
- Mitigating factors provided by the industry member such as employee training, changes to procedures, and corrective actions.

TTB will only agree to a negotiated settlement if, singularly or in combination, the amount of the OIC or the number of days for the stipulated suspension is commensurate with the alleged violations and is sufficient to ensure the industry member's future compliance. If TTB and the industry member cannot agree on a negotiated settlement to resolve the violations, TTB may either suspend or revoke the basic permit. The FAA Act does not authorize the imposition of fines or unilaterally imposed penalties for violations of its terms.

TTB continues to research how to measure the impact of its efforts on voluntary compliance or deterred illegal conduct. Because any measure requires reliable estimates comparing the universe of conduct before and after increased enforcement, and because illegal conduct is inherently clandestine, TTB has limited options for quantitative measurement. However, two indicators of program effectiveness are repeat violations following settlement and industry feedback as to changes in the marketplace or requests for additional education. When TTB develops leads indicating recidivism, those leads are evaluated for further investigation as part of our risk calculation. TTB would resolve any such cases in a way that reflects the seriousness that repetitive conduct presents, as provided for in the above-described criteria. Likewise, TTB actively seeks and responds to stakeholder requests for additional educational and outreach opportunities. TTB maintains continuous dialogue with its stakeholders to gain information to maximize program results.

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Please do not hesitate to contact me at 202-453-2000 or [Mary.Ryan@ttb.gov](mailto:Mary.Ryan@ttb.gov) if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mary G. Ryan".

Mary G. Ryan  
Administrator

#### Attachments

cc:

The Honorable Kay Granger  
The Honorable Mike Quigley  
The Honorable Tom Graves  
The Honorable Richard Shelby  
The Honorable Patrick Leahy  
The Honorable John Kennedy  
The Honorable Christopher Coons

**Appendix: TTB Trade Practice Enforcement Case Activity (as of July 2020)**

	Case Activity			Closed Case Results <sup>5</sup>		
	Initiated	Open	Closed	Suspensions <sup>6</sup>	Number of OICs	Total Dollar Value of OICs
FY15	1	1	2	0	1	\$450,000
FY16	1	1	1	0	1	\$300,000
FY17 <sup>7</sup>	11	11	1	0	1	\$750,000
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<sup>5</sup> Since receiving dedicated funding for trade practice enforcement, TTB has closed 39 cases with 30 permit suspensions, 8 OICs, and one case that involved both a permit suspension and an OIC.

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Administrator

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ADMINISTRATOR

DEPARTMENT OF THE TREASURY  
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU  
WASHINGTON, D.C. 20005

October 30, 2020

The Honorable Patrick Leahy  
Ranking Member, Committee on Appropriations  
United States Senate  
Washington, DC 20510

Dear Senator Leahy:

I write in response to House Reports 115-792 and 116-122, which directed the Alcohol and Tobacco Tax and Trade Bureau (TTB) to report to the Committees on Appropriations of the House and Senate on how it used the \$5 million appropriated in Fiscal Years (FY) 2019 and 2020 to increase enforcement efforts for industry trade practice violations to bolster enforcement, including through forensic audits and investigations, particularly at known points in the supply chain that are susceptible to illegal activity. Additionally, House Report 116-122 directed TTB to report on how the funding has been used to increase education activities and accessibility to permit holders in all 50 states. House Report 116-122 further directed TTB to submit to the Committee a report on TTB's use of negotiated settlements in lieu of permit actions, and to make the report publicly available on its website. As directed, this report describes the process used during settlement negotiations, including the criteria for determining the amount of an appropriate settlement.

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In addition to investigations, TTB invests a substantial amount of the dedicated trade practice funding on education and outreach, which is TTB's primary strategy to facilitate voluntary compliance. For example, during FY 2019, TTB conducted 8 trade practice seminars held in partnership with state authorities at strategic locations across the country, bringing the total to date to 16. These seminars explain the elements of a trade practice violation, provide examples of violations that TTB has found in actual cases,

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ADMINISTRATOR

DEPARTMENT OF THE TREASURY  
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU  
WASHINGTON, D.C. 20005

October 30, 2020

The Honorable Mike Quigley  
Chairman, Subcommittee on Financial Services  
and General Government  
Committee on Appropriations  
U.S. House of Representatives  
Washington, DC 20515

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ADMINISTRATOR

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ALCOHOL AND TOBACCO TAX AND TRADE BUREAU  
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October 30, 2020

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- Number of alleged violations;
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TTB will only agree to a negotiated settlement if, singularly or in combination, the amount of the OIC or the number of days for the stipulated suspension is commensurate with the alleged violations and is sufficient to ensure the industry member's future compliance. If TTB and the industry member cannot agree on a negotiated settlement to resolve the violations, TTB may either suspend or revoke the basic permit. The FAA Act does not authorize the imposition of fines or unilaterally imposed penalties for violations of its terms.

TTB continues to research how to measure the impact of its efforts on voluntary compliance or deterred illegal conduct. Because any measure requires reliable estimates comparing the universe of conduct before and after increased enforcement, and because illegal conduct is inherently clandestine, TTB has limited options for quantitative measurement. However, two indicators of program effectiveness are repeat violations following settlement and industry feedback as to changes in the marketplace or requests for additional education. When TTB develops leads indicating recidivism, those leads are evaluated for further investigation as part of our risk calculation. TTB would resolve any such cases in a way that reflects the seriousness that repetitive conduct presents, as provided for in the above-described criteria. Likewise, TTB actively seeks and responds to stakeholder requests for additional educational and outreach opportunities. TTB maintains continuous dialogue with its stakeholders to gain information to maximize program results.

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The Honorable Tom Graves

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Please do not hesitate to contact me at 202-453-2000 or [Mary.Ryan@ttb.gov](mailto:Mary.Ryan@ttb.gov) if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Mary G. Ryan". The signature is written in a cursive style with a period at the end.

Mary G. Ryan  
Administrator

#### Attachments

cc:

The Honorable Nita M. Lowey  
The Honorable Kay Granger  
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ADMINISTRATOR

DEPARTMENT OF THE TREASURY  
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU  
WASHINGTON, D.C. 20005

October 30, 2020

The Honorable John Kennedy  
Chairman, Subcommittee on Financial Services  
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Committee on Appropriations  
United States Senate  
Washington, DC 20510

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<sup>2</sup> Section 204(e) of the FAA Act provides that TTB shall revoke or suspend a basic permit, after due notice and opportunity for hearing, if its holder willfully violates the permit's conditions. TTB generally initiates revocation or suspension of a basic permit when it determines that: 1) the evidence is conclusive and the nature of the violation is of a continuing character that necessitates immediate action to protect the public interest; 2) a negotiated settlement will not ensure future compliance with the laws and regulations; 3) the permit holder has not approached TTB seeking a negotiated settlement; 4) the circumstances otherwise preclude a negotiated settlement; or 5) efforts to negotiate a settlement failed. Revoking or suspending a basic permit serves both punitive and remedial purposes to deter future violations. TTB initiates enforcement action by serving the permit holder with an Order to Show Cause as to why the permit should not be revoked or suspended. After TTB serves the Order to Show Cause, the permit holder can either agree with TTB's allegations or request a hearing before an administrative law judge.

<sup>3</sup> Section 207 of the FAA Act authorizes TTB to compromise the liability arising from violations of Section 205 for up to \$500 for each offense.

hearing. Through the agreement, the industry member accepts a suspension of its permit for an agreed upon number of days.<sup>4</sup>

In determining whether an OIC or stipulated suspension is the more appropriate form of negotiated settlement, TTB considers the severity of the violations, the industry member's compliance history, and any steps the industry member has taken to prevent the violations from recurring.

When determining whether to accept an industry member's negotiated settlement offer/proposal, TTB considers a variety of factors, including:

- Number of alleged violations;
- Type of violations;
- Evidence of the industry member's willfulness in connection with the violations;
- Cooperation of the industry member;
- Compliance history of the industry member; and
- Mitigating factors provided by the industry member such as employee training, changes to procedures, and corrective actions.

TTB will only agree to a negotiated settlement if, singularly or in combination, the amount of the OIC or the number of days for the stipulated suspension is commensurate with the alleged violations and is sufficient to ensure the industry member's future compliance. If TTB and the industry member cannot agree on a negotiated settlement to resolve the violations, TTB may either suspend or revoke the basic permit. The FAA Act does not authorize the imposition of fines or unilaterally imposed penalties for violations of its terms.

TTB continues to research how to measure the impact of its efforts on voluntary compliance or deterred illegal conduct. Because any measure requires reliable estimates comparing the universe of conduct before and after increased enforcement, and because illegal conduct is inherently clandestine, TTB has limited options for quantitative measurement. However, two indicators of program effectiveness are repeat violations following settlement and industry feedback as to changes in the marketplace or requests for additional education. When TTB develops leads indicating recidivism, those leads are evaluated for further investigation as part of our risk calculation. TTB would resolve any such cases in a way that reflects the seriousness that repetitive conduct presents, as provided for in the above-described criteria. Likewise, TTB actively seeks and responds to stakeholder requests for additional educational and outreach opportunities. TTB maintains continuous dialogue with its stakeholders to gain information to maximize program results.

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<sup>4</sup> In a stipulated suspension, since the industry member has already agreed to waive its right to a formal hearing, the Order to Show Cause is usually served at the same time as the Order Suspending Permit.

The Honorable Christopher Coons

While TTB cannot ascertain the effect of increased outreach and enforcement on compliance, we are confident that these efforts have raised awareness in the industry. We appreciate the Committees' support. As directed by the Committees, we will post the information regarding our use of negotiated settlements to our website in a user-friendly, web-appropriate manner.

Please do not hesitate to contact me at 202-453-2000 or [Mary.Ryan@ttb.gov](mailto:Mary.Ryan@ttb.gov) if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Mary G. Ryan".

Mary G. Ryan  
Administrator

#### Attachments

cc:

The Honorable Nita M. Lowey  
The Honorable Kay Granger  
The Honorable Mike Quigley  
The Honorable Tom Graves  
The Honorable Richard Shelby  
The Honorable Patrick Leahy  
The Honorable John Kennedy

**Appendix: TTB Trade Practice Enforcement Case Activity (as of July 2020)**

	Case Activity			Closed Case Results <sup>5</sup>		
	Initiated	Open	Closed	Suspensions <sup>6</sup>	Number of OICs	Total Dollar Value of OICs
FY15	1	1	2	0	1	\$450,000
FY16	1	1	1	0	1	\$300,000
FY17 <sup>7</sup>	11	11	1	0	1	\$750,000
FY18	48	54	5	1	1	\$900,000
FY19	9	23	40	22	5	\$5,095,000
FY20 YTD	10	18	15	8	3	\$5,800,000

**Initiated:** New investigations opened during the fiscal year.  
**Open:** Investigations that were still in progress at the end of the fiscal year.  
**Closed:** Investigations fully resolved during the fiscal year. This count includes cases where the industry member surrendered their permit as well as cases where TTB did not pursue settlement or permit suspension.

<sup>5</sup> Since receiving dedicated funding for trade practice enforcement, TTB has closed 39 cases with 30 permit suspensions, 8 OICs, and one case that involved both a permit suspension and an OIC.

<sup>6</sup> Other than two suspensions in FY20, all suspensions have involved consignment sale cases. These consignment sale cases almost exclusively resulted from the investigation of a single wholesaler and its suppliers.

<sup>7</sup> In FY17, prior to receiving the dedicated funding, TTB initiated 2 investigations and closed 1, resulting in an OIC of \$750,000.