

DEPARTMENT OF THE TREASURY
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

Supporting Statement – Information Collection Request

OMB Control Number – 1513-0005

TTB REC 5130/2 - Letterhead applications and notices filed by Brewers
TTB F 5130.10 - Brewer's Notice

A. Justification

1. What are the circumstances that make this collection of information necessary and what legal or administrative requirements necessitate the collection?

The Internal Revenue Code requires brewers to file a notice of intent to operate a brewery. The Brewer's Notice, TTB F 5130.10, is similar to a permit to operate. Brewers also file letterhead applications and notices as needed to identify specific activities and to provide information to protect revenue, as TTB regulations require. Brewers must keep general required records for ongoing brewery operations for a period of 3 years. However, the brewer must keep certain documents for an indefinite period. Qualifying documents are the permission to operate. So, as long as the brewery is in operation, the brewer must keep the pertinent qualifying documents, including the Brewer's Notice and other notices and applications.

The Internal Revenue Code taxes beer removed for consumption or sale at the rate of \$18 per barrel (31 gallons). Certain small brewers pay at a reduced rate of \$7 per barrel. To safeguard the revenue from this tax, Congress provided in Title 26 U.S.C., Subtitle E a comprehensive system of regulating breweries and collecting excise taxes on beer.

Specific statutes authorizing information collection:

- 26 U.S.C. 5051-5056 imposes taxes on beer, provides for specific exemptions from beer taxes, and provides for payment and refund of beer taxes.
- 26 U.S.C. 5401 requires all brewers to furnish qualifying documents to TTB before they start business. These documents include a notice with specific information about the intended business, as well as a bond to ensure the protection of the tax revenue.
- 26 U.S.C. 5092, 5042, and 5416 define brewery, brewer, package, and packaging.
- 26 U.S.C. 5411 lists authorized uses of brewery premises and stipulate that with regulations the Secretary may allow other uses that do not jeopardize the revenue.

- 26 U.S.C. 5412 requires that brewers may remove beer only in containers as required by regulations. This section permits pipeline transfers of beer to a contiguous distilled spirits plant.
- 26 U.S.C. 5414 permits removals of beer from one brewery to another brewery owned by the same brewer.
- 26 U.S.C. 5415 requires brewers to keep records in the form and manner we prescribe by regulations. To protect revenue, these records must be available during business hours for TTB examination. The records must be maintained according to regulations.
- 26 U.S.C. 5417 authorizes pilot brewing plants for research, analytical, experimental, or developmental purposes. These pilot breweries must comply with regulations.

Letterhead applications and notices

This information collection submission includes letterhead applications and notices and one form, the Brewer's Notice, TTB Form 5130.10. Brewers may submit letterhead applications for actions that we must approve. Letterhead notices are for actions that do not require TTB approval. Letterhead applications and notices are documents that qualify the brewer to conduct certain operations and specific regulated activity.

When we issue regulations to require these letterhead reports, we first determine if there is sufficient jeopardy to the revenue to require a notice or application. If we determine there is sufficient cause, it is our policy to regulate those activities with the greatest jeopardy to the revenue with a letterhead application. A brewer may not conduct these activities without receiving our approval. Those activities with lesser jeopardy we regulate with a notice requirement that does not need our prior approval.

Brewer's Notice, TTB Form 5130.10

26 U.S.C. 5401 requires a brewer to file a Brewer's Notice prior to starting business.

- Regulations at 27 CFR 25.25 require brewers to file a Brewer's Notice, TTB Form 5130.10, to operate a tavern on brewery premises. This requirement regulates smaller brewers known popularly as "brewpubs"—essentially breweries with restaurants on the brewery premises.
- 27 CFR 25.61 requires brewers to file a Brewer's Notice, TTB Form 5130.10, prior to starting business as a brewer.

Specific regulatory requirements

These are the information collection requirements in this submission.

- Brewer's Notice, TTB Form 5130.10 [27 CFR Part 25]
 - § 25.25 operation of a tavern on brewery premises
 - § 25.61 general requirements for notice

- § 25.62 data for notice
 - § 25.63 notice of registration
 - § 25.64 maintenance of notice file
 - § 25.66 organizational documents
 - § 25.68 description of brewery
 - § 25.71 amended or superseding notice
 - § 25.72 changes in proprietorship
 - § 25.73 change in partnership
 - § 25.75 change in officers and directors
 - § 25.77 change in location
 - § 25.78 change in premises
 - § 25.85 notice of permanent discontinuance
- Letterhead applications [27 CFR Part 25]
 - § 25.23 restrictions on use
 - § 25.52 variations from requirements
 - § 25.222 notice of brewer
 - § 25.272 application (pilot brewing plants)
 - § 25.273 action on application
 - § 25.299 execution under penalties of perjury
 - § 25.300 retention and preservation of records
 - Letterhead notices [27 CFR Part 25]
 - § 25.74 change in stockholders
 - § 25.81 alternation of brewery and wine premises
 - § 25.114 exemptions from dealers special tax
 - § 25.141 barrels and kegs (label coding system)
 - § 25.142 bottles (label coding system)
 - § 25.144 rebranding barrels and kegs
 - § 25.158 tax computation for bottled beer
 - § 25.167 notice of brewer to pay reduced rate of tax
 - § 25.184 losses in transit
 - § 25.213 beer returned to brewery other than that from which removed
 - § 25.225 destruction of taxpaid beer which was never removed from
brewery premises
 - § 25.277 discontinuance of pilot brewing plant
 - § 25.282 beer lost by fire, theft, casualty, or act of God
 - § 25.300 retention and preservation of records

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

We examine the information in the Brewer's Notice, TTB Form 5130.10, to:

- Ensure that we have sufficient details concerning business operations to judge qualifications for operations and to protect revenue;
- Ensure that the business and operations are allowed under law and regulations;
- Ensure that the revenue is protected by operations; and
- Ensure that the brewer has an accurate method to determine the amount of tax due.

The complete Brewer's Notice provides a permanent record of the brewery operation and serves as the application and approval document. A brewer may periodically update the Brewer's Notice as changes affect the accuracy of the document. Without this document, we are not able to assess compliance with law and regulations or to determine if there is jeopardy to the revenue. Without the information in this document we are not able to determine whether a brewery is authorized under the law.

We examine the information on letterhead applications to:

- Evaluate operations that are not covered under the Brewer's Notice (§§ 25.23 and 25.52);
- Establish pilot brewing plants (§ 25.272); and
- Evaluate destruction of taxpaid beer off of brewery premises (§ 25.222).

This information permits us to determine whether these particular operations conform with law and regulations and to determine if the destruction of taxpaid beer is in accordance with law and does not jeopardize revenue.

We examine the information on letterhead notices to:

- Determine if the brewer is conforming with law and regulations;
- Determine if a brewer is properly and sufficiently:
 - Determining and paying proper taxes,
 - Properly marking and labeling packages of beer, and
 - Reporting changes in the status of brewery qualifications.

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?

TTB has approved and will continue to approve, on a case-by-case basis, the use of improved technology for the maintenance of required records.

4. What efforts are used to identify duplication? Why can't any similar information already available be used or modified for use for the purposes described in Item 2 above?

We terminated the Federal Information Locator System (FILS) Program for agency use. However, we search an agency subject classification system to identify duplication. Similar information is not available elsewhere for this information collection requirement.

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

We consider this recordkeeping requirement to be the minimum necessary to ensure compliance with existing laws and regulations. Where possible we have reduced requirements based on the size of the respondent.

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?

No similar information is available from any source which we can use to describe fully the brewery's:

- operation,
- construction and security, or
- method to determine Federal taxes on beer production.

Without this information there would be jeopardy to the revenue.

7. Are there any special circumstances associated with this information collection?

There are no special circumstances associated with this information collection.

8. What effort was made to notify the general public about this collection of information?

A 60-day notice was published in the Federal Register (72 FR 3194) on Wednesday, January 24, 2007. The notice solicited comments from the general public. TTB received no comments in response to this notice.

9. What decision was made to provide any payment or gift to respondents, other than reenumeration of contractors or grantees?

No payment or gift is associated with this collection.

10. What assurance of confidentiality was provided to respondents and what was the basis for the assurance in statute, regulations, or agency policy?

We maintain these records in secure file rooms with controlled public access. This information is also subject to protection under 26 U.S.C. 6103 and 5 U.S.C. 552.

11. What justification is there for questions of a sensitive nature?

No questions of a sensitive nature are asked.

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

Brewers file the majority of the letterhead applications and notices as are necessary by the conduct of their business. Most applications or notices may be filed only once in the course of the business lifetime. Some applications or notices are filed more frequently, particularly those relating to revenue protection. Examples include destruction of beer or beer returned to the brewery. Letterhead notices relating to the status of the brewery may be filed several times a year, such as alternation of premises—only a few brewers file these notices.

We estimate that brewers will file an average of only 5 letterhead applications and notices by each of the 1,632 breweries per year. Each letterhead application or notice requires 0.5 hour to prepare.

We expect that brewers will file the Brewer's Notice, TTB Form 5130.10 once each year. We estimate each notice requires 3 hours to complete.

	Form 5130.10		Notices & Applications
Number of respondents	1,632		1,632
Number of responses	1		5
Total annual responses	1,632		8,160
Hours per response	<u>3</u>		<u>0.5</u>
Total annual hours	4,896	+	4,080
	8,976		

Since the last information collection submission the number of brewers has decreased from 1,750 to 1,632.

13. What is the estimated total annual cost burden to respondents or recordkeepers resulting from this collection of information?

The total annual cost estimate associated with this information collection is allocated entirely to operations and maintenance. Annual costs are allocated as follows.

Minimum wage \$5.25	preparation 9,625 hours @ \$5.25 =	\$ 50,531.25
Postage	1,632 Forms 5130.10 @ \$0.55 =	897.60
Postage	8,160 letterhead notices @ \$0.37 =	<u>3,019.20</u>
Total		\$ 54,448.05

14. What is the annualized cost to the Federal government?

Estimates of annual cost to the Federal government are as follows:

There is no cost to the Government for preparation of letterhead applications and notices by the brewer.

Costs for the Brewer's Notice, TTB Form 5130.10, are as follows:

Distribution	\$ 300
Clerical costs	200
Other salary (review, supervisory)	<u>400</u>
Total	\$ 900

15. What is the reason for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I?

There is an adjustments associated with this collection because of a decrease in the number of respondents. There is no change in the burden as a result of the changes to TTB F 5130.10.

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

The results of this collection will not be published.

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?

We will display the expiration date of OMB approval for this collection.

18. What are the exceptions to the certification statement?

There are no exceptions to the certification statement.

B. Collection of Information Employing Statistical Methods

This collection does not employ statistical methods.