

DEPARTMENT OF THE TREASURY

ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

Supporting Statement – Information Collection Request

OMB Control Number - 1513-0007

TTB F 5130.9 - Brewer's Report of Operations

TTB F 5130.26 - Brewpub Report of Operations

**A. Justification**

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

*Abstract*

The Internal Revenue Code (IRC) requires brewers to file periodic reports of their brewing and associated operations. The Alcohol and Tobacco Tax and Trade Bureau (TTB) uses these reports to determine whether the brewer's operations are lawful and in compliance with the requirements of law and regulations. We also use this information to assist to determine whether the brewer pays proper taxes timely and accurately. There are 1,640 brewers. Most of these are smaller facilities, most producing fewer than 10,000 barrels per year. Many of the smaller brewers are brewpubs, which primarily produce beer for consumption in restaurants located on the brewery premises.

The periodic operations reports enable us to determine whether the brewer is complying with a variety of IRC provisions that govern brewery activity. These operations include packaging or bottling, transfers between plants, experimental operations, and other activity.

*Specific statutes authorizing information collection*

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.

Specifically:

- 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. 5092, 5402, and 5416 define brewery, brewer, package, and packaging.
- 26 U.S.C. 5411 lists authorized uses of brewery premises and stipulates 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 all brewers to furnish periodic reports of operations to TTB. These reports document the regulated activity and brewing operations and provide specific information about the brewer's business operations to ensure and protect the beer tax revenue of the United States.
- 26 U.S.C. 5415 also 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.

#### *Brewers Report of Operations and Brewpub Report of Operations*

This information collection submission includes two forms. Both of these reports provide information about operations. In addition to meeting the return requirement under 26 U.S.C. 5415, these reports are used by TTB for two primary compliance procedures: audit and statistics.

#### *Brewer operations report audits*

Both TTB F 5130.9 and 5130.26 summarize the quantities of beer the brewer has on hand, produced and removed, or otherwise disposed of during the reporting period. The reports also list materials used during production. We examine these reports for completeness and accuracy and compare the information against other documentation, including forms and reports of exports, tax payments, transfers between breweries, and other authorized activities. These examinations provide early evidence of unauthorized, unexplained, or discrepant activity that may present jeopardy to the revenue. We may then conduct audits or inspections to investigate the potential for additional taxes, penalties, and interest due to the United States.

Brewers and brewpubs must retain their copy of each report for a period of 3 years. Where we deem it necessary to protect the revenue we have the authority under the IRC to require extensions of the retention period up to an additional 3 years.

*Brewer's Report of Operations, TTB F 5130.9*

26 U.S.C. 5415 requires a brewer to file period reports of operations. Provisions at 27 CFR 25.148 and 25.297 require brewers to file a Brewer's Report of Operations, TTB F 5130.9. Larger brewers must file a monthly report. If a brewer produces less than 10,000 barrels per year (310,000 gallons) they may file quarterly. These provisions currently apply to all brewers, regardless of size or complexity of operations. The estimated burden for each report is one hour.

*Brewpub Report of Operations, TTB F 5130.26*

This form contains only the information that is pertinent to the production and removal of beer by a brewery where the brewer operates a restaurant (the law calls the restaurant portion of the brewery a "tavern." These reports are quarterly reports that apply when a brewer's entire production is removed for consumption in the brewery tavern.

In the future, TTB will modify its regulations to specifically provide for the brewpub report of operations. In the interim we are using authority in 27 CFR 25.52, variations from requirements, to permit this alternative report for the brewpubs.

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

We examine the information in these forms 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;
- Compare operations reports with tax returns;
- Ensure that the brewer has an accurate method to determine the amount of tax due; and
- Prepare periodic statistical releases of use to the government, to the regulated industry, and to associated industries.

Brewer's and brewpub reports of operations provide permanent records of brewery operations and serve as vital documents for revenue protection. Without these documents, we are unable to assess compliance with law and regulations or to determine if there is jeopardy to the revenue. Without the information in these documents we are not able to determine whether a brewery is in compliance with the law.

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. We are taking steps to include these information collection requirements in an e-commerce initiative. The project includes electronic versions of the brewer's and brewpub reports of operations.

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

- operations,
- materials used, or
- methods to determine Federal taxes on beer production.

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

We consider this reporting requirement to be the minimum necessary to ensure compliance with existing law and regulations. Where possible we have reduced requirements based on the size of the respondent. We had previously reduced the filing requirement from monthly to quarterly for those brewers whose production does not exceed 10,000 barrels per year (310,000 gallons).

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?

Without this information we could not protect revenue unless we diverted significant resources from other program areas to conduct much more frequent inspections and audits at all of the 1,640 brewers. It is doubtful that we have sufficient resources to accomplish such audit activity. The other Federal agencies which use this information would have to find alternative sources for the data, or collect it themselves.

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 20176) on Monday, April 23, 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 decision of 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 5 U.S.C. 552 and 26 U.S.C. 6103.

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?

We expect that brewers will file the Brewer's Report of Operations, TTB F 5130.9 monthly and the Brewpub Report of Operations, TTB F 5130.26 quarterly. We estimate each report requires 1 hour to complete.

|                        | TTB F 5130.9 |   | TTB F 5130.26 |         |
|------------------------|--------------|---|---------------|---------|
| Number of respondents  | 410          |   | 1,230         | = 1,640 |
| Number of responses    | 12           |   | 4             |         |
| Total annual responses | 4,920        |   | 4,920         |         |
| Hours per response     | <u>1</u>     |   | <u>1</u>      |         |
| Total annual hours     | 4,920        | + | 4,920         | = 9,840 |

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

There is no cost associated with this collection.

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

Estimate of annual cost to the Federal government is as follows:

Costs for the brewer's and brewpub reports of operations, are as follows:

|                                    |              |
|------------------------------------|--------------|
| Printing                           | \$ 400       |
| Distribution                       | 200          |
| Clerical costs                     | 200          |
| Other salary (review, supervisory) | <u>1,000</u> |
| Total                              | \$1,800      |

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 due to a decrease in the number of respondents, from 1,750 to 1,640, and an increase in the total burden hours as a result of a miscalculation of the burden hours in our last submission.

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

We summarize the information in reports that group the information by period and by State (or groups of States where a summary might disclose a particular brewer's activity or where privacy concerns mitigate against disclosure).

There are a number of users for this data outside of TTB, including:

- The Beer Institute, representing the beer industry.
- The US Department of Commerce; Bureau of Economic Analysis, to generate information for their national accounts program.
- The US Department of Agriculture, Crops Division, to measure domestic grain usage; these data, along with distilled spirits report data, are an important barometer for a significant portion of domestic demand for cereal grain and hops.

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 of information does not use statistical methods.