

DEPARTMENT OF THE TREASURY
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU
Supporting Statement -- Information Collection Request
OMB Control Number 1513-0007

Information Collection Request Title:

Brewer's Report of Operations and Quarterly Brewer's Report of Operations

Information Collections Issued under this Title:

- TTB F 5130.9 — Brewer's Report of Operations.
- TTB F 5130.26 — Quarterly Brewer's 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? 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 excise tax and the related provisions of chapter 51 of the Internal Revenue Code (IRC; 26 U.S.C. chapter 51), 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 has delegated certain IRC administrative and enforcement authorities to TTB through Treasury Department Order 120-01.

Abstract

The IRC requires brewers to file periodic reports of their brewing and associated operations. TTB uses these reports to determine whether the brewer's operations are in compliance with the requirements of Federal alcohol excise tax law and regulations, including determining whether the brewer is paying proper taxes timely and accurately. These periodic operations reports also enable TTB to determine whether the brewer is complying with a variety of IRC provisions that govern brewery operations, including packaging or bottling, transfers between plants, and experimental operations.

Specific Statutes Authorizing Information Collection

The IRC sets the Federal excise tax for beer removed for consumption or sale at the rate of \$18 per barrel (31 gallons). Certain brewers pay at a reduced rate of \$7 per barrel. To safeguard the revenue generated by this tax, Congress provided in the IRC, 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 and 7652 impose excise 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 the Secretary may allow, by regulation, other uses that do not jeopardize the revenue.
- 26 U.S.C. 5412 requires that brewers 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, without payment of tax.
- 26 U.S.C. 5415 requires all brewers to furnish periodic reports of operations (returns) in the form and at the times prescribed by regulation.
- 26 U.S.C. 5415 also requires brewers to keep and maintain records in the form and manner prescribed by regulations, and that those records be made available during business hours for TTB examination.

Brewer's Report of Operations and Quarterly Brewer's Report of Operations (formerly, Brewpub Report of Operations)

This information collection submission includes two versions of the brewer's report of operations: TTB F 5130.9, Brewer's Report of Operations, and TTB F 5130.26, Quarterly Brewer's Report of Operations. Both report forms summarize the quantities of beer the brewer has on hand, and the quantities of beer produced, removed, or otherwise disposed of during the reporting period. TTB F 5130.26, the quarterly version of the brewer's report, is a condensed version of TTB F 5130.9, and it reflects the less complex operations typical of smaller brewers.

Regulations Requiring the Use of TTB F 5130.9 or TTB F 5130.26

The TTB regulations at 27 CFR 25.297, paragraph (a), state, "Except as provided in paragraph (b) of this section, each brewer shall prepare and submit a monthly report of brewery operations on Form 5130.9." Paragraph (b)(1), however, states, "For calendar quarters commencing on or after January 1, 2015, a brewer who was liable for not more than \$50,000 in taxes with respect to beer imposed by 26 U.S.C. 5051 and 7652 in the preceding calendar year and reasonably expects to be liable for not more than \$50,000 in such taxes during the current calendar year shall file quarterly Form 5130.9 or Form 5130.26 (or any successor forms)." (See T.D. TTB–123, 09/30/2014, 79 FR 58674.)

In the TTB alcohol export regulations at 27 CFR 28.148, brewers are required to report beer or beer concentrate removed without payment of tax for export, as well as any such shipments that are returned to the brewer, on TTB F 5130.9. TTB will soon issue a technical corrections final rule amending that section to recognize that brewers who export and who are required to report quarterly have the option of using either TTB F 5130.9 or TTB F 5120.26.

In general, the TTB regulations require that brewers retain certain records, including operations reports, for a period of 3 years. In addition, when TTB deems 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.

This information collection is aligned with:

Line of Business/Sub-function: General Government/Taxation Management.

IT Investment: Tax Major Application Systems.

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

TTB's National Revenue Center staff and field staff use the brewer's report of operations reports to:

- Ensure that we have sufficient detail concerning a brewer's business operations to determine qualification for operations;
- 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.

Without the information in these documents we are not able to determine whether a brewery is in compliance with the law. Our staff examines these reports for completeness and accuracy and compares 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.

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.

Currently, TTB includes TTB F 5130.9 and TTB F 5130.26 in the Pay.gov system to allow the electronic submission of these forms (see <http://www.ttb.gov/epayment/epayment.shtml>). "Fillable-printable" versions of the two forms and their instructions also are available on the TTB website at <http://www.ttb.gov/forms/5000.shtml>.

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?*

TTB F 5130.9 and TTB F 5130.26 collect information that is pertinent to each respondent and applicable to the specific issue of filing a brewer's report of operations on a monthly or quarterly basis, as required by statute and regulations. As far as TTB can determine, similar information is not available elsewhere

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

The filing of periodic operations reports by brewers is required by the IRC, regardless of the size of the entity involved. However, by regulation, TTB has provided for the use of TTB F 5130.26, which is filed on a quarterly basis, for certain brewers. This version of the brewer's report is a condensed version of the monthly report, TTB F 5130.9, and it reflects the less complex operations typical of smaller brewers. For small brewers, we consider the quarterly reporting period and the information collected on the quarterly report to be the minimum necessary to protect the revenue and to ensure compliance with existing law and regulations.

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 the information collected on the brewer's report of operations, TTB could not protect the revenue unless we diverted significant resources from other program areas to conduct more frequent inspections and audits at the 5,000 brewers we regulate. It is doubtful that we have sufficient resources to accomplish such inspection and audit activities, and these activities also would be more burdensome to the affected industry members.

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?*

As stated in 27 CFR 25.297(b)(3), the appropriate TTB officer may require a brewer who is otherwise eligible to file quarterly operations reports to file such reports monthly if that officer determines that there is a jeopardy to the revenue.

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 general public, TTB published a "60-day" comment request notice for this information collection in the Federal Register on January 21, 2015, at 80 FR 3013. TTB received no comments on this information collection in response.

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 collection.

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

No specific assurance of confidentiality is provided on this form. However, Federal law at 5 U.S.C. 552 protects the confidentiality of proprietary information obtained by the Government from regulated businesses and individuals, and 26 U.S.C. 6103 prohibits disclosure of tax returns and related information unless disclosure is specifically authorized by that section. We maintain these records in secure file rooms and computer systems with controlled access.

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 contains no questions of a sensitive nature.

A Privacy Impact Assessment (PIA) has been conducted for information collected under this request as part of the Tax Major Application System , and a Privacy Act System of Records notice (SORN) has been issued for this system under TTB .001–Regulatory Enforcement Record System and published in the Federal Register on January 28, 2015, at 80 FR 4637. TTB’s PIAs are available on the TTB website at <http://www.ttb.gov/foia/pia.shtml>.

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

Brewers who are liable for \$50,000 or more in beer excise tax in a given calendar year must file TTB F 5130.9, Brewer’s Report of Operations, on a monthly basis. Brewers who are liable for less than \$50,000 in beer excise tax in a given calendar year and the previous year are required to file quarterly on either TTB F 5130.9 or on TTB F 5130.26, Quarterly Brewer’s Report of Operations.

We estimate that a brewer will take 45 minutes to complete either form.

The estimated annual burden for this information collection is as follows:

| | TTB F 5130.9 | TTB F 5130.26 | Totals |
|---|---------------------|----------------------|---------------|
| Number of respondents | 506 | 4,494 | 5,000 |
| Number of annual responses per respondent | 12 | 4 | |
| Total annual responses | 6,072 | 17,976 | 24,048 |
| Hours per response | 0.75 (45 min.) | 0.75 (45 min) | |
| Total annual hours | 4,554 | 13,482 | 18,036 |

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

There is no cost associated with this collection. The information submitted by brewers on their operations reports is gathered from usual and customary records that brewers keep in the normal course of business, including production, shipment, and loss records among others.

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

Estimates of annual cost to the Federal Government are:

| | |
|--|--------------|
| Printing costs | \$ 0 |
| Distribution costs | 0 |
| Clerical costs | 200 |
| Other Salary costs (review, supervisory, etc.) | 1,000 |
| TOTAL COSTS | 1,200 |

Printing and distribution costs to the Federal government have decreased to \$0.00 in TTB's cost estimate due to the availability of the brewer's operations report forms to the public on the Pay.gov system and on the TTB website (www.ttb.gov).

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

We are submitting this information collection as a revision of this collection as last approved by OMB for six months in October 2014. Under a final rule amending 27 CFR 25.297(b) published in the Federal Register on September 30, 2014, and effective on January 1, 2015, certain brewers are now required to file their operations reports on a quarterly basis, either on TTB F 5130.9 or TTB F 5130.26. (See T.D. TTB-123 at 79 FR 58674.) TTB estimates this will lessen the reporting burdens for 90 percent of the total number of brewers, which would be 4,494 brewers.

Further, we are increasing the number of respondents to 5,000 and increasing the resulting total annual burden hours to reflect a significant increase in the number of respondents due to the growth in the number of small, craft brewers in recent years.

In addition, we are removing from this information collection older versions of TTB F 5130.9 and TTB F 5130.26 used by brewers to report operational activities that occurred prior to 2015, and we are retaining the revised shorter version of TTB F 5130.9 and the revised quarterly version of TTB F 5130.26 that brewers will use to report operational activities occurring on and after January 1, 2015. TTB estimates that the revised versions of these

reports will reduce the time it takes brewers to complete either form by 15 minutes, reducing the overall time estimate from one hour to 45 minutes.

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

Without disclosing the identity of individual brewer's, we summarize the information provided in the brewer's reports of operations and post it monthly to our website.

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

- The U.S. Department of Commerce, Bureau of Economic Analysis, to generate information for its national accounts program.
- Beer industry trade groups, such as the Beer Institute and the Brewers Association.

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?

As a cost saving measure for both TTB and the general public, TTB is seeking approval not to display the expiration date for OMB approval of this information collection. By not displaying the expiration date of this collection on the related form, TTB will not have to update the form's expiration date on its electronic systems and website pages or on the form's paper version each time the information collection is approved. More importantly, this avoids confusion among users of the form when the OMB approval date may have passed but the form is approved under interim short-term approvals while the form is under OMB review but before OMB has taken action. In addition, TTB-regulated businesses will not have to update their stocks of paper forms or alter electronic copies of the form, including any versions of the form produced by some businesses, at their own expense, for use with their electronic systems or for sale to other businesses or individuals.

18. What are the exceptions to the certification statement?

- (f) This is not a recordkeeping requirement.
- (i) No statistics are involved.

B. Collections of Information Employing Statistical Methods.

This collection does not employ statistical methods.