

DEPARTMENT OF THE TREASURY
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU
Supporting Statement -- Information Collection Request
OMB Control Number 1513-0005

Information Collection Request Title:

Letterhead Applications and Notices Filed by Brewers; Brewer's Notice.

Information Collections Issued under this Title:

- TTB REC 5130/2 – Letterhead Applications and Notices Filed by Brewers.
- TTB F 5130.10 – Brewer's Notice.
- Brewer's Notice (PONL/electronic).

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 chapter 51 (distilled spirits, wine, and beer), chapter 52 (tobacco products, processed tobacco, and cigarette papers and tubes), and sections 4181–4182 (firearms and ammunition excise taxes) of the Internal Revenue Code of 1986, as amended, (IRC, 26 U.S.C.) 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.

On December 18, 2015, the President signed into law the Consolidated Appropriations Act, 2016 (Public Law 114-113). Division Q of this Act is titled the Protecting Americans from Tax Hikes Act of 2015 (PATH Act). Section 332 of the PATH Act amends the IRC to change tax return due dates and remove bond requirements for certain taxpayers with respect to taxes on distilled spirits, wine, and beer. This law includes amendments to the IRC at 26 U.S.C. 5061(d)(4) (providing for a new annual tax return period) and 26 U.S.C. 5551(d) (providing for a new exemption from bond requirements). This law has an effective date of January 1, 2017.

The IRC at 26 U.S.C. 5051–5056 imposes Federal excise taxes on beer, provides for specific exemptions from those taxes, and provides for payment and/or refund for those taxes. The IRC at 26 U.S.C. 5401 requires all brewers to furnish qualifying documents to the Secretary before starting business. These documents include a notice of intent to operate a brewery with specific information about the intended business, as well as a bond to ensure the protection of the tax revenue. Under the IRC at 26 U.S.C. 5551(d), as amended by the PATH Act, certain brewers are exempt from bond requirements if they are

eligible to pay excise taxes quarterly or annually under the IRC at 26 U.S.C. 5061(d)(4). In addition, the IRC at:

- 26 U.S.C. 5411 lists authorized uses of brewery premises and stipulates that, by 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 as prescribed by regulations. This section also requires brewers to make true and accurate returns of operations and transactions as prescribed by regulations.
- 26 U.S.C. 5417 authorizes pilot brewing plants for research, analytical, experimental, or developmental purposes. These pilot breweries must comply with regulations.

As required under the TTB regulations in 27 CFR Part 25, Beer, applicants are required to file the Brewer's Notice, TTB F 5130.10, prior to commencing brewing operations. Under the regulations in 27 CFR part 25, brewers also are required to file letterhead applications and notices with TTB, such as requests for other authorized uses of the brewery and formula approvals, to provide information regarding certain activities in order to protect the revenue.

Brewer's Notice, TTB Form 5130.10

As noted, the IRC at 26 U.S.C. 5401 requires a brewer to file a Brewer's Notice prior to starting business. The TTB regulations at 27 CFR 25.61 require brewers to file a Brewer's Notice, TTB Form 5130.10, prior to starting business as a brewer. Also, 27 CFR 25.25 requires 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. In addition, the following TTB regulations concern the filing, maintenance, and amendment of the Brewer's Notice, TTB F 5130.10:

§ 19.143	Alternation for other purposes;	§ 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 notices;	§ 25.72	Change in proprietorship;
§ 25.73	Change in partnership;	§ 25.75	Change in officers and directors;
§ 25.77	Change in location;	§ 25.78	Change in premises;
§ 25.79	Change in bond status;	§ 25.81	Alternation of brewery and bonded or taxpaid wine premises;
§ 25.85	Notice of permanent discontinuance.		

To implement the bond exemption under the PATH Act, TTB is amending its regulations to provide that an applicant or existing brewer must state on TTB Form 5130.10 whether the proprietor is exempt from bond requirements (see 27 CFR 25.62 and 25.79, cited above).

Letterhead Applications and Notices

Brewers file letterhead applications and notices to conduct certain regulated operations at the brewery. In general, brewers file letterhead applications to obtain TTB approval for activities that TTB has determined pose the most jeopardy to the revenue. Activities posing less jeopardy require the brewer to submit a letterhead notice to TTB.

In 27 CFR part 25, the following regulations require letterhead applications:

§ 25.23	Restrictions on use;	§ 25.52	Variations from requirements;
§ 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.

In 27 CFR part 25, the following regulations require letterhead notices:

§ 25.74	Change in stockholders;	§ 25.81	Alternation of brewery and bonded or taxpaid wine premises;
§ 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 ...;	§ 25.222	Notice of brewer;
§ 25.225	Destruction of taxpaid beer ...;	§ 25.277	Discontinuance of operations (pilot brewing plants);
§ 25.282	Beer lost by fire, theft, casualty ...;	§ 25.300	Retention and preservation of records.

This information collection is aligned with —

- Line of Business/Sub-function: Law Enforcement/Substance Control.
- IT Investment: Tax Major Application Systems.

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

TTB examines 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;
- The business and operations are allowed under law and regulations;
- The revenue is protected by operations; and
- The brewer has an accurate method to determine the amount of tax due.

The Brewer's Notice provides a permanent record of the brewery operation and serves as the application and approval document. As changes occur to the brewery, its ownership, officers, location, or the like, the brewer submits an amended Brewer's Notice. Without this document, we are not able to assess compliance with law and regulations or 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 or tax-determined beer off of brewery premises (§ 25.222).

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

We examine the information on letterhead notices to:

- Determine if the brewer is conforming with law and regulations; and
- 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?

We have approved and will continue to approve, on a case-by-case basis, the use of improved information technology for the collection and maintenance of required records.

Currently, the Brewer's Notice, TTB F 5130.10, is available as a fillable/printable paper form on the TTB website at <https://www.ttb.gov>. Respondents also may file the information collected on the Brewer's Notice electronically through TTB's Permits Online (PONL) system (see <https://www.ttbonline.gov/permitsonline>).

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?

The information collected is pertinent to each respondent and applicable to the specific issues of filing a Brewer's Notice and letterhead applications and notices related to certain specific brewery operations. As far as TTB is able to 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?

All entities, regardless of size, are required by statute to file and maintain the Brewer's Notice, TTB F 5130.10, to operate as a brewer. Brewers also are required to file letterhead applications and notices to identify specific operational activities and to keep records of those activities in accordance with statutory and regulatory requirements. We consider the burden to be the minimum necessary to ensure compliance with existing laws and regulations and to protect the revenue. 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 source is available to TTB from which it determine who is operating as a brewer, or that describes the brewery's operations, construction, and security. Also, there are no other sources from which TTB could learn of operations at a brewery that may propose a jeopardy to the revenue or determine if a brewer is operating in compliance with Federal law and regulations.

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?*

Under 27 CFR 25.64, Maintenance of notice file, for as long as the brewery remains in business, brewers must maintain the approved Brewer's Notice, TTB F 5130.10, and all incorporated documents at the brewery premises, and must keep those records in complete and current condition, readily available for inspection by an appropriate TTB officer.

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.*

The general public will be notified of this information collection in a temporary rule and notice of proposed rulemaking that will be published shortly in the Federal Register. The notice will solicit comments from the general public.

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 TTB F 5130.10. However, 5 U.S.C. 552 protects proprietary information from disclosure, while 26 U.S.C. 6103 protects taxpayer information from disclosure.

The records required under this information collection generally are maintained by respondents who control the confidentiality of those documents. Letterhead applications and notices submitted to TTB are maintained 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.

Personally identifiable information is collected on the Brewer's Notice, TTB F 5130.10, but is not collected via Letterhead Applications and Notices. Therefore, a Privacy Impact Assessment (PIA) has been conducted for information collected under this request as part of the Regulatory Enforcement Record 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?*

Respondents file the Brewer's Notice, TTB F 5130.10, before commencing operations, and then file amended Brewer's Notices on an as needed basis. As such, TTB estimates that 6,298 applicants or existing brewers will file one Brewer's Notice each year. We estimate each notice requires 3 hours to complete on paper, and 2 hours to complete using our electronic system Permits Online (PONL) system. We also estimate that 1,652 existing brewers will file one Brewer's Notice in each of the next three years in order to apply for the bond exemption authorized under the IRC at 26 U.S.C. 5551(d) (discussed under Question 1 above). On average, TTB estimates that the bond exemption application will require 1 hour to complete using either paper or PONL.

Brewers file letterhead applications and notices as necessary during the course of business. Some letterhead applications and notices may be filed only once in the course of the business lifetime. Some letterhead applications or notices are filed more frequently, particularly those relating to revenue protection such as applications regarding the destruction of beer and 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. Therefore, based on TTB's experience, we estimate that each of the 6,298 brewers will file an average of 5 letterhead applications and notices per year, and we estimate that each letterhead application or notice requires one-half hour to prepare.

	# Respondents	# Responses Per Respondent	Annual Responses	Hours Per Response	Total Annual Burden
5130.10 paper	2,099	1	2,099	3.0	6,297
5130.10 electronic	4,199	1	4,199	2.0	8,398
5130.10 bond exempt applications	1,651	1	1	1	1,651
Letterhead Notices & Applications	6,298	5	31,490	0.50	15,745
Totals	6,298		37,788		32,091

Record Retention: Brewers must keep required records for ongoing brewery operations, including letterhead applications and notices, for a period of 3 years. However, TTB may

require some records be kept for an additional period in cases where such retention is deemed necessary for the protection of the revenue. In addition, as long as the brewery is in operation, the brewer must keep at the brewery up-to-date copies of the Brewer's Notice, TTB F 5130.10, along with copies of all incorporated documents filed as part of the Brewer's Notice.

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 are no capital/start-up or ongoing operation/maintenance costs associated with this information collection.

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

Costs to the Government associated with the filing of TTB F 5130.10 are as follows:

Clerical costs	\$2,963
Other Salary costs (review, supervisory, etc.)	\$2,808
TOTAL COSTS	\$5,771

Printing and distribution costs to the Federal government have decreased to \$0.00 in TTB's cost estimate due to the availability of TTB forms to the public on the TTB website (<http://www.ttb.gov>).

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

As described above, TTB is making program changes associated with this information collection to implement the bond exemption under the PATH Act. TTB is amending its regulations to provide that an applicant or existing brewer must state on TTB Form 5130.10 whether the proprietor is exempt from bond requirements.

As for adjustments, since the last submission of this information collection, the number of brewers regulated by TTB has increased from 5,864 to 6,298, resulting in an increase in the number of respondents, responses, and total annual burden hours associated with this collection. The total number of annual respondents and burden hours will also increase by 1,651 in each of the next three years as a result of submissions of TTB Form 5130.10 by brewers applying for the bond exemption authorized under the IRC at 26 U.S.C. 5551(d), and TTB expects this will be a one-time increase over the next three years. TTB is also adding a new item to the form where the applicant or brewer selects whether the proprietor is eligible for the bond exemption, and TTB is amending one of the instructions on the form to reflect this change.

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

TTB will not publish the results of this collection.

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?*

Letterhead Applications and Notice Requirements: For the letterhead applications and notice submission requirements contained in this information collection, these are sent to TTB on the brewer's letterhead, and, as such, there is no medium for TTB to display the collection's OMB approval expiration date.

Brewer's Notice, TTB F 5130.10: 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 on this form. 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. Similarly, TTB-regulated businesses will not have to update their stocks of paper forms or alter electronic copies of the form, including any marginally punched continuous printed 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. Additionally, not displaying the OMB approval expiration date on this form will avoid confusion among members of the public who may have identical forms with different expiration dates in their possession. By not displaying the expiration date, supplies of the form could continue in use regardless of when OMB's approval has expired.

18. *What are the exceptions to the certification statement?*

(i) No statistics are involved.

B. Collections of Information Employing Statistical Methods.

This collection does not employ statistical methods.