**DEPARTMENT OF THE TREASURY**

**ALCOHOL AND TOBACCO TAX AND TRADE BUREAU**

**Supporting Statement –– Information Collection Request**

**OMB Control Number 1513–0047**

**Distilled Spirits Production Records (TTB REC 5110/01) and**

**Monthly Report of Production 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 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 (the Secretary) has delegated certain IRC administrative and enforcement authorities to TTB through Treasury Department Order 120–01.

The IRC at 26 U.S.C. 5001 sets forth, in general, the Federal excise tax rates for distilled spirits produced in or imported into the United States. To protect the revenue from this tax, the IRC also provides at 26 U.S.C. 5207 that proprietors of distilled spirits plant (DSPs) must maintain records of production, storage, denaturation, and processing activities and must render reports covering those operations at such times, in such form and manner, and containing such information as the Secretary prescribed by regulation.

Under those IRC authorities, the TTB regulations in 27 CFR Part 19, Distilled Spirits Plants, require DSP proprietors to keep certain records and render certain reports. The regulations in §§ 19.584 through 19.586, as amplified by other sections of the part 19 regulations, require the keeping of records unique to DSP production operations. These include records necessary to account for materials used for the production of spirits (§§ 19.293, 19.294, 19.295, 19.308, and 19.584), the production of spirits and withdrawal of spirits from the production account (§ 19.585), and byproduct spirit production (§§ 19.309and 19.586). These records must be retained for at least three years, as required by § 19.575.

Using data from those production records, § 19.632 requires DSP proprietors to submit monthly distilled spirits production reports on form TTB F 5100.40, Monthly Report of Production Operations. Per § 19.634, proprietors may substitute a computer-generated report for the TTB form if that report has the same data elements, has a similar physical layout, and contains the same penalty of perjury statement as the TTB form.

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?*

To protect the revenue, TTB uses the collected information regarding distilled spirits production to account for a DSP proprietor's Federal excise tax liability and adequacy of their bond coverage. TTB also uses the collected information to ensure compliance with relevant IRC provisions and TTB regulations, to detect anomalies and effectively allocate audit and inspection resources, as an audit tool during revenue inspections, to analyze industry trends, and to compile generalized statistical reports for public release.

*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 information technology for the collection and maintenance of required information.

Currently, DSP proprietors may submit TTB F 5110.40 electronically through the Federal Government’s Pay.gov website (*https://www.pay.gov/public/home*). TTB F 5110.40 also is available on the TTB website (*https://www.ttb.gov/forms*) as a fillable, printable form that respondents may then submitted to TTB via the Pay.gov website or postal mail.

*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 5110.40 is used to collect information that is pertinent to each respondent and specific to their production of distilled spirits. As far as TTB is able 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 (the IRC at 26 U.S.C. 5207) to maintain records and make reports regarding distilled spirits production operations in such form and manner as the Secretary prescribes by regulation. Under that authority, the TTB regulations require all DSPs to keep production records to account for the materials used to produce distilled spirits and the amount of distilled spirits produced. TTB believes the required information is the minimum necessary to verify the amount of spirits produced by a DSP. As such, TTB cannot reduce its DSP production recordkeeping and reporting requirements reduced based on an entity’s size. TTB notes, however, that its regulations allow DSP respondents to substitute a self-generated computer report for the TTB monthly distilled spirits production operations report form, alleviating the need for a respondent to transfer such production data from their data system to a TTB F 5100.40.

*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?*

TTB believes the required information is the minimum necessary to verify the amount of spirits produced by a DSP. Not collecting the required information or collecting it less frequently would jeopardize the revenue as TTB would not be able to, or would be less able to, determine or verify the amount of spirits produced at a DSP and the resulting excise tax liability. Not collecting the required information or collecting it less frequently also would harm TTB’s ability to enforce relevant statues and regulations, detect production anomalies at DSPs, allocate audit and inspection resources, perform DSP audits, analyze industry trends, and compile generalized statistical reports for use by government agencies, academic institutions, trade associations, and 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? (See 5 CFR 1320.5(d)(2).)*

Under the OMB regulations at 5 CFR 1320.5(d)(2)(i), requiring respondents to report information to an agency more often than quarterly is a special circumstance. The IRC at 26 U.S.C. 5207 requires DSP proprietors to maintain records regarding their production activities and make reports on those activities at such time and in such form and manner as the Secretary prescribes by regulation. Under that authority, the TTB regulations in 27 CFR part 19 require DSP proprietors to report their production activities to TTB on a monthly basis. TTB believes that such monthly reporting is necessary to protect 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 public, TTB published a “60-day” comment request notice for this information collection request in the Federal Register on June 15, 2021, at 86 FR 31818. TTB received two comments on this information collection in response that notice.

In Comment 1, a DSP operations manager stated that on TTB F 5110.40, the ingredients used in production list is too limited, noting that there is nowhere to list ingredients such as agave, sweet potatoes, beet, carrots or other plants and vegetables used for spirits production by many craft producers. In response, TTB acknowledges that the list of materials used in the production of spirits is not all-inclusive and some novel products may not fit into one of the listed categories. TTB will consider this suggestion when developing updates to this form in the near future.

In Comment 2, the Department of Commerce, Bureau of Economic Analysis (BEA), stated that it “strongly supports” the continued collection of distilled spirits production data by TTB using TTB F 5110.40. Specifically, the Bureau noted that it uses the (generalized) collected data to prepare the quarterly national accounts, and that it specifically uses that data to determine seasonal adjustment factors for Federal excise taxes collected on distilled spirits. In response, TTB notes that it has no plans to discontinue the collection of DSP production data as approved under this information collection since TTB uses the collected information to protect the revenue.

*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 information collection request.

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

TTB provides no specific assurance of confidentiality for the information collected on the DSP production records and reports required under this collection request. 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 that section specifically authorizes such disclosure. DSP proprietors maintain the required records at their premises, while TTB maintains its copies of TTB F 5110.40 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. In addition, this information collection does not collect personally identifiable information (PII) in an electronic system. Therefore, no Privacy Impact Assessment (PIA) or System of Records Notice (SORN) is required for this collection.

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

Estimated Respondent Burden: Based on recent data, TTB estimates that 2,500 respondents will keep the required distilled spirits production records and will file 12 monthly DSP production reports per year, resulting in 30,000 total annual responses to this information collection. TTB further estimates that each response requires 2 hours to complete (1 hour for recordkeeping and 1 hour for reporting), resulting in an estimated total annual burden of 60,000 hours.

Estimated Respondent Labor Costs: TTB estimates the annual per-respondent and total respondent labor costs for this information collection as follows:

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| --- | --- | --- | --- | --- | --- |
| **NAICS 312000 – Beverage Manufacturing – Office & Administrative Support Occupations – Fully-loaded Labor Rate/Hour[[1]](#footnote-1) = $30.50** | | | | | |
| Avg. Time / Response | Labor Cost / Response | Responses / Respondent | Labor Costs / Respondent | Total Responses | Total Labor Costs |
| 2 hours | $61.00 | 12 | $732.00 | 30,000 | $1,830,000.00 |

Respondent Record Retention: The TTB regulations in 27 CFR part 19 require DSP proprietors to keep the records required under that part, including copies of any reports submitted to TTB, for at least three years from the date of the record or the date of the last entry, whichever is later. In addition, DSP proprietors must make the required records available for TTB inspection during normal business hours. See 27 CFR 19.574, 19.575, and 19.632.

*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)?*

TTB believes there are no annualized capital, start-up, operational, or maintenance costs to respondents associated with this information collection, which largely consists of usual and customary distilled spirits production and inventory records kept during the normal course of business, as well as monthly submissions of distilled spirits production reports based on those records. As for the submission of the required monthly DSP production reports, for the 25 percent of respondents (625 of 2,500) who submit monthly reports via the Pay.gov website, there are no mailing costs. As for the 75 percent of respondents who submit their monthly production reports to TTB by mail (1,875 of 2,500), TTB estimates annual postage and mailing supply costs as follows: $2.00 for each response, $24.00 for each respondent making 12 annual responses, and $45,000 in total.

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

TTB estimates its annual labor costs for this information collection as follows:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Labor Costs for Personnel at TTB’s National Revenue Center in Cincinnati, Ohio,**  **for OMB No. 1513–0047\*** | | | | | |
| Position | Fully-loaded Labor Rate/Hour[[2]](#footnote-2) | Processing Time per Response | Labor Costs per Response | Total Responses | Total TTB Labor Costs |
| GS–6, Step 5,  Clerk | $36.17 | 6 minutes | $3.62 | 30,000 | $108,600.00 |
| GS–11, Step 5, Specialist | $59.50 | 6 minutes | $5.95 | $178,500.00 |
| **Totals** | **($47.85)** | **12 minutes** | **$9.57** | **30,000** | **$287,100.00** |

\* Labor costs rounded to the nearest whole cent.

TTB estimates that it has $1.00 in overhead costs for each monthly DSP production report submitted, for a total of $30,000.00 in such costs for this information collection. However, TTB’s printing and distribution costs have decreased to $0.00 in due to the availability of its forms to the public on the TTB website’s forms page at *https://www.ttb.gov/forms*. As such, total cost to the Federal Government for this information collection is $317,000.00 ($287,100.00 in labor costs plus $30,000.00 in overhead costs).

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

There are no program changes associated with this collection. As for adjustments, due to changes in agency estimates, TTB is increasing the annual estimated burden associated with this information collection, from 1,600 respondents, 19,200 responses, and 38,400 burden hours, to 2,500 respondents, 30,000 responses, and 60,000 burden hours. The increase in respondents, and the related increases in annual responses and burden hours, is due to continued growth in the number of active distilled spirits plants in the United States, particularly in the number of small “craft” spirits producers.

Changes to TTB F 5110.40: There are no changes to the collected information. However, TTB is clarifying the instructions on TTB F 5110.40 to make the mailing address the form is to be sent to more visible, and is adding the TTB website address for the complete instructions and additional guidance for completing that form. In the form’s Paperwork Reduction Act Notice, TTB is updating the position title of the staff member who receives public comments on the burden estimates associated with its information collections.

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

TTB uses the data submitted on TTB F 5110.40, Monthly Report of Production Operations, to compile and publish monthly and year-to-date distilled spirits statistical reports, which, among other things, list statistics regarding net distilled spirits production by spirits type and the materials used by type of grain. These reports are generalized and do not disclose the identity of individual respondents. See *https://www.ttb.gov/statistics/reports-and-data*.

*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 public, TTB is seeking approval not to display the expiration date for OMB approval of this information collection on its related form, TTB F 5110.40. By not displaying that date on the form, TTB will not have to update the form each time OMB reapproves this information collection. Similarly, respondents and other businesses will not have to update stocks of the paper form, self-produced electronic copies of the form, or versions of the form made for sale to other businesses. Additionally, not displaying the information collection’s OMB approval expiration date on the form will avoid confusion among members of the public who may have copies of the form with different expiration dates in their possession. TTB also notes that there is no prescribed collection instrument for the recordkeeping portion of this information collection, TTB REC 5110/01. As such, there is no medium for TTB to display the OMB approval expiration date for that portion of this information collection.

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

(c) See item 5 above.

(i) No statistics are involved.

**B. Collections of Information Employing Statistical Methods.**

This information collection does not employ statistical methods.

1. The Fully-loaded Labor Rate = Hourly wage rate + benefit costs, which, for the private sector, is calculated as hourly wage x 1.44. Per the most recent U.S. Department of Labor, Bureau of Labor Statistics, data for National Industry-Specific Occupational Employment and Wage Estimates for NAICS 312100—Beverage Manufacturing, the average fully-loaded labor rate per hour for Office and Administrative Support Occupations (43–0000) is $30.50 ($21.18 for hourly wages plus $9.32 for benefit costs); see *https://www.bls.gov/oes/current/naics4\_312100.htm*. [↑](#footnote-ref-1)
2. Federal Government Fully-loaded Labor Rate = Hourly wage rate x 1.63 to account for benefit costs. Per the most recent Office of Personnel Management (OPM) hourly wage data, the fully-loaded labor rates for the Cincinnati, Ohio, wage area are: (1) GS–6, step 5, employee = $36.17 ($22.19 in wages plus $13.98 in benefit costs); and (2) GS–11, step  5 = $59.50/hour ($36.50 in wages plus $23.00 in benefit costs),. See the OPM website at *https://www.opm.gov/policy-data-oversight/ pay-leave/salaries-wages/salary-tables/pdf/2021/CIN\_h.pdf*. [↑](#footnote-ref-2)