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## **DEPARTMENT OF THE TREASURY**

### **Alcohol and Tobacco Tax and Trade Bureau**

#### **27 CFR Part 25**

**[Docket No. TTB–2012–0006; Notice No. 131; Re: T.D. TTB–109]**

**RIN 1513–AB94**

#### **Small Brewers Bond Reduction**

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Elsewhere in this issue of the **Federal Register**, the Alcohol and Tobacco Tax and Trade Bureau (TTB) is publishing a temporary rule that for a period of three years modifies the penal sum for a brewer's bond where the excise tax liability of the brewer is reasonably expected to be not more than \$50,000 in the current calendar year and the brewer was liable for not more than \$50,000 in such taxes in the preceding calendar year. Under the temporary rule, for the next three years, the penal sum of the required bond is \$1,000 for such brewers who file excise tax returns and remit taxes quarterly. In this document, TTB proposes to adopt the \$1,000 penal sum amount for the brewer's bond for such brewers as a permanent regulatory change. This document also proposes amendments to the regulatory text to require that such brewers file Federal excise tax returns and payments quarterly, as well as submit reports of operations quarterly. Finally, TTB is soliciting comments on how the TTB

regulations governing brewers' operations might be modified to reduce the burden on brewers and, at the same time, meet all statutory requirements and protect the revenue.

**DATES:** TTB must receive comments on or before [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may send comments on the proposals contained in this document to one of the following addresses:

- <http://www.regulations.gov>: To submit comments via the Internet, use the comment form for this document as posted within Docket No. TTB–2012–0006 at “Regulations.gov,” the Federal e-rulemaking portal;
- U.S. Mail: Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Box 12, Washington, DC 20005;
- Hand Delivery/Courier in Lieu of Mail: Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

See the **Public Participation** section of this document for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this document, the related temporary rule, selected supporting materials, and any comments TTB receives about this proposal within Docket No. TTB–2012–0006 at <http://www.regulations.gov>. A link to this Regulations.gov docket is posted on the TTB Web site at <http://www.ttb.gov/beer/beer-rulemaking.shtml> under Notice No. 131. You also

may view copies of this document, the related temporary rule, all supporting materials, and any comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20005. Please call 202-453-2270 to make an appointment.

**FOR FURTHER INFORMATION CONTACT:** Ramona Hupp, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; telephone 202-453-1039, ext. 110 or email [BeerRegs@ttb.gov](mailto:BeerRegs@ttb.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

TTB Authority

Chapter 51 of the Internal Revenue Code of 1986 (IRC), pertains to the taxation of distilled spirits, wines, and beer (see title 26 of the United State Code (U.S.C.), chapter 51 (26 U.S.C. chapter 51)). With regard to beer, IRC section 5051 (26 U.S.C. 5051) imposes a Federal excise tax on all beer brewed or produced, and removed for consumption or sale within the United States or imported into the United States. The rate of the Federal excise tax on beer is \$18 for every barrel containing not more than 31 gallons, and a like rate for any other quantity or for fractional parts of a barrel, with an exception that the rate of tax is \$7 a barrel for the first 60,000 barrels of beer for a domestic brewer that does not produce more than 2 million barrels in a calendar year. Section 5054 (26 U.S.C. 5054) provides that, in general, the tax imposed on beer under section 5051 shall be determined at the time the beer is removed for

consumption or sale, and shall be paid by the brewer in accordance with section 5061 (26 U.S.C. 5061).

Section 5061 pertains to the time and method for filing tax returns and payment of the applicable excise taxes. Section 5061 states that Federal excise taxes on distilled spirits, wines, and beer shall be collected on the basis of a return, and that the Secretary of the Treasury (the Secretary) shall, by regulation, prescribe the period or event for which such return shall be filed. Section 5061(d)(1) generally requires that the excise taxes owed on alcohol beverages, including beer, withdrawn under bond be paid no later than the 14<sup>th</sup> day after the last day of the semimonthly period during which the withdrawal occurs. Under a special rule, September has three return periods (Section 5061(d)(5)), resulting in a total of 25 returns due each year. Section 5061(d)(4) provides an exception to the semimonthly rule for taxpayers who reasonably expect to be liable for not more than \$50,000 in alcohol excise taxes in a given calendar year and who had an excise tax liability of not more than \$50,000 the previous calendar year. Under this provision, such taxpayers may pay the excise taxes on alcohol beverages withdrawn under bond on a quarterly basis.

Section 5401(b) (26 U.S.C. 5401(b)) provides that all brewers shall obtain a bond to insure the payment of any taxes owed. The amount of such bond shall be “in such reasonable penal sum” as prescribed by the Secretary in regulations “as necessary to protect and insure collection of the revenue.”

Section 5415 of the IRC (26 U.S.C. 5415) requires brewers to keep records and to make true and accurate “returns” of their brewing and associated

operations at the times and for such periods as the Secretary prescribes by regulation. The implementing regulations refer to these “returns” as “reports” of operations.

The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers chapter 51 of the IRC and its implementing regulations pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated January 21, 2003, to the TTB Administrator to perform the functions and duties in administration and enforcement of these laws. Regulations that implement the provisions of sections 5051, 5054, 5061, 5401, and 5415 of the IRC, as they relate to beer, are set forth in part 25 of title 27 of the Code of Federal Regulations (CFR).

#### Reducing Burdens on Regulated Industries

Executive Order 13563, Improving Regulation and Regulatory Review (E.O. 13563), signed by the President on January 18, 2011, required Federal agencies to conduct retrospective analyses of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them as appropriate. E.O. 13563 also required each agency to develop plans to review its regulations. The Department of the Treasury (Treasury) issued its Plan for Retrospective Analysis of Existing Rules (the Plan) on August 22, 2011. In developing the Plan, Treasury requested input from its Bureaus and Offices to help identify regulations that should be modified or updated. TTB identified a number of rulemaking proposals that were specifically

included in the Plan, one of which concerned revision to the beer regulations contained in 27 CFR part 25. The proposal included in the Plan states:

Revisions to the Beer Regulations (Part 25): Under the authority of the Internal Revenue Code, TTB regulates activities at breweries. The regulations of Title 27 of the Code of Federal Regulations, Part 25, address the qualification of breweries, bonds and taxation, removals without payment of tax, and records and reporting. Brewery regulations were last revised in 1986 and need to be updated to reflect changes to the industry, including the increased number of small (“craft”) brewers. In an advance notice of proposed rulemaking, TTB plans to solicit comments regarding potential ways to decrease the regulatory burden on industry members (including but not limited to streamlining and/or reducing the reporting and recordkeeping requirements for the industry, including small business members) and increase efficiency for both the industry and TTB. Upon consideration of comments received, TTB intends to develop and propose specific regulatory changes.

In September 2011, TTB met with representatives and members of the Brewers Association, a trade organization that promotes the interests of small and independent brewers in the United States, to discuss reducing the regulatory burdens on smaller brewers. During this meeting, the representatives and members put forth a number of suggestions toward that goal. TTB also met with members of the Oregon Brewers Guild in February 2012, and discussed the current regulatory burdens imposed on smaller brewers.

There is no specific statutory or regulatory definition as to who is a “small” brewer. However, for taxpayers whose annual alcohol excise tax liability is not reasonably expected to be more than \$50,000 in the current calendar year, and who were liable for not more than \$50,000 in such taxes in the preceding calendar year, there is, under section 5061(d)(4) of the IRC, a quarterly tax return and tax payment exception to the semimonthly rule. TTB believes that the

requirements for qualifying for this exception provide a reasonable standard for determining when a brewer may be considered “small”. A recent analysis of tax returns submitted to TTB by brewers reveals that the vast majority of brewers would be deemed “small” under this standard. At the end of calendar year 2011, there were 2,026 brewers submitting Federal excise tax returns to TTB, and 1,846 of those brewers (91 percent) paid less than \$50,000 in excise tax annually. In fact, the vast majority of those 1,846 “small” brewers actually paid much less than \$50,000, given that 1,616 of those brewers (87.5 percent) paid annual taxes of \$7,000 or less. (Hereafter, for the purposes of this document, the term “small brewers” refers to brewers who are eligible to file excise tax returns on a quarterly basis.)

TTB’s tax return statistics also indicate that the total sum of excise tax collected from small brewers represents a small amount of the total sum of excise tax collected on beer each year. Small brewers, though making up more than 90 percent of the total number of brewers who pay tax, cumulatively paid just over six percent (approximately \$11.5 million) of the \$177.8 million in total excise tax on beer collected in 2011. In 2010, small brewers paid 5.6 percent (approximately \$10.15 million) of the \$180.6 million in excise tax collected that year.

Statutory requirements for brewers include filing tax returns and paying excise taxes, obtaining a brewer’s bond, and filing reports of operations. Under TTB’s current regulations, there are options that a small brewer must consider. First, the regulations provide that a small brewer may file tax returns and pay

taxes either semimonthly or quarterly. However, different bond amounts may apply, depending on which option the small brewer selects. With regard to filing reports of operations, the general regulatory rule is that monthly reports are required, but a brewer who produces less than 10,000 barrels a year may opt to file reports of operations quarterly (27 CFR 25.297). Under these regulations, a small brewer must be aware of different eligibility standards regarding tax returns, tax payments, and reporting. Taken in their entirety, these regulations may be difficult for small brewers to fully understand and use to their best advantage.

Accordingly, TTB is proposing to simplify its beer regulations for the more than 90 percent of brewers who were 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 expect to be liable for not more than \$50,000 in such taxes during the current calendar year. As discussed in greater detail below, under the proposed regulations these brewers:

- Must obtain a bond with a penal sum of \$1,000, the minimum amount of bond under our current regulations, with no required adjustments to the amount of the bond; and
- Must file their tax returns, remit tax payments, and submit reports of operations on a quarterly basis.

With regard to the bond requirement, TTB is issuing a temporary rule that, for a period of three years, sets the penal sum for a brewer's bond for small brewers at a flat \$1,000 (see T.D. TTB-109 published in the rules section of this

issue of the **Federal Register**). As discussed in greater detail below, TTB proposes in this document to adopt the \$1,000 penal sum amount of the bond for small brewers as a permanent regulatory change.

By lowering the required bond amount and lessening the number of required excise tax returns and operations reports for small brewers, TTB believes these proposals will lessen costs and increase efficiencies for those businesses. TTB notes that the regulatory proposals contained in this document also will reduce the administrative burden on TTB. If small brewers submitted quarterly returns and operations reports, TTB would reduce the overall time the Bureau spends processing these forms.

As noted above and stated in the Plan, TTB initially intended to publish an advance notice of proposed rulemaking (ANPRM) to solicit written comments from the public before proposing changes to its regulations in part 25. After discussions with industry groups and members, analyzing available data, and reviewing its existing regulations and requirements, TTB believes that it should propose for immediate consideration changes to its regulations that would reduce the excise tax return filing and operations reporting burdens on small brewers. Compared to publishing an ANPRM and awaiting comments before proposing specific changes to the regulations, the proposals in this document would accelerate change in the regulations and thus provide more immediate and significant relief from existing regulatory burdens. However, TTB does not intend that the proposed regulatory changes outlined in this rulemaking cover all the changes to part 25 regulations that may be appropriate. Therefore, in this

document, TTB also is soliciting comments from the brewing industry and the public on other changes TTB could make to its part 25 beer regulations that could further reduce the regulatory burden on brewers and at the same time meet statutory requirements and regulatory objectives.

## **Discussion of Proposed Regulatory Changes**

### Penal Sum of the Brewer's Bond

Penal sum amounts of the brewer's bond are set forth in the TTB regulations at 27 CFR 25.93. In the related temporary rule, T.D. TTB-109, published in the rules section of this issue of the **Federal Register**, TTB explains its reasons for modifying the bond amount to a flat \$1,000 penal sum for small brewers. By doing so, TTB hopes to encourage such brewers to file tax returns and pay taxes quarterly rather than semimonthly without the need to obtain a bond with a greater penal sum. The temporary rule contains a discussion of how the previous bond requirements for these small brewers could require such brewers to increase their bond amount coverage when they file Federal excise tax returns and remit taxes quarterly rather than semimonthly. The modified bond amount set forth in the temporary rule is effective for three years from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

In this document, TTB proposes to eliminate the option to file excise tax returns and remit taxes semimonthly for small brewers, and thus require such brewers to file excise tax returns and pay taxes quarterly. Consistent with that proposal, TTB also proposes to adopt the flat \$1,000 penal sum of the bond requirement for such brewers as a permanent rule. This change to the

regulations governing the penal sum of the bond facilitates the change to quarterly excise tax returns and payment of tax because it eliminates differences between bond amounts based on when the brewer files tax returns and how much tax is owed. Thus, a small brewer who files excise tax returns and pays taxes quarterly will not have to increase its bond coverage under any circumstance.

Through this document, TTB seeks comments on the temporary rule, which modifies bond requirements for a period of three years, as well as the proposal outlined in this document that TTB permanently adopt the change in the required bond amount to a flat \$1,000 for small brewers.

#### Quarterly Tax Returns for Small Brewers

In 2005, section 11127 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. 109–59, 119 Stat. 1144 (“the Act”) amended section 5061(d) of the IRC to allow certain Federal alcohol excise taxpayers to pay taxes quarterly. Prior to the Act semimonthly tax returns were required. In a temporary rule, T.D. TTB–41, published in the **Federal Register** on February 2, 2006 (71 FR 5598), TTB implemented the new quarterly tax payment procedures of IRC section 5061(d)(4) by amending its regulations, including 27 CFR 25.164(c) pertaining to brewers. Section 25.164(c) requires all brewers who defer payment of tax to file returns and pay tax semimonthly, with the exception that a brewer may choose to use a quarterly return period if the brewer was liable for not more than \$50,000 in taxes imposed by 26 U.S.C. 5051 and 7652 with respect to beer in the preceding calendar year and if that brewer

reasonably expects to be liable for not more than \$50,000 in such taxes during the current calendar year. TTB adopted this regulatory change as a final rule in T.D. TTB-94, published in the **Federal Register** on August 24, 2011 (76 FR 52862).

In adopting the quarterly tax payment provisions, T.D. TTB-41 also made corresponding changes to the required penal sum of the brewers bond specifically applicable to quarterly taxpayers in order to fully secure the increase in deferred tax liability. T.D. TTB-41 provided that if a taxpayer otherwise eligible for the new quarterly payment procedure did not wish to adjust the penal sum of their bond, that taxpayer should be allowed to continue to make tax payments and file returns on a semimonthly basis, and the quarterly payment procedure was treated as optional rather than mandatory for taxpayers who did not wish to adjust their bond coverage.

TTB estimates that filing quarterly excise returns reduces a brewer's paperwork burden from 18.75 hours per year (based on an estimate of 45 minutes to prepare and submit a semimonthly return) to just three hours per year. However, many small brewers do not file quarterly; in 2011, of the 1,846 brewers eligible to file quarterly excise returns more than half (1,095) chose to file semimonthly excise tax returns.

Section 5061(a) provides that "[t]he Secretary shall, by regulation, prescribe the period or event for which such return shall be filed, the time for filing such return, the information to be shown in such return, and the time for payment of such tax." As discussed above, TTB is proposing to permanently

remove the bond disincentive for filing Federal excise tax returns and remitting tax payments quarterly. In the interest of reducing regulatory burdens on small brewers, and creating reporting and administrative efficiencies for both small brewers and TTB, TTB also proposes to amend the regulatory text in § 25.164(c) to require quarterly filing of Federal excise tax returns and payments for all small brewers.

### Report of Operations

Section 25.297 of the TTB regulations (27 CFR 25.297) implements the statutory requirement in 26 U.S.C. 5415 that brewers file periodic reports of their brewing and associated operations. Under § 25.297, as a general rule, brewers are required to submit monthly a Brewer's Report of Operations (TTB Form 5130.9). Section 25.297(a) and (b), provide an exception to the monthly reporting requirement, allowing brewers who produce less than 10,000 barrels of beer per calendar year to submit their report of brewery operations quarterly instead of monthly.

The baseline for optional quarterly operations reporting under § 25.297 (less than 10,000 barrels of production per calendar year) is different from the baseline established for optional filing quarterly tax returns under § 25.164 (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 expect to be liable for not more than \$50,000 in such taxes during the current calendar year). The less than 10,000 barrels a year baseline was adopted by TTB's predecessor agency, the Bureau of Alcohol, Tobacco and Firearms (ATF) in T.D. ATF-345,

and published in the **Federal Register** on July 28, 1993 (58 FR 40355). The rationale for adopting the less than 10,000 barrels per year baseline is contained in ATF Notice No. 755, published in the **Federal Register** on September 28, 1992 (57 FR 44525). In Notice No. 755, ATF stated that nearly 99 percent of beer excise tax is paid by breweries producing more than 10,000 barrels of beer per year, and that monthly reports from large breweries would still provide most of the data needed for the monthly statistics that ATF (and currently TTB) provides to the industry.

TTB proposes to change § 25.297 in several ways. First, TTB proposes to use as the baseline for filing quarterly reports of operation the “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 expect to be liable for not more than \$50,000 in such taxes during the current calendar year” standard, rather than the “less than 10,000 barrels of beer” per annum standard that currently exists. TTB believes that there is no justifiable rationale for maintaining separate standards for which brewers shall file quarterly tax returns and which brewers shall file quarterly operations reports. Both standards are intended to reduce burdens on small brewers; however, the flexibility to change one of the standards is available only to the operations reporting standard that has been set through regulation. The “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 expect to be liable for not more than \$50,000 in such taxes during the current calendar year”

standard applicable to quarterly tax return filing is set by law in section 5061(d)(4) of the IRC and therefore cannot be changed by TTB through regulation.

TTB has reviewed its quarterly operations reporting statistical records, and these records indicate that changing the current quarterly operations reporting eligibility standard to be consistent with the quarterly tax return eligibility standard would impact only a small number of brewers. At the current reduced tax rate of \$7 a barrel, removal of 10,000 barrels per year equates to \$70,000 in taxes owed per annum. In 2011, there were 41 brewers whose annual tax liability was between \$50,000 and \$70,000, and only 7 of those filed operations reports on a quarterly basis. Similarly, in 2010, there were 27 brewers whose annual tax liability was between \$50,000 and \$70,000; and of whom only 3 filed operations reports on a quarterly basis.

Secondly, TTB proposes to make quarterly operations reporting for eligible brewers mandatory rather than optional. TTB believes that mandating quarterly operations reporting would reduce regulatory burdens on small brewers, and create administrative efficiencies for TTB.

Simplifying the bond requirement, and creating consistencies between the tax return and remittance requirement and the operations reporting requirement, will make it easier for small brewers to understand and comply with the TTB regulations. These changes also make it easier for TTB to administer its regulatory program while providing adequate protection to the revenue.

Finally, TTB proposes to include a reference in § 25.297 to TTB Form 5130.26, which is available to certain brewers as an alternative to TTB Form 5130.9.

### Part 25 Update

Consistent with the intent of the ANPRM described in the Plan, as discussed above, TTB also seeks comments on other changes regarding part 25 regulations that brewers and other interested parties believe TTB should consider. Because the Administrative Procedure Act (5 U.S.C. 553) generally requires that the public have notice of and an opportunity to comment on regulatory changes prior to their adoption as final rules, TTB may not be able to adopt in any final rule the recommended changes that are outside the scope of the changes proposed in this document. However, TTB will consider such comments to determine if it should propose additional regulatory changes and conduct separate rulemaking on those proposed changes.

### **Public Participation**

#### Comments Invited

TTB invites comments from interested members of the public on the proposed regulatory changes contained in this document. Please provide specific information in support of your comments. Comments that merely express a preference for or against the proposed regulation do not provide a basis for agency action.

TTB specifically invites comments on the expected economic impact of the proposed rule, especially the impact on small businesses. TTB is interested in

hearing from small brewers as to how they would be impacted by the proposed rule, and in particular on what the economic impact of these proposals on small brewers might be. Please explain in detail and provide specific cost data.

In addition to comments on the proposed regulatory amendments, TTB solicits comments on other changes to the beer regulations in part 25 that could further reduce the regulatory burden on brewers and at the same time meet statutory requirements and regulatory objectives. As indicated above, while such comments may not be the subject of the final rulemaking document on these proposed regulatory changes, TTB may use such comments for the purpose of proposing additional regulatory changes in a separate rulemaking action.

#### Submitting Comments

Please submit your comments by the closing date shown above in this document. You may submit comments in one of the following three ways:

- Federal e-Rulemaking Portal: You may send comments via the online comment form associated with this document in Docket No. TTB–2012–0006 on “Regulations.gov,” the Federal e-rulemaking portal, at <http://www.regulations.gov>. A direct link to that docket is available under Notice No. 131 on the TTB Web site at <http://www.ttb.gov/beer/beer-rulemaking.shtml>. Supplemental files may be attached to comments submitted via Regulations.gov. For information on how to use Regulations.gov, click on the site’s Help tab.

- U.S. Mail: You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Box 12, Washington, DC 20005.

- Hand Delivery/Courier: You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

Your comments must reference Notice No. 131 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not accept anonymous comments, does not acknowledge receipt of comments, and considers all comments as originals.

In your comment, please indicate if you are commenting on your own behalf or on behalf of an entity such as a small brewer or other business. If you are commenting on behalf of an entity, your comment must include the entity's name as well as your name and position title. If you comment via Regulations.gov, please also enter the entity's name in the "Organization" blank of the comment form. If you comment via U.S. mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

#### Confidentiality

All submitted comments and attachments are part of the public record and subject to public disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for public disclosure.

### Public Disclosure

On the Federal e-rulemaking portal, Regulations.gov, TTB will post, and the public may view, copies of this document, the related temporary rule, and any electronic or mailed comments we receive about these proposals. A direct link to the Regulations.gov docket containing this document and the posted comments received on it is available on the TTB Web site at <http://www.ttb.gov/beer/beer-rulemaking.shtml> under Notice No. 131. You may also reach the docket containing this document and its related comments through the Regulations.gov search page at <http://www.regulations.gov>.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that the Bureau considers unsuitable for posting.

You and other members of the public may view copies of this document, the related temporary rule, and any electronic or mailed comments TTB receives about these proposals by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact the TTB information specialist at the above address or by telephone at 202-453-2270 to schedule an appointment or to request copies of comments or other materials.

### **Regulatory Flexibility Act**

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. chapter 6) TTB certifies that this notice of proposed rulemaking will not have a

significant economic impact on a substantial number of small entities. As discussed below in the **Paperwork Reduction Act** section of this document, the changes TTB proposes in this rulemaking would have the effect of lessening current reporting requirements on small businesses. The proposal that small brewers submit their excise tax returns quarterly would reduce their current reporting burden from 18.75 hours per year to 3 hours per year and the proposal that small brewers submit their report of operations quarterly would reduce current reporting burdens from 12 hours per year to 4 hours. Accordingly, a regulatory flexibility analysis is not required.

#### **Executive Order 12866**

It has been determined that this document is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not necessary.

#### **Paperwork Reduction Act**

There are two collections of information approved by the Office of Management and Budget (OMB) that would be affected by the adoption of these proposed regulatory changes. These collections of information, approved in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), are the Excise Tax Return (TTB Form 5000.24) and the Brewer's Report of Operations and the Brewpub Report of Operations (TTB Form 5130.9 and TTB Form 5130.26), which are associated with OMB control numbers 1513-0083 and 1513-0007, respectively.

OMB Control Number 1513–0083

TTB bases the estimated reporting burdens submitted to OMB for the Excise Tax Return (OMB Control Number 1513–0083) on the total number of all TTB-regulated industry members who pay taxes, including beverage alcohol producers and tobacco products manufacturers. In order to estimate the burden-hour savings specific to brewers, we have based the estimates below solely on the current number of individuals holding Brewer's Notices. TTB estimates that it takes 45 minutes to complete TTB Form 5000.24. The proposed mandate that small brewers submit their excise tax returns quarterly would reduce their current reporting burden from 18.75 hours per year to just 3 hours per year. In addition, it would reduce the estimated annual reporting burden to 8,913 hours; this represents an estimated savings of 15,777 hours.

TTB estimates that, as a result of the proposed regulatory amendments (and reflecting the estimated number of monthly and quarterly tax return filers), the total annual burden for tax return submissions will be as follows:

- Estimated number of respondents: 2,026 (180 filing semi-monthly; 1,846 filing quarterly).
- Estimated annual frequency of responses: 25 for semi-monthly reporting; 4 for quarterly reporting.
- Estimated total annual reporting burden: 8,913 hours (3,375 hours filing semi-monthly and 5,538 hours filing quarterly).
- Estimated annual burden hours per respondent: 18.75 hours for semi-monthly filing; 3 hours for quarterly filing.

OMB Control Number 1513-0007

TTB estimates that it takes 1 hour to complete the Brewer's Report of Operations or the Brewpub Report of Operations (TTB Form 5130.9 and TTB Form 5130.26). Therefore, the proposed mandate that small brewers submit their report of operations quarterly would reduce their current reporting burdens from 12 hours to 4 hours per year. That is a savings of 8 hours for each small brewer not currently filing these reports quarterly. In addition, it would reduce the estimated annual reporting burden to 9,544 hours, which is an estimated savings of 2,608 hours.

Based on the current number of individuals holding Brewer's Notices, TTB estimates that, as a result of the proposed regulatory amendments (and reflecting the estimated number of brewers filing monthly and quarterly operations reports), the total annual burden for the brewers operations reporting will be as follows:

- Estimated number of respondents: 180 reporting monthly; 1,846 reporting quarterly.
- Estimated annual frequency of responses: 12 for monthly reporting; 4 for quarterly reporting.
- Estimated total annual reporting burden: 9,544 hours (2,160 hours for monthly reporting and 7,384 hours for quarterly reporting).
- Estimated annual burden hours per respondent: 12 hours for monthly reporting; 4 hours for quarterly reporting.

Comments on the two collections of information should be sent to OMB to Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503; or email to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). A copy also should be sent to the Alcohol and Tobacco Tax and Trade Bureau by any of the methods previously described. Comments on the information collection should be submitted not later than [INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments are specifically requested concerning:

- Whether the two collections of information submitted to OMB are necessary for the proper performance of the functions of the Alcohol and Tobacco Tax and Trade Bureau, including whether the information will have practical utility;
- The accuracy of the estimated burdens associated with the two collections of information submitted to OMB;
- How to enhance the quality, utility, and clarity of the information to be collected;
- How to minimize the burden of complying with the proposed revisions of the collections of information, including the application of automated collection techniques or other forms of information technology; and
- Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

## **Drafting Information**

Gerald M. Isenberg and Ramona Hupp of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

## **List of Subjects in 27 CFR Part 25**

Beer, Excise taxes, Reporting and recordkeeping requirements, Surety bonds.

## **Amendments to the Regulations**

Accordingly, for the reasons set forth in the preamble, TTB proposes to amend 27 CFR, chapter I, part 25 as set forth below.

## **PART 25—BEER**

1. The authority citation for part 25 continues to read as follows:

**Authority:** 19 U.S.C. 81c; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5121, 5122–5124, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

2. Amend § 25.93 by revising paragraph (a)(2) to read as follows:

### **§ 25.93 Penal sum of bond.**

(a) \* \* \*

(2) Brewers filing quarterly tax returns. For brewers who were 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, who reasonably expect to be liable for not more than \$50,000 in such taxes during the current calendar year, and who

file tax returns and remit taxes quarterly under § 25.164(c)(3), the penal sum of the brewers bond is \$1,000 on beer:

(i) Removed for transfer to the brewery from other breweries owned by the same brewer;

(ii) Removed without payment of tax for export or for use as supplies on vessels and aircraft;

(iii) Removed without payment of tax for use in research, development, or testing; and

(iv) Removed for consumption or sale.

\* \* \* \* \*

**3. Amend § 25.164 by:**

**a.** Amending the first sentence in paragraph (c)(1) by removing the words “, and chooses to use,”; and

**b.** Amending the first sentence in paragraph (c)(2) by removing the words “may choose to” and replacing them with “shall”.

**4. Amend § 25.297 by revising the section heading and paragraphs (b) and (c) to read as follows:**

**§ 25.297 Report of Operations, Form 5130.9 or Form 5130.26.**

\* \* \* \* \*

(b) Quarterly report of operations. (1) For calendar quarters commencing after [the effective date of the final rule], 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. For purposes of this section, “reasonably expects” means that the brewer was liable for not more than \$50,000 in taxes the previous year and that there is no other existing or anticipated circumstances known to the brewer (such as an increase in production capacity) that would cause the brewer’s liability to increase beyond that level.

(2) If a brewer determines that it will be liable for more than \$50,000 in taxes with respect to beer imposed by 26 U.S.C. 5051 and 7652 during the current calendar year, the brewer shall file the Brewer’s Report of Operations, Form 5130.9, for that month and for each subsequent month of that calendar year. When filing the last quarterly report, a brewer shall state in the “Remarks” section of Form 5130.9 or Form 5130.26 that it will be liable for more than \$50,000 in taxes for the current calendar year and will henceforth submit monthly filings.

(3) The appropriate TTB officer may at any time require a brewer who is filing Form 5130.9 or Form 5130.26 quarterly to file such report monthly on Form 5130.9 if there is a jeopardy to the revenue.

(c) Retention. The brewer shall retain a copy of Form 5130.9 or Form 5130.26 as part of the brewery records.

Signed: September 18, 2012.

**John J. Manfreda,**

Administrator.

Approved: September 28, 2012.

**Timothy E. Skud,**

Deputy Assistant Secretary  
(Tax, Trade, and Tariff Policy).

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