



This document is scheduled to be published in the Federal Register on 09/30/2014 and available online at <http://federalregister.gov/a/2014-22964>, and on [FDsys.gov](http://FDsys.gov)

[BILLING CODE: 4810–31–P]

## **DEPARTMENT OF THE TREASURY**

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

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

**[Docket No. TTB–2012–0006; T.D. TTB–123; Re: Notice No. 131 and T.D. TTB–109]**

**RIN 1513–AB94**

### **Small Brewers Bond Reduction and Requirement to File Tax Returns, Remit Tax Payments and Submit Reports Quarterly**

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

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) is adopting as a permanent regulatory change a flat \$1,000 penal sum for the brewer's bond for brewers whose excise tax liability is reasonably expected to be not more than \$50,000 in a given calendar year and who were liable for not more than \$50,000 in such taxes in the preceding calendar year. TTB originally set forth this change in a temporary rule issued on December 7, 2012. In addition, TTB is adopting as a final rule its proposal, also issued on December 7, 2012, to require small brewers to file Federal excise tax returns, pay tax, and submit reports of operations quarterly. TTB expects these amendments to reduce the regulatory burdens on such brewers, reduce their administrative costs, and create administrative efficiencies for TTB.

**DATES:** This final rule is effective on January 1, 2015.

**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 States 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 of beer 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 submitting 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 calendar year and who were liable for not more than \$50,000 in the preceding 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 December 10, 2013, 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 (27 CFR part 25).

#### 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 to discuss 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 who reasonably expect to be liable for not more than \$50,000 in alcohol excise taxes in a 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 the requirements to qualify for

the quarterly tax return and tax payment exception provide a reasonable standard for determining those brewers for which quarterly filing is appropriate for purposes of the IRC. In 2011, analysis of TTB data revealed that the vast majority of brewers qualified as quarterly taxpayers under this standard.

Specifically, this data provided that 2,026 brewers submitted 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 brewers 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, when used in this document, the term “small brewers” will refer to brewers who are eligible to file excise tax returns, remit tax payments, and submit operations reports on a quarterly basis.

#### Tax Return Filing, Tax Payment, Bond, and Reporting Requirements

Statutory requirements for brewers include filing tax returns, remitting excise tax payments, obtaining a brewer’s bond, and submitting 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 (27 CFR 25.164(c)). Under § 25.164(c), a brewer must adhere to a semimonthly tax return period unless the brewer qualifies for, and chooses to use, a quarterly tax return period. A brewer has the option to choose to use a quarterly return period if the brewer reasonably expects to be liable for not more than \$50,000 in taxes with respect to beer imposed by 26 U.S.C. 5051 and 7652 in a calendar year and was liable for not more than \$50,000 in such taxes in the preceding calendar year.

With regard to submitting reports of operations, the general regulatory rule is that monthly reports are required; but a brewer who produces less than 10,000 barrels of beer a year may opt to submit reports of operations quarterly (27 CFR 25.297). In addition, prior to the publication of the temporary rule on December 7, 2012 (discussed later in this document), 27 CFR 25.93 provided that, for brewers who filed tax returns and remitted tax payments semimonthly, the penal sum of the brewer's bond had to be "equal to 10 percent of the maximum amount of tax calculated at the rates prescribed by law which the brewer will become liable to pay during a calendar year" (27 CFR 25.93(a)(1)). For those small brewers who chose to file quarterly, the penal sum of the brewer's bond increased to 29 percent of the maximum amount of that tax (27 CFR 25.93(a)(2)). Under these previous regulatory provisions, a small brewer had to be aware of different eligibility standards regarding tax returns, tax payments, and reporting. TTB believed that these regulatory options, taken in their entirety, were difficult for small brewers to fully understand and use to their best advantage.

### **Temporary Rule and Notice of Proposed Rulemaking**

On December 7, 2012, TTB published in the **Federal Register** a temporary rule (T.D. TTB-109, 77 FR 72939) that provided for a flat \$1,000 penal sum for a brewer's bond for small brewers who file excise returns and remit payments quarterly. TTB stated that it was issuing the temporary rule to encourage eligible brewers to file excise tax returns and pay taxes quarterly rather than semimonthly without being required to obtain a bond with a penal

sum of more than \$1,000. The rule was issued as a temporary rule without prior notice and comment, pursuant to authority under section 4(a) of the Administrative Procedure Act (5 U.S.C. 553(b)), because TTB expected the affected public would benefit from a lower bond amount.

In the same issue of the **Federal Register**, TTB published Notice No. 131 (77 FR 72999) proposing to amend the TTB regulations at § 25.93 and § 25.297 to require that small brewers file tax returns, remit tax payments, and submit reports of operations quarterly.

In Notice No. 131, TTB proposed to adopt as a final rule in § 25.93, the flat \$1,000 penal sum for the bond for small brewers as outlined in the temporary rule, which would otherwise expire at the end of 3 years. In that proposed rule, TTB stated that it believed that lowering the required bond amount would remove the disincentive for small brewers to file excise tax returns and remit tax payments quarterly, and that lessening the number of required excise tax returns and operations reports for small brewers would lessen costs and increase efficiencies for those businesses.

As TTB stated in Notice No. 131, 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.

Specifically, TTB estimated that filing tax returns quarterly would reduce 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 3 hours per year. If all small brewers file tax returns, remit tax payments, and submit operations reports quarterly, TTB will reduce the overall time it spends processing these submissions.

In Notice No. 131, TTB solicited comments from the public on these proposed amendments and on other changes TTB could make to the part 25 beer regulations that could further reduce the regulatory burden on brewers and at the same time meet statutory requirements and regulatory objectives. The comment period for Notice No. 131 closed February 5, 2013.

### **Comments Received**

In response to Notice No. 131, TTB received 44 comments. In the following discussion of the comments, TTB provides a number in parentheses, such as "(Comment 1)," to refer to the number that was assigned to the individual comment when it was submitted through "Regulations.gov" (<http://www.regulations.gov>), an online system for individuals to submit comments on proposed regulations and related documents. One comment was sent directly to TTB and was added to the other comments received on this rulemaking action through Regulations.gov.

Forty-two of the 44 comments came from individuals associated with the brewing industry; the remaining two came from the Brewers Association (as described previously) and a surety agency. Forty-three of the comments

supported the proposed amendments, and one comment pointed out an error in the preamble of the proposed rule regarding certain figures that TTB had cited, but the commenter expressed neither support for nor opposition to the proposed rule or the temporary rule. Many of the comments from brewers provided information regarding the amount of time they estimate spending to prepare and submit tax returns and operations reports and how the proposed amendments would result in time and cost savings. A detailed discussion of the comments follows.

#### Correction to the Annual Beer Excise Tax Statistics

One of the commenters (Comment 44) stated that the figures TTB cited in both the proposed rule and temporary rule for excise tax collections on beer for 2010 and 2011 were incorrect according to TTB's monthly statistical reports. Specifically, TTB had stated that small brewers cumulatively paid 5.6 percent (approximately \$10.15 million) of the \$180.6 million in total excise tax on beer collected in 2010 and, in 2011, small brewers paid just over 6 percent (approximately \$11.5 million) of the \$177.8 million in excise tax collected on beer that year. The commenter also stated that because the total amount of excise taxes collected for each year was incorrect, the percentages attributed to small brewers were also incorrect.

TTB acknowledges that, in the proposed rule and the temporary rule, it printed incorrect numbers for the total amount of tax collections on beer in 2010 and 2011. TTB inadvertently printed the number of taxable barrels of beer that domestic brewers had reported producing for domestic consumption in 2010 and

2011 as if those numbers were the total amount of excise taxes TTB collected on domestically-produced beer in those years. In 2010, the actual total amount of excise taxes TTB collected on beer produced in the U.S. was approximately \$3.2 billion, and in 2011, the total amount was approximately \$3.1 billion. However, the amount of those excise taxes contributed by small brewers (approximately \$10.15 million in 2010 and approximately \$11.5 million in 2011) was correctly stated in the previous documents. Thus, the amount of tax contributed by small brewers represents a far smaller percentage of the total amount of such excise taxes on beer than originally stated. These revised figures further support the statement that although small brewers make up more than 90 percent of the total number of U.S. brewers, they contribute a small amount (approximately 0.3 percent in 2010 and 0.4 percent in 2011) of the total amount of excise taxes collected by TTB on beer.

#### Reduced Penal Sum for Brewer's Bond

Eighteen of the 44 comments specifically addressed the proposal to reduce the penal sum for a brewer's bond to a flat \$1,000. All 18 of these comments supported the proposal to permanently adopt the reduced penal sum as a way to reduce the financial burden on small brewers. The Brewers Association (Comment 43) supports the reduced bond amount, stating that it "will most certainly ease the financial burden many of these businesses faced previously when choosing to file quarterly." Two other commenters described the positive effect that the reduced penal sum would have on newly-opened small breweries. One comment (Comment 1), submitted by a person "working towards

opening a nano-brewery,” stated that lessening the burden of any operations fees would “support sustainable success” for start-up ventures. Another commenter (Comment 25) described recently opening a small brewery and agreed that the reduced bond requirements “would help out greatly on cash flow that is so desperately needed in these first few years of growth.” Two additional commenters (Comments 4 and 27) indicated that small breweries do not have the “economies of scale” of a larger brewer, meaning, they often may pay more for raw materials than a large-scale brewery does, and added that any way that TTB can reduce overhead costs for small brewers is welcome.

Other commenters stated that the savings incurred from a reduced bond amount would allow them to reinvest in their businesses. For example, one self-identified small brewery owner (Comment 34) stated that the bond reduction would “save my company \* \* \* thousands of dollars which will in turn allow us to hire the much needed additional employees to run the brewery.” Two other commenters stated that the savings brought about by a reduced bond amount would go to “purchasing equipment that could further our ability to produce our beers” (Comment 35) and would also “be used to help offset labor and equipment costs” (Comment 39). Finally, other commenters supported the flat \$1,000 bond amount, saying that the “additional time of recordkeeping and adjusting bonds \* \* \* is currently very time consuming” (Comment 20), and the time and productivity lost calculating the current “volume-based” bond requirement “is far more significant than the actual dollars involved” (Comment 37).

One other comment came from a surety company (Comment 21) that asked for clarification regarding the relationship between the 4-year term of the required bond and the 3-year effective period of the temporary rule. Specifically, the commenter noted that the current required term for surety bonds is 4 years and asked what effect the temporary rule had on the 4-year term of the bond.

TTB notes that temporary rules are issued by TTB under the authority of the IRC at 26 U.S.C. 7805, which states at paragraph (e)(2) that any temporary regulation shall expire within 3 years after the date of issuance of such regulation. TTB stated in Notice No. 131 that the modified bond amount set forth in the temporary rule is effective for 3 years from December 7, 2012. The duration of the required bond is set forth in the IRC at 26 U.S.C. 5401(b) and in the implementing regulations at § 25.91. That regulatory section states in paragraph (a), with regard to the duration of the bond and with exceptions not relevant here, that every brewer intending to continue the business of a brewer shall, once every 4 years execute and file a new bond. As a result, if the temporary rule had remained in effect for 3 years and the regulation had then reverted back to its previous text, a small brewer who had obtained a \$1,000 bond and whose quarterly tax liability required a bond higher than \$1,000 would have had to obtain either a new bond at the higher amount or a strengthening bond (see 27 CFR 25.94) or prepay the taxes due (see 27 CFR 25.174) when the temporary rule expired at the end of 3 years. However, because this final rule makes the flat \$1,000 penal sum for the brewer's bond permanent for small

brewers, such bonds obtained under the temporary rule will be valid for the standard term of 4 years.

Requirement to File Tax Returns, Remit Tax Payments, and Submit Reports Quarterly

Thirty-six of the comments TTB received specifically mentioned the proposal to require small brewers to file excise tax returns, remit payments, and submit reports of operations quarterly. In general, all 36 of the comments supported the proposal as a way to increase efficiency and reduce administrative expenses and paperwork burdens for small brewers. Many of the commenters included projected financial savings as a result of filing quarterly, rather than semimonthly. For example, one commenter (Comment 2), who said his company produced about 2,600 barrels of beer in 2012, expected to save \$4,000 a year by filing quarterly. A second commenter (Comment 5), who said his company produces 700 to 750 barrels of beer annually, stated that, “[t]he amount of time necessary to piece together the necessary info, sign and copy the documents, and write the check and mail the forms, usually takes up the brunt of the day for our brewer,” and switching to the quarterly schedule would save his company approximately \$1,000 a year. A third commenter (Comment 9), who reports producing 1,300 barrels of beer a year, believed that the proposal would save her company 9.3 man hours and \$558 dollars a year; the savings in time and money, she continued, would “be spent on improving our operations.” That commenter stated that her company had previously not even considered filing quarterly “since that would increase our bond amount.” Another commenter (Comment 11) stated that his company would “save over \$2,000 in labor cost[s]”

by filing quarterly, money which “could be otherwise used on new equipment and/or job creation.”

Another commenter (Comment 29), who described his brewery as a “three person operation,” said that the three of them “have our hands more than full just trying to make beer,” and that filing quarterly will save much-needed time and approximately \$1,350 a year. A person who identified himself as the owner and head brewer of a small craft brewery (Comment 41) estimated that the annual administrative costs of filing semimonthly for his business are approximately \$3,000, but filing quarterly would save \$2,000 a year, which is “a substantial amount for our budget.” A person who identified himself as co-owner of a small brewery (Comment 42) with a projected production of 500 barrels of beer this year estimated that filing quarterly would save his company \$2,160 annually, which “represents a significant amount of money given our narrow margins as a startup brewery.” Finally, the Brewers Association (Comment 43) estimated that, based on information gathered from a sample of its members that would be eligible for quarterly filings and tax payments, “the average annual individual brewery savings derived from moving to quarterly filings of tax returns and operational reports is approximately 26 hours and \$1,200.”

One self-identified small brewer (Comment 17) supported the proposal to allow small brewers to submit taxes and operations reports quarterly because it would be “an incredible time savings” for his business. However, he also stated that he would prefer TTB to allow small brewers the option to submit their taxes and operations reports monthly because his State requires State taxes to be paid

monthly, and submitting Federal and State taxes on the same schedule would be more efficient for him. In response to this commenter's proposal, TTB notes that the overwhelming response to the Notice No. 131 was that small brewers prefer to submit reports, file tax returns, and remit tax payments as infrequently as possible, with many respondents specifically supporting the quarterly schedule. Therefore, TTB has determined that requiring submissions four times a year will more effectively accomplish the goals of reducing the regulatory burden and creating administrative efficiencies for affected entities than either requiring or allowing more frequent submissions.

#### Use of the Term "Small Brewer"

The Brewers Association (Comment 43) supported the proposed quarterly requirement for submitting reports and paying taxes, as well as the proposed flat \$1,000 penal sum. The association also noted that there is "no general agreement on the meanings of the terms 'small brewery' and 'small brewer'" in statutes, regulations, forms, and proposed legislation, and these terms "are commonly applied to a variety of businesses that vary considerably in size." For example, the association pointed out that the IRC provides for a reduced rate of tax for brewers who produce not more than 2 million barrels of beer annually. The association also pointed out that, under a then-proposed change to a TTB form, brewers producing less than 10,000 barrels of beer a year would have been eligible to submit reports of operations quarterly, while the proposed reduction in the brewer's bond amount uses yet another standard of an annual tax liability of \$50,000 or less to determine eligibility, a tax liability that equates to

only 7,142 barrels of beer a year. The association expressed concern that one of these "competing" definitions might become codified as the official definition of the term "small" and requested that TTB refrain from using the term in subsequent rulemaking and, instead, use alternate terminology.

In response, TTB notes that, in Notice No. 131, it proposed adopting the same eligibility standards for reporting operations quarterly on Form 5130.26 as apply to filing Federal excise tax returns and remitting tax payments quarterly. TTB made this proposal in order to make it easier for small brewers to understand and comply with the TTB regulations. The "reasonably expects to be liable for not more than \$50,000 in taxes with respect to beer imposed by 26 U.S.C. 5051 and 7652 in a calendar year and was liable for not more than \$50,000 in such taxes in the preceding calendar year" standard applicable to quarterly tax payment is set by law in section 5061(d)(4) of the IRC and therefore cannot be changed by regulation. Consequently, TTB chose to adopt this standard for submitting operational reports quarterly and for determining eligibility to use TTB Form 5130.26. With regard to the use of the term "small brewers," and where its meaning is specifically set forth, such as in the preamble to this rulemaking document, TTB uses the phrase only for simplicity. The term does not appear in the text of the TTB regulations, and TTB does not intend to use the term in regulatory text in the future. Additionally, TTB is removing the phrase "small brewers" from the proposed new title of Form 5130.26.

### Suggested Regulatory and Other Actions

Consistent with the intent of the advanced notice of proposed rulemaking described in the Plan, as discussed earlier in this preamble, TTB also sought comments on other changes regarding part 25 regulations that brewers and other interested parties believe TTB should consider. The Brewers Association (Comment 43) made several suggestions. One suggestion was to eliminate the requirement for TTB approval of formulas for “non-controversial products.” Another suggestion was to simplify mandatory label information for bulk containers, such as kegs, and clarify the Certificate of Label Approval requirements for malt beverages intended for sale only within a State. The association also recommended changes to the TTB regulations to allow breweries to begin operation upon the filing of a Brewer’s Notice, without requiring prior approval of the notice, and to require “only persons, not facilities,” to obtain permits under the Federal Alcohol Administration Act. Finally, the association suggested that TTB revise the current method of “calculating taxable production.”

With respect to the association’s request for TTB to eliminate the requirement for TTB approval of formulas for “non-controversial products”, TTB notes that it issued TTB Ruling 2014–4, Ingredients and Processes Used in the Production of Beer Not Subject to Formula Requirements on June 5, 2014 (see <http://www.ttb.gov/rulings/2014-4.pdf>).

With respect to the association’s request for TTB to clarify the Certificate of Label Approval requirements for malt beverages intended for sale only within a

State, TTB notes that it issued TTB Ruling 2013–1, Malt Beverages Sold Exclusively in Intrastate Commerce, on March 28, 2013 (see <http://www.ttb.gov/rulings/2013-1.pdf>). TTB also is considering the Brewers Association’s comments to determine if TTB should propose additional regulatory changes or undertake other actions.

### **TTB Finding**

Based on the comments received in response to Notice No. 131, TTB has determined that the proposed regulations contained in that notice should be adopted as final, with a correction to a typographical error in § 25.93(a)(2), as well as minor editorial changes to § 25.297(b)(1) and (c) so that a new regulation will not have to be issued if only a form number or a heading on a form changes. TTB also revised § 25.297(b)(2) to clarify that if a brewer who had been eligible to file quarterly reports becomes liable for more than \$50,000 in taxes for the current calendar year, it must commence filing monthly reports beginning with the first month that it will be liable for more than \$50,000 in taxes for the current calendar year. The brewer must also concurrently file a report for any previous month of that quarter. These minor changes are for clarity only and do not change the substance of the regulation.

### **Delayed Effective Date**

Although TTB did not receive any comments that discussed concerns regarding the amount of time brewers may need to adjust to quarterly filing and reporting, TTB has decided this final rule will become effective on January 1, 2015. Therefore, affected brewers will be required to file tax returns, remit tax

payments, and submit reports of operations on a quarterly basis for the quarter that begins January 1, 2015.

### **Regulatory Flexibility Act**

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. chapter 6), TTB certifies that this final rule 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 in this final rule will have the effect of lessening current reporting requirements on small businesses. TTB estimates that the amendment requiring small brewers to submit their excise tax returns quarterly rather than semimonthly will reduce their current reporting burden per respondent from 18.75 hours per year to 3 hours per year and that the requirement that small brewers submit their report of operations quarterly will reduce current reporting burdens per respondent from 12 hours per year to 4 hours. Accordingly, a regulatory flexibility analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, TTB submitted the temporary rule (T.D. TTB-109, 77 FR 72939, December 7, 2012) and related notice of proposed rulemaking (Notice No. 131, 77 FR 72999, December 7, 2012) to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for comment on the impact of these regulations. The SBA had no comment on either the temporary rule or the proposed rule.

### **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 are affected by the adoption of these 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), associated with OMB control number 1513–0083, and the Brewer’s Report of Operations and the Quarterly Brewers Report of Operations (TTB Form 5130.9 and TTB Form 5130.26), which are both associated with OMB control number 1513–0007. Under the Paperwork Reduction Act, an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

### **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, TTB based the estimates below solely on the current number of individuals holding Brewer’s Notices. TTB estimates that it

takes, on average, 45 minutes to complete TTB Form 5000.24. The requirement that small brewers submit their excise tax returns quarterly is estimated to reduce their current reporting burden per respondent from 18.75 hours per year to 3 hours per year. In addition, it would reduce the estimated total annual reporting burden for brewers to 8,913 hours; this represents an estimated savings of 15,777 hours.

TTB estimates that, as a result of the regulatory amendments (and reflecting the estimated number of semimonthly 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 semimonthly; 1,846 filing quarterly).
- Estimated annual frequency of responses: 25 for semimonthly reporting; 4 for quarterly reporting.
- Estimated total annual reporting burden: 8,913 hours (3,375 hours filing semimonthly and 5,538 hours filing quarterly).
- Estimated annual burden hours per respondent: 18.75 hours for semimonthly filing; 3 hours for quarterly filing.

OMB Control Number 1513-0007

TTB estimates that it takes an average of one hour to complete either TTB Form 5130.9 or TTB Form 5130.26. Therefore, the requirement that small brewers submit their report of operations quarterly will reduce their current reporting burdens per respondent 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 will reduce the estimated total 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 regulatory amendments (and reflecting the estimated number of brewers submitting monthly and quarterly operations reports), the total annual burden for the brewers operations reporting will be as follows:

- Estimated number of respondents: 2,026 (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; 7,384 hours for quarterly reporting).
- Estimated annual burden hours per respondent: 12 hours for monthly reporting; 4 hours for quarterly reporting.

### **Drafting Information**

Karen A. Thornton of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

### **List of Subjects**

#### 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 amends 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. In § 25.93, paragraph (a)(2) is revised 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)(2), the penal sum of the brewer's bond is \$1,000 and covers:

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

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

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

(iv) Beer removed for consumption or sale.

\* \* \* \* \*

**§ 25.164 [Amended]**

**3.** In § 25.164:

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

**b.** The first sentence in paragraph (c)(2) is amended by removing the words “may choose to” and adding, in their place, the word “shall”.

**4.** In § 25.297, revise 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 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). For purposes of this section, “reasonably expects” means that the brewer was liable for not more than \$50,000 in taxes the previous calendar year and that there is no other existing or anticipated circumstance known to the brewer (such as an increase in production

capacity) that would cause the brewer's liability to increase beyond that level in the current calendar year.

(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 Form 5130.9 monthly beginning with the first month during which the tax liability exceeds \$50,000, and shall concurrently file Form 5130.9 for any previous month of that quarter. When filing the first monthly report, a brewer shall state on the form that it will be liable for more than \$50,000 in taxes for the current calendar year and will henceforth submit monthly filings. The brewer shall then continue to file Form 5130.9 for each subsequent month of that calendar year.

(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 (or any successor form) as part of the brewery records.

Signed: July 22, 2014.

**John J. Manfreda,**  
Administrator.

Approved: August 15, 2014.

**Timothy E. Skud,**  
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[FR Doc. 2014-22964 Filed 09/29/2014 at 8:45 am; Publication Date: 09/30/2014]