

Congress of the United States

Washington, DC 20515

January 24, 2019

Mr. John Manfreda
Administrator
Alcohol and Tobacco Tax and Trade Bureau
1310 G Street, N.W.
Washington, DC, 20005

Dear Administrator Manfreda:

We write to acknowledge that when the shutdown ends, you and your employees will have the substantial task of clearing a large backlog of pending applications, collecting revenue, and protecting the public. We ask that when the Alcohol and Tobacco Tax and Trade Bureau (TTB) reopens that you exercise temporary enforcement discretion on certain TTB actions.

The TTB's mission is vital to allowing business to expand and innovate. The ability for small, independent breweries to grow is especially dependent upon the agency's work. The industry continues to grow at a breakneck pace – there are over 7100 small and independent breweries which directly employ over 135,000 employees, contributing an overall economic output of \$70 billion. As co-chairs of the House Small Brewers Caucus, we can testify to Congress' support for the industry. Last Congress there were 244 House members representing 44 states, making it the largest bipartisan House caucus. Caucus members understand and appreciate the economic benefits the craft brewing industry provides to their districts.

As you know, industry members cannot function without TTB processing brewer's notices, bonded wine cellars, and certificates of label approval ("COLAs"). As reported in several media outlets <https://bit.ly/2DtQYGC> such small businesses already have suffered from delays caused by the inability to obtain COLAs for new products.

TTB cannot allow the shutdown backlog to further paralyze the industry. Accordingly, we urge you to exercise temporary enforcement discretion, just as TTB has done previously in the wake of natural disasters and other catastrophic events. That would allow businesses to get back to work innovating new products, expanding facilities, and other activities to foster economic growth.

In the case of COLAs, TTB should promptly announce that the lack of an approved COLA will not lead to agency enforcement action if the industry member had filed for COLA approval and nothing suggests that the business knew or should have known its label was in violation of the law. Of course, where TTB requires changes after an industry member has entered the market in good faith, TTB should continue its longstanding practice of granting "use up" approvals in appropriate circumstances.

TTB should apply a similar policy towards applications for formulas as well as for original and amended brewer's notices, bonded wine cellars, distilled spirits plant registrations, and basic permits. Clearly given the importance of screening new people and entities entering the industry, TTB should not permit such new companies to commence doing business without first obtaining necessary approvals from TTB. But for existing companies, including affiliates within the same "controlled group" already deemed sufficiently trustworthy to operate as an industry member, TTB should not take enforcement action for the mere lack of approval of a new activity, tradename, location, etc. In such cases, TTB should stay enforcement as long as the industry member has submitted an amendment or application for the function or location in question and nothing suggests that the industry member knew or should have known that the proposed activity would not meet applicable legal requirements. Allowing companies that already hold brewer's notices and permits to move forward pending further review would also allow TTB to devote its initial post-shutdown efforts to new businesses that cannot operate at all without an approved notice of permit.

To help TTB and the industry return to normal, other TTB functions should receive similar treatment. These include the requirement that a brewer or wholesaler obtain TTB approval before it can destroy old or un-merchantable beer, as well as the requirement to obtain TTB approval to export beer, wine, or spirits without payment of tax. In all cases, so long as the industry member submits required applications and nothing suggests a willful violation of the law, TTB should not let pre-approval alone serve as grounds to take enforcement action against that industry member.

We envision that this temporary enforcement policy would last only as long as needed to allow TTB to clear the current backlog and get approval times under control. Implementation of the temporary enforcement policy outlined above would have numerous benefits:

1. It would allow TTB to systematically concentrate on clearing the current backlog without needing to address the inevitable numerous pleas for expedited treatment it will otherwise receive.
2. It would create an even playing field for all industry members. A process that relies on *ad hoc* expedites for "special" circumstances carries too high a risk of arbitrary and uneven decision making.
3. It would preserve TTB's authority to take full enforcement action against those few industry members that might try to exploit the situation. Indeed, we would expect TTB to show little mercy towards such "bad actors" – the industry has no place for them.

Finally, only through proper communication would TTB and the industry reap the benefits of the temporary enforcement policy outlined above. To that end, we urge you to immediately publish an Industry Circular once the shutdown ends to inform the industry of the temporary new policy.


We urge you to move forward with this proposal as expeditiously as possible to minimize the economic impact the shutdown already has had on America's breweries, wineries and distilleries.

Thank you for your attention to this matter. We would appreciate the opportunity to speak with you about this subject at your earliest convenience.

Sincerely,



Peter A. DeFazio
Member of Congress



Patrick T. McHenry
Member of Congress



Mike Kelly
Member of Congress

Cc: The Honorable Steve Mnuchin