

**1513-0005**

**26 U.S.C.**

**§ 5042. Exemption from tax**

(a) Tax-free production

(1) Cider

Subject to regulations prescribed by the Secretary, the noneffervescent product of the normal alcoholic fermentation of apple juice only, which is produced at a place other than a bonded wine cellar and without the use of preservative methods or materials, and which is sold or offered for sale as cider and not as wine or as a substitute for wine, shall not be subject to tax as wine nor to the provisions of subchapter F.

(2) Wine for personal or family use

Subject to regulations prescribed by the Secretary -

(A) Exemption

Any adult may, without payment of tax, produce wine for personal or family use and not for sale.

(B) Limitation

The aggregate amount of wine exempt from tax under this paragraph with respect to any household shall not exceed -

(i) 200 gallons per calendar year if there are 2 or more adults in such household, or

(ii) 100 gallons per calendar year if there is only 1 adult in such household.

(C) Adults

For purposes of this paragraph, the term "adult" means an individual who has attained 18 years of age, or the minimum age (if any) established by law applicable in the locality in which the household is situated at which wine may be sold to individuals, whichever is greater.

(3) Experimental wine

Subject to regulations prescribed by the Secretary, any scientific university, college of learning, or institution of scientific research may produce, receive, blend, treat, and store wine, without payment of tax, for experimental or research use but not for consumption (other than organoleptical tests) or sale, and may receive such wine spirits without payment of tax as may be necessary for such production.

(b) Cross references

(1) For provisions relating to exemption of tax on losses of wine (including losses by theft or authorized destruction), see section 5370.

(2) For provisions exempting from tax samples of wine, see section 5372.

(3) For provisions authorizing withdrawals of wine free of tax or without payment of tax, see section 5362.

**§ 5051. Imposition and rate of tax**

(a) Rate of tax

(1) In general

A tax is hereby imposed on all beer brewed or produced, and removed for consumption or sale, within the United States, or imported into the United States. Except as provided in paragraph (2), the rate of such tax shall be \$18 for every barrel containing not more than 31 gallons and at a like rate for any other quantity or for fractional parts of a barrel.

(2) Reduced rate for certain domestic production

(A) \$7 a barrel rate

In the case of a brewer who produces not more than 2,000,000 barrels of beer during the calendar year, the per barrel rate of the tax imposed by this section shall be \$7 on the first 60,000 barrels of beer which are removed in such year for consumption or sale and which have been brewed or produced by such brewer at qualified breweries in the United States.

(B) Controlled groups. In the case of a controlled group, the 2,000,000 barrel quantity specified in subparagraph (A) shall be applied to the controlled group, and the 60,000 barrel quantity specified in subparagraph (A) shall be apportioned among the brewers who are component members of such group in such manner as the Secretary or his delegate shall by regulations prescribed. For purposes of the preceding sentence, the term "controlled group" has the meaning assigned to it by subsection (a) of section 1563, except that for such purposes the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" in each place it appears in such subsection. Under regulations prescribed by the Secretary or his delegate, principles similar to the principles of the preceding two sentences shall be applied to a group of brewers under common control where one or more of the brewers is not a corporation.

(C) Regulations

The Secretary may prescribe such regulations as may be necessary to prevent the reduced rates provided in this paragraph from benefiting any person who produces more than 2,000,000 barrels of beer during a calendar year.

(3) Tolerances

Where the Secretary or his delegate finds that the revenue will not be endangered thereby, he may by regulations prescribe tolerances for barrels and fractional parts of barrels, and, if such tolerances are prescribed, no assessment shall be made and no tax shall be collected for any excess in any case where the contents of a barrel or a fractional part of a barrel are within the limit of the applicable tolerance prescribed.

(b) Assessment on materials used in production in case of fraud

Nothing contained in this subpart or subchapter G shall be construed to authorize an assessment on the quantity of materials used in producing or purchased for the purpose of producing beer, nor shall the quantity of materials so used or purchased be evidence, for the purpose of taxation, of the quantity of beer produced; but the tax on all beer shall be paid as provided in section 5054, and not otherwise; except that this subsection shall not apply to cases of fraud, and nothing in this subsection shall have the effect to change the rules of law respecting evidence in any prosecution or suit.

(c) Illegally produced beer

The production of any beer at any place in the United States shall be subject to tax at the rate prescribed in subsection (a) and such tax shall be due and payable as provided in section 5054(a)(3) unless -

(1) such beer is produced in a brewery qualified under the provisions of subchapter G, or

(2) such production is exempt from tax under section 5053(e) (relating to beer for personal or family use).

**§ 5052. Definitions**

(a) Beer

For purposes of this chapter (except when used with reference to distilling or distilling material) the term beer means beer, ale, porter, stout, and other similar fermented beverages (including sake or similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor.

(b) Gallon

For purposes of this subpart, the term gallon means the liquid measure containing 231 cubic inches.

(c) Removed for consumption of sale

Except as provided for in the case of removal of beer without payment of tax, the term "removed for consumption or sale", for the purposes of this subpart means -

(1) Sale of beer

The sale and transfer of possession of beer for consumption at the brewery; or

(2) Removals

Any removal of beer from the brewery.

(d) Brewer For definition of brewer, see section 5092.

### **§ 5053. Exemptions**

(a) Beer may be removed from the brewery, without payment of tax, for export, in such containers and under such regulations, and on the giving of such notices, entries, and bonds and other security, as the Secretary may by regulations prescribe.

(b) Removals when unfit for beverage use

When beer has become sour or damaged, so as to be incapable of use as such, a brewer may remove the same from his brewery without payment of tax, for manufacturing purposes, under such regulations as the Secretary may prescribe.

(c) Removals for laboratory analysis

Beer may be removed from the brewery, without payment of tax, for laboratory analysis, subject to such limitations and under such regulations as the Secretary may prescribe.

(d) Removals for research, development, or testing

Under such conditions and regulations as the Secretary may prescribe, beer may be removed from the brewery without payment of tax for use in research, development, or testing (other than consumer testing or other market analysis) of processes, systems, materials, or equipment relating to beer or brewery operations.

(e) Beer for personal or family use

Subject to regulation prescribed by the Secretary, any adult may, without payment of tax, produce beer for personal or family use and not for sale. The aggregate amount of beer exempt from tax under this subsection with respect to any household shall not exceed -

(1) 200 gallons per calendar year if there are 2 or more adults in such household,  
or

(2) 100 gallons per calendar year if there is only 1 adult in such household. For purposes of this subsection, the term "adult" means an individual who has attained 18 years of age, or the minimum age (if any) established by law applicable in the locality in which the household is situated at which beer may be sold to individuals, whichever is greater.

(f) Removal for Use as Distilling Material.--Subject to such regulations as the Secretary may prescribe, beer may be removed from a brewery without payment of tax to any distilled spirits plant for use as distilling material.

(g) Removals for Use of Foreign Embassies, Legations, Etc.--

(1) In general.--Subject to such regulations as the Secretary may prescribe--

(A) beer may be withdrawn from the brewery without payment of tax for transfer to any customs bonded warehouse for entry pending withdrawal therefrom as provided in subparagraph (B), and

(B) beer entered into any customs bonded warehouse under subparagraph (A) may be withdrawn for consumption in the United States by, and for the official and family use of, such foreign governments, organizations, and individuals as are entitled to withdraw imported beer from such warehouses free of tax. Beer transferred to any customs bonded warehouse under subparagraph (A) shall be entered, stored, and accounted for in such warehouse under such regulations and bonds as the Secretary may prescribe, and may be withdrawn therefrom by such governments, organizations, and individuals free of tax under the same conditions and procedures as imported beer.

(2) Other rules to apply.--Rules similar to the rules of paragraphs (2) and (3) of section 5362(e) shall apply for purposes of this subsection.

(h) Removals for Destruction.--Subject to such regulations as the Secretary may prescribe, beer may be removed from the brewery without payment of tax for destruction.

(i) Removal as supplies for certain vessels and aircraft For exemption as to supplies for certain vessels and aircraft, see section 309 of the Tariff Act of 1930, as amended (19 U.S.C. 1309).

#### **§ 5054. Determination and collection of tax on beer**

(a) Time of determination

(1) Beer produced in the United States; Certain Imported Beer  
Except as provided in paragraph (3), the tax imposed by section 5051 on beer produced in the United States, or imported into the United States and transferred

to a brewery free of tax under section 5418, shall be determined at the time it is removed for consumption or sale, and shall be paid by the brewer thereof in accordance with section 5061.

(2) Beer imported into the United States

Except as provided in paragraph (4), the tax imposed by section 5051 on beer imported into the United States and not transferred to a brewery free of tax under section 5418 shall be determined at the time of the importation thereof, or, if entered for warehousing, at the time of removal from the 1st such warehouse.

(3) Illegally produced beer

The tax on any beer produced in the United States shall be due and payable immediately upon production unless -

(A) such beer is produced in a brewery qualified under the provisions of subchapter G, or

(B) such production is exempt from tax under sections  
(FOOTNOTE 1) 5053(e) (relating to beer for personal or family use).  
(FOOTNOTE 1) So in original. Probably should be "section".

(4) Unlawfully imported beer

Beer smuggled or brought into the United States unlawfully shall, for purposes of this chapter, be held to be imported into the United States, and the internal revenue tax shall be due and payable at the time of such importation.

(b) Tax on returned beer

Beer which has been removed for consumption or sale and is thereafter returned to the brewery shall be subject to all provisions of this chapter relating to beer prior to removal for consumption or sale, including the tax imposed by section 5051. The tax on any such returned beer which is again removed for consumption or sale shall be determined and paid without respect to the tax which was determined at the time of prior removal of the beer for consumption or sale.

(c) Applicability of other provisions of law

All administrative and penal provisions of this title, insofar as applicable, shall apply to any tax imposed by section 5051.

**§ 5055. Drawback of tax**

On the exportation of beer, brewed or produced in the United States, the brewer thereof shall be allowed a drawback equal in amount to the tax paid on such beer if there is such proof of exportation as the Secretary may by regulations require. For the purpose of this section, exportation shall include delivery for use as

supplies on the vessels and aircraft described in section 309 of the Tariff Act of 1930, as amended (19 U.S.C. 1309).

### **§ 5056. Refund and credit of tax, or relief from liability**

#### **(a) Beer returned or voluntarily destroyed**

Any tax paid by any brewer on beer removed for consumption or sale may be refunded or credited to the brewer, without interest, or if the tax has not been paid, the brewer may be relieved of liability therefor, under such regulations as the Secretary may prescribe, if such beer is returned to any brewery of the brewer or is destroyed under the supervision required by such regulations. In determining the amount of tax due on beer removed on any day, the quantity of beer returned to the same brewery from which removed shall be allowed, under such regulations as the Secretary may prescribe, as an offset against or deduction from the total quantity of beer removed from that brewery on the day of such return.

#### **(b) Beer lost by fire, theft, casualty, or act of God**

Subject to regulations prescribed by the Secretary, the tax paid by any brewer on beer removed for consumption or sale may be refunded or credited to the brewer, without interest, or if the tax has not been paid, the brewer may be relieved of liability therefor, if such beer is lost, whether by theft or otherwise, or is destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God before the transfer of title thereto to any other person. In any case in which beer is lost or destroyed, whether by theft or otherwise, the Secretary may require the brewer to file a claim for relief from the tax and submit proof as to the cause of such loss. In every case where it appears that the loss was by theft, the first sentence shall not apply unless the brewer establishes to the satisfaction of the Secretary that such theft occurred before removal from the brewery and occurred without connivance, collusion, fraud, or negligence on the part of the brewer, consignor, consignee, bailee, or carrier, or the employees or agents of any of them.

**(c) Beer Received at a Distilled Spirits Plant-** Any tax paid by any brewer on beer removed for consumption or sale may be refunded or credited to the brewer, without interest, or if the tax has not been paid, the brewer may be relieved of liability therefor, under regulations as the Secretary may prescribe, if such beer is received on the bonded premises of a distilled spirits plant pursuant to the provisions of section 5222(b)(2), for use in the production of distilled spirits.

#### **(d) Limitations**

No claim under this section shall be allowed (1) unless filed within 6 months after the date of the return, loss, destruction, rendering unmerchantable, or receipt on the bonded premises of a distilled spirits plant or (2) if the claimant was indemnified by insurance or otherwise in respect of the tax.

## **§ 5092. Definition of brewer**

Every person who brews beer (except a person who produces only beer exempt from tax under section 5053(e)) and every person who produces beer for sale shall be deemed to be a brewer.

## **§ 5401. Qualifying documents**

### **(a) Notice**

Every brewer shall, before commencing or continuing business, file with the officer designated for that purpose by the Secretary a notice in writing, in such form and containing such information as the Secretary shall by regulations prescribe as necessary to protect and insure collection of the revenue.

### **(b) Bonds**

Every brewer, on filing notice as provided by subsection (a) of his intention to commence business, shall execute a bond to the United States in such reasonable penal sum as the Secretary shall by regulation prescribe as necessary to protect and insure collection of the revenue. The bond shall be conditioned (1) that the brewer shall pay, or cause to be paid, as herein provided, the tax required by law on all beer, including all beer removed for transfer to the brewery from other breweries owned by him as provided in section 5414; (2) that he shall pay or cause to be paid the tax on all beer removed free of tax for export as provided in section 5053(a), which beer is not exported or returned to the brewery; and (3) that he shall in all respects faithfully comply, without fraud or evasion, with all requirements of law relating to the production and sale of any beer aforesaid. Once in every 4 years, or whenever required so to do by the Secretary, the brewer shall execute a new bond or a continuation certificate, in the penal sum prescribed in pursuance of this section, and conditioned as above provided, which bond or continuation certificate shall be in lieu of any former bond or bonds, or former continuation certificate or certificates, of such brewer in respect to all liabilities accruing after its approval. If the contract of surety between the brewer and the surety on an expiring bond or continuation certificate is continued in force between the parties for a succeeding period of not less than 4 years, the brewer may submit, in lieu of a new bond, a certificate executed, under penalties of perjury, by the brewer and the surety attesting to continuation of the bond, which certificate shall constitute a bond subject to all provisions of law applicable to bonds given pursuant to this section.

Part II. Operations.

## **§ 5411. Use of brewery**

The brewery shall be used under regulations prescribed by the Secretary only for the purpose of producing, packaging, and storing beer, cereal beverages containing less than one-half of 1 percent of alcohol by volume, vitamins, ice, malt, malt sirup, and other byproducts and of soft drinks; for the purpose of



processing spent grain, carbon dioxide, and yeast; and for such other purposes as the Secretary by regulation may find will not jeopardize the revenue.

#### **§ 5412. Removal of beer in containers or by pipeline**

Beer may be removed from the brewery for consumption or sale only in hogsheads, packages, and similar containers, marked, branded, or labeled in such manner as the Secretary may by regulation require, except that beer may be removed from the brewery by pipeline to contiguous distilled spirits plants under section 5222.

#### **§ 5414. Removals from one brewery to another belonging to the same brewer**

Beer may be removed from one brewery to another brewery belonging to the same brewer, without payment of tax, and may be mingled with beer at the receiving brewery, subject to such conditions, including payment of the tax, and in such containers, as the Secretary by regulations shall prescribe. The removal from one brewery to another brewery belonging to the same brewer shall be deemed to include any removal from a brewery owned by one corporation to a brewery owned by another corporation when (1) one such corporation owns the controlling interest in the other such corporation, or (2) the controlling interest in each such corporation is owned by the same person or persons.

#### **§ 5415. Records and returns**

##### **(a) Records**

Every brewer shall keep records, in such form and containing such information as the Secretary shall prescribe by regulations as necessary for protection of the revenue. These records shall be preserved by the person required to keep such records for such period as the Secretary shall by regulations prescribe, and shall be available during business hours for examination and taking of abstracts therefrom by any internal revenue officer.

##### **(b) Returns**

Every brewer shall make true and accurate returns of his operations and transactions in the form, at the times, and for such periods as the Secretary shall by regulation prescribe.

#### **§ 5416. Definitions of package and packaging**

For purposes of this subchapter, the term "package" means a bottle, can, keg, barrel, or other original consumer container, and the term "packaging" means the filling of any package.

### **§ 5417. Pilot brewing plants**

Under such regulations as the Secretary may prescribe, and on the filing of such bonds and applications as he may require, pilot brewing plants may, at the discretion of the Secretary be established and operated off the brewery premises for research, analytical, experimental, or development purposes with regard to beer or brewery operations. Nothing in this section shall be construed as authority to waive the filing of any bond or the payment of any tax provided for in this chapter.

## 27 CFR

### Sec. 25.23 Restrictions on use.

(a) Use of brewery in production of beer or cereal beverage. A brewery may be used only for the following purposes involving the production of beer or cereal beverages:

(1) For producing, packaging and storing beer, cereal beverages, vitamins, ice, malt, malt syrup, and other by-products of the brewing process, or soft drinks and other nonalcoholic beverages;

(2) For processing spent grain, carbon dioxide, and yeast; and

(3) For storing packages and supplies necessary or connected to brewery operations.

(b) Other authorized uses. A brewer may use a brewery for other purposes, not involving the production of beer or cereal beverage, upon approval from the appropriate TTB officer, if the purposes:

(1) Require the use of by-products or waste from the production of beer;

(2) Utilize buildings, rooms, areas, or equipment not fully employed in the production or packaging of beer;

(3) Are reasonably necessary to realize the maximum benefit from the premises and equipment and reduce the overhead of the brewery;

(4) Are in the public interest because of emergency conditions;

(5) Involve experiments or research projects related to equipment, materials, processes, products, by-products, or waste of the brewery; or

(6) Involve operation of a tavern on brewery premises in accordance with Sec. 25.25.

(c) Application. Except as provided in Sec. 25.25 for operation of a tavern on brewery premises, a brewer desiring to use a brewery for other purposes shall submit to the appropriate TTB officer, an application listing the purposes. The appropriate TTB officer will approve the application if the use for other purposes will not jeopardize the revenue or impede the effective administration of this part and is not contrary to specific provisions of law.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5411))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-268, 53 FR 8628, Mar 16, 1988]

**Sec. 25.25 Operation of a tavern on brewery premises.**

(a) General. A brewer desiring to operate a tavern as an alternate use of brewery premises, shall submit a Brewer's Notice, Form 5130.10 containing the information required by paragraph (b) of this section. If the appropriate TTB officer finds that the operation of the tavern on brewery premises will not jeopardize the revenue or impede the effective administration of this part and is not contrary to specific provisions of law, the approval of the Brewer's Notice, Form 5130.10 shall constitute approval of the alternate use of brewery premises, in lieu of the application required by Sec. 25.23. As used in this section, "tavern" means a portion of brewery premises where beer is sold to consumers. Food, and/or taxpaid wine, and/or taxpaid distilled spirits may also be sold at a tavern operated on brewery premises. Taxpaid beer produced by other brewers may be received, stored and sold on brewery premises in accordance with Sec. 25.24.

(b) Brewer's Notice. In preparing the Brewer's Notice, Form 5130.10, the applicant shall show the following information, in addition to the information required by the form:

(1) The applicant shall identify the portion of the brewery which will be operated as a tavern by providing a diagram or narrative description of the boundaries of the tavern. The diagram or description shall identify areas of the brewery which are accessible to the public and areas which are not. The applicant shall describe security measures to be used to segregate public areas from non-public areas.

(2) The applicant shall describe in detail the method to be used for measuring beer for the purposes of tax determination.

(3) The applicant shall identify the tanks which will periodically contain tax-determined beer, and any other areas where tax-determined beer will be stored.

(c) Procedures. The following procedures shall apply to operation of a tavern on brewery premises:

(1) The brewery shall have a suitable method for measurement of the beer, such as a meter or gauge glass. Tax determination shall consist of the measurement of the beer and the preparation of the brewer's record of tax determination, required by Sec. 25.292(a)(8). The taxes shall be determined prior to the time that the beer is dispensed into a container for consumption.

(2) If the brewer uses one or more tanks for tax determination, the following procedures shall apply:

(i) Each such tank shall be durably marked with the words "tax-determination tank";

(ii) The taxes shall be determined each time beer is added to a tax-determination tank; and

(iii) The brewer may never simultaneously pump into and out of a tax-determination tank.

(3) A brewer qualified under this section may store, on brewery premises, tax-determined beer which is intended for sale at a tavern operated on brewery premises, in accordance with this section. The prohibition of Sec. 25.24 shall not apply to such tax-determined beer.

(4) Beer consumed by employees and visitors in the brewery's tavern shall be beer on which the tax has been paid or determined.

[T.D. ATF-268, 53 FR 8628, Mar 16, 1988]

#### **Sec. 25.52 Variations from requirements.**

(a) Exceptions to construction, equipment and methods of operations--(1) General. The appropriate TTB officer may approve details of construction, equipment or methods of operations, in lieu of those specified in this part. The brewer shall show that it is impracticable to conform to the prescribed specification, and that the proposed variance:

(i) Will afford the protection to the revenue intended by the specifications in this part;

(ii) Will not hinder the effective administration of this part, and

(iii) Is not contrary to any provision of law.

(2) Application. A brewer who proposes to employ methods of operations or construction or equipment other than as provided in this part shall submit an application to the appropriate TTB officer. The application will describe the proposed variation and state the need for it. The brewer shall submit drawings or photographs if necessary to describe the proposed variation.

(3) Approval by appropriate TTB officer. The appropriate TTB officer may approve the use of an alternate method or procedure if:

(i) The brewer shows good cause for its use;

(ii) It is consistent with the purpose and effect of the procedure prescribed by this part and provides equal security to the revenue;

(iii) It is not contrary to law; and

(iv) It will not cause an increase in cost to the Government and will not hinder the effective administration of this part.

(4) Exceptions. The appropriate TTB officer may not authorize an alternate method or procedure relating to the giving of any bond, or to the assessment, payment, or collection of tax.

(5) Conditions of approval. A brewer may not employ an alternate method or procedure until the appropriate TTB officer has approved its use. The brewer shall, during the terms of the authorization of an alternate method or procedure, comply with the terms of the approved application.

(b) Emergency variations from requirements--(1) Application. When an emergency exists, a brewer may apply to the appropriate TTB officer for a variation from the requirements of this part relating to construction, equipment, and methods of operation. The brewer shall describe the proposed variation and set forth the reasons for using it.

(2) Approval. The appropriate TTB officer may approve an emergency variation from requirements if:

(i) An emergency exists;

(ii) The variation from the requirements is necessary;

(iii) It will afford the same security and protection to the revenue as intended by the specific regulations;

(iv) It will not hinder the effective administration of this part; and

(v) It is not contrary to law.

(3) Conditions of approval. A brewer may not employ an emergency variation from the requirements until the appropriate TTB officer has approved its use. Approval of variations from requirements are conditioned upon compliance with the conditions and limitations set forth in the approval.

(c) Automatic termination of approval. If the brewer fails to comply in good faith with the procedures, conditions or limitations set forth in the approval, authority

for the variation from requirements is automatically terminated and the brewer is required to comply with prescribed requirements of regulations.

(d) Withdrawal of approval. The appropriate TTB officer may withdraw approval of an alternate method or procedure, approved under paragraph (a) or (b) of this section, if the appropriate TTB officer finds that the revenue is jeopardized or the effective administration of this part is hindered by the approval.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1395, as amended, 1396, as amended (26 U.S.C. 5552, 5556))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-437, 66 FR 5479, Jan. 19, 2001]

### **Sec. 25.61 General requirements for notice.**

#### Original Qualification

(a) Establishment. Operations as a brewer may be conducted only by a person who has given notice as a brewer under this subpart. A person may not commence the business of a brewer until the appropriate TTB officer approves the brewery and the brewer's notice, including all documents made part of that notice.

(b) Brewer's Notice, Form 5130.10. Each person must, before commencing business as a brewer, give notice on Form 5130.10. Each person continuing business as a brewer as provided in Sec. 25.71 must give notice on Form 5130.10. Each notice will be executed under penalties of perjury, and all written statements, affidavits, and other documents submitted in support of the notice will be made part of the notice.

(c) Additional information. The appropriate TTB officer may at any time require the brewer to furnish, as part of the notice, additional information which is necessary to protect and insure collection of the revenue.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-437, 66 FR 5479, Jan. 19, 2001]

### **Sec. 25.62 Data for notice.**

(a) Required information. The brewer shall prepare the notice on Form 5130.10 and shall include the following information:

- (1) Serial number.
  - (2) Purpose for which filed.
  - (3) Name and principal business address of the brewer and the location of the brewery if different from the business address.
  - (4) Statement of the type of business organization and of the persons interested in the business, supported by the information listed in Sec. 25.66.
  - (5) Description of brewery, as specified in Sec. 25.68.
  - (6) A list of trade names which the brewer intends to use in doing business or in packaging beer.
  - (7) [Reserved]
  - (8) The name and address of the owner of the land or buildings comprising the brewery, and of any mortgagee or other encumbrancer of the land or buildings comprising the brewery.
  - (9) The 24-hour cycle of operations at the brewery which is to be the brewer's business day.
  - (10) The process by which the brewer intends to render beer unfit for beverage use when beer is to be removed for use in manufacturing under Sec. Sec. 25.191-25.192.
  - (11) Statement showing ownership or controlling interests in other breweries which will establish eligibility for the transfer of beer without payment of tax between breweries of the same ownership, as authorized in Sec. 25.181.
  - (12) The date of the notice and the name and signature of the brewer or person authorized to sign on behalf of the brewer.
- (b) Incorporation by reference. If any of the information required by paragraph (a)(4) of this section is on file with an TTB office in connection with the qualification of any other premises operated by the brewer, that information, if accurate and complete, may be incorporated into the brewer's notice by reference.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by TTB T.D.-21, 70 FR 237, Jan. 3, 2005]



### **Sec. 25.63 Notice of registration.**

The Brewer's Notice, Form 5130.10, when approved by the appropriate TTB officer, will constitute the notice of registration of the brewery. The appropriate TTB officer will not approve the notice until the notice and all incorporated documents are complete, accurate, and in compliance with the requirements of this part. A person may not operate a brewery until the notice required by this subpart has been approved by the appropriate TTB officer.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

### **Sec. 25.64 Maintenance of notice file.**

The brewer shall maintain the approved Brewer's Notice, Form 5130.10, and all incorporated documents at the brewery premises, in complete and current condition, readily available for inspection by an appropriate TTB officer.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

### **Sec. 25.66 Organizational documents.**

The supporting information required by paragraph (a)(4) of Sec. 25.62 includes, as applicable, the following:

- (a) Corporate documents. (1) Corporate charter or a certificate of corporate existence or incorporation;
  - (2) List of directors and officers, showing their names and addresses;
  - (3) Extracts or digests of minutes of meetings of board of directors, authorizing certain individuals to sign for the corporation; and
  - (4) Statement showing the number of shares of stock or other evidence of ownership, authorized and outstanding, and the voting rights of the respective owners or holders.
- (b) Articles of partnership. Copy of the articles of partnership or association, if any, or certificate of partnership or association if required to be filed by any State, county, or municipality.
- (c) Statement of interest. (1) Names and addresses of all persons having 10 percent or more stock in the corporation, or other legal entity, and the nature and amount of the stockholding or other interest of each, whether the interest appears in the name of the interested party or in the name of another person. If a corporation is wholly owned or controlled by another corporation, those persons

of the parent corporation who meet the above standards are considered to be the persons interested in the business of the subsidiary, and the names thereof need be furnished only upon request of the appropriate TTB officer; or (2) In the case of an individual owner or partnership, the name and address of each person holding an interest in the brewery, whether the interest appears in the name of the interested party or in the name of another for that person.

(d) Availability of additional corporate documents. The originals of documents required to be submitted under this section, and additional documents such as the articles of incorporation, bylaws, and State certificates authorizing the brewer to operate in the State where located (if other than the State in which the brewery is incorporated) shall be made available to any appropriate TTB officer upon request. In the case of multiplant brewers, these documents may be made available at the brewer's home brewery. Each brewer's notice filed by multiplant brewers will state the location where these corporate documents may be inspected.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

**Sec. 25.68 Description of brewery.**

(a) The Brewer's Notice, Form 5130.10, will include a description of (1) each tract of land comprising the brewery, and (2) a listing of each brewery building by its designated letter or number, giving the approximate ground dimensions and the purpose for which ordinarily used.

(b) The description of the land will be in sufficient detail to enable appropriate TTB officers to determine the boundaries of the brewery.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

**Sec. 25.71 Amended or superseding notices.**

(a) Requirement for amended notice. (1) When there is a change with respect to the information shown in the Brewer's Notice, Form 5130.10, the brewer shall within 30 days of the change (except as otherwise provided in this subpart) submit an amended notice setting forth the new information. Changed notices will be submitted in skeleton form, with unchanged items marked ``No change since Form 5130.10, Serial No. -----."`

(2) The appropriate TTB officer may require immediate filing of an amended Form 5130.10 if the accuracy of existing documents has been affected by any change.

(b) Requirement for superseding notice. (1) The appropriate TTB officer may require a brewer to file a new and complete notice, superseding those previously

filed, in conjunction with the filing of a new bond. This superseding notice will become effective on the date of the brewer's bond or on the date of the brewer's bond continuation certificate.

(2) If the information required by Sec. 25.62(a) (4), (5), (6), (7), (9), and (10) is on file as part of an approved Form 5130.10 and is current, the brewer may incorporate by reference those documents as part of any superseding notice.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

### **Sec. 25.72 Change in proprietorship.**

(a) General. If there is a change in the proprietorship of a brewery, the outgoing brewer shall comply with the requirements of Sec. 25.85. The successor brewer shall, before beginning operations, qualify in the same manner as the proprietor of a new brewery. The successor brewer shall file a new notice and bond in his or her own name. Beer on hand may be transferred without payment of tax to the successor brewer and will be accounted for by that brewer.

(b) Fiduciary. (1) If the successor to the brewer is an administrator, executor, receiver, trustee, assignee or other fiduciary, the fiduciary may in lieu of filing a new notice and bond, file an amended notice and furnish a consent of surety extending the terms of the predecessor's bond or continuation certificate.

(2) The fiduciary shall furnish the appropriate TTB officer a certified copy of the court order or other document showing qualification as fiduciary. The effective date of the qualifying documents filed by a fiduciary will be the same as the date of the order, or the date therein specified for the fiduciary to assume control. If the fiduciary was not appointed by the court, the date of the appointment will be the effective date of the qualifying documents filed by the fiduciary.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

### **Sec. 25.73 Change in partnership.**

(a) New notice required. The withdrawal of one or more members of a partnership or the taking in of a new partner, whether active or silent, constitutes a change in proprietorship. Unless exempted by paragraph (b) of this section, the death, bankruptcy or adjudicated insolvency of one or more partners results in a dissolution of the partnership and a change in proprietorship. The successor shall qualify the brewery in the same manner as the proprietor of a new brewery.

(b) Continuing partnership. A surviving partner or partners may continue to operate the brewery for purposes of liquidation and settlement under the following conditions:

(1) Under the laws of the State where the partnership was formed, the partnership is not terminated on death or insolvency of a partner(s); and

(2) Under the laws of the State where the partnership was formed, the surviving partner(s) has the exclusive right to control and possession of the partnership assets for the purpose of liquidation and settlement; and

(3) A consent of surety is filed in which the surety and the surviving partner(s) agree to remain liable on the bond.

(c) Settlement of partnership. If the surviving partner(s) acquires the business on completion of the settlement of the partnership, that partner(s) shall qualify in his or her own name from the date of acquisition and give a new brewer's notice on Form 5130.10 and a new bond on Form 5130.22.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986; 51 FR 10540, Mar. 27, 1986]

#### **Sec. 25.74 Change in stockholders.**

Changes in the list of stockholders furnished under the provisions of Sec. 25.66(c)(1) shall be submitted annually by the brewer on July 1 or on any other date approved by the appropriate TTB officer. When the sale or transfer of capital stock results in a change in the control or management of the business, notification of the change will be made within 30 days in accordance with Sec. 25.71.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

#### **Sec. 25.75 Change in officers and directors.**

When there is any change in the list of officers or directors furnished under the provisions of Sec. 25.66(a)(4), the brewer shall submit, within 30 days of the change, an amended notice on Form 5130.10. If the brewer has shown to the satisfaction of the appropriate TTB officer that certain corporate officers listed on the original notice have no responsibilities in connection with the operations covered by the notice, the appropriate TTB officer may waive the requirements for submitting applications for amended notice to cover changes of those corporate officers. In the case of multiplant brewers, new brewers notices need not be filed for those breweries in which the lists of officers and directors are incorporated by reference in their brewer's notices under Sec. 25.62(b).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

### **Sec. 25.77 Change in location.**

When there is a change in the location of the brewery, the brewer shall file an amended Form 5130.10, and a new bond, Form 5130.22, or a consent of surety, Form 1533 (5000.18), in accordance with Sec. 25.91, extending the terms of the bond or continuation certificate to cover operations at the new location. The brewer may not begin operations at the new location until the appropriate TTB officer approves the required documents.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

### **Sec. 25.78 Change in premises.**

Except as authorized in Sec. 25.81, when the brewery is to be extended or curtailed, the brewer shall file an amended Form 5130.10. The additional facilities covered by the extension may not be used for the proposed purposes, and the portion to be curtailed may not be used for other than the previously approved purposes, prior to approval of Form 5130.10

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

### **Sec. 25.81 Alternation of brewery and bonded or taxpaid wine premises.**

(a) General. A brewer operating a contiguous bonded winery or taxpaid wine bottling house may, as provided in this section, alternate the use of each premises by extension or curtailment.

(b) Qualifying documents. The brewer shall file and receive approval of the following qualifying documents:

(1) Form 5120.25 and Form 5130.10 to cover the curtailment and extension of the premises to be alternated.

(2) Special diagrams, in duplicate, delineating the brewery premises and the bonded or taxpaid wine premises as they will exist both during extension and curtailment. The diagrams will clearly depict all areas, buildings, floors, rooms, equipment and pipelines which are to be subject to alternation in their relative operating sequence.

(3) Evidence of existing bond, consent of surety, continuation certificate, or a new bond to cover the proposed alternation of premises.

(c) Brewer's responsibility. After approval of qualifying documents, the brewer may alternate the designated premises pursuant to a letterhead notice submitted to the appropriate TTB officer. The notice will contain the information required by

paragraph (d) of this section. Prior to the effective date and hour of the alternation, the brewer shall

(1) Remove all beer on brewery premises to be alternated to bonded or taxpaid wine premises, or

(2) Remove all wine from bonded to taxpaid wine premises to be alternated to brewery premises.

(d) Information for notice. The notice required by paragraph (c) of this section will contain the following information:

(1) Plant name and address;

(2) Serial number;

(3) Effective date and hour of proposed change;

(4) Whether premises are to be curtailed or extended;

(5) Purpose of curtailment or extension;

(6) Identification of the special diagram depicting the premises as they exist when curtailed or extended; and

(7) Date of execution and signature of brewer.

(e) Separation of premises. The appropriate TTB officer may require that the portion of brewery or bonded or taxpaid wine premises extended or curtailed under this section be separated, in a manner satisfactory to the appropriate TTB officer, from the remaining portion of the brewery or bonded or taxpaid premises.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended, 1389, as amended, 1390, as amended (26 U.S.C. 5401, 5411, 5415))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986; 51 FR 9190, Mar. 18, 1986; as amended by T.D. ATF-299, 55 FR 24989, June 19, 1990]

### **Sec. 25.85 Notice of permanent discontinuance.**

When a brewer desires to discontinue business permanently, he or she must file a notice on Form 5130.10. The brewer must state the purpose of the notice as "Discontinuance of business" and give the date of the discontinuance. When all beer has been lawfully disposed of, appropriate TTB officer will approve the Form 5130.10 and return a copy to the brewer. The brewer shall file a report on

Form 5130.9 showing no beer or cereal beverage on hand and marked ``Final Report."

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-437, 66 FR 5479, Jan. 19, 2001]

### **Sec. 25.114 Exemptions from dealer's special taxes.**

(a) Brewer. A brewer is not required to pay special tax or to register during the suspension period described in Sec. 25.111(c), as a wholesale or retail dealer in beer because of sales, at the principal place of business or at the brewery, of beer which at the time of sale is stored at the brewery or which had been removed and stored in a taxpaid storeroom operated in connection with the brewery. Each brewer shall have only one exemption from dealer's special tax or registration for each brewery. The brewer may designate, in writing to the appropriate TTB officer, that the principal place of business will be exempt from dealer's special tax or registration; otherwise, the exemption will apply to the brewery.

(b) Wholesale dealer. A wholesale dealer in beer who has paid the appropriate special tax, or who has registered during the suspension period described in Sec. 25.111(c), will not again be required to pay special tax or register as a wholesale dealer in beer because of sales of beer to wholesale or retail dealers in liquors or beer or to limited retail dealers, at the purchaser's place of business.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1340, as amended (26 U.S.C. 5113))

[T.D. ATF-271, 53 FR 17547, May 17, 1988, as amended by T.D. TTB-36, 70 FR 62245, Oct. 31, 2005]

### **Sec. 25.141 Barrels and kegs.**

(a) General requirements. The brewer's name or trade name and the place of production (city and, if necessary for identification, State) shall be permanently marked on each barrel or keg. If the place of production is clearly shown on the bung or on the tap cover, or on a label securely affixed to each barrel or keg, the place of production need not be permanently marked on each barrel or keg. No statement as to payment of internal revenue taxes may be shown.

(b) Breweries of same ownership. (1) If two or more breweries are owned or operated by the same person, firm, or corporation (as defined in Sec. 25.181), the place of production:

(i) May be shown as the only location on the bung, or on the tap cover, or on a separate label attached to the keg;

(ii) May be included in a listing of the locations of breweries qualified under this part if the place of production is not given less emphasis than any of the other locations; or

(iii) Need not be shown if the brewer's principal place of business is shown in lieu of any other location. The brewer's principal place of business will be the location of a brewery operated by the brewer and qualified under this part.

(2) If the location of two or more breweries is shown on the keg, bung, tap cover, or on a separate label attached to the keg (paragraph (b)(1)(ii)), or if the brewer's principal place of business is shown in lieu of the actual place of production (paragraph (b)(1)(iii)), the brewer shall indicate the actual place of production by printing, coding or other markings on the keg, bung, tap cover, or on a separate label attached to the keg. The coding system employed will permit an appropriate TTB officer to determine the place of production (including street address if two or more breweries are located in the same city) of the beer. The brewer must notify the appropriate TTB officer prior to employing a coding system.

(c) Label approval required. Labels or tap covers used by brewers shall be covered by certificates of label approval, Form 5100.31, when required by Part 7 of this chapter.

(Approved by the Office of Management and Budget under control number 1513-0085)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5412))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-225, 51 FR 8492, Mar. 12, 1986; T.D. ATF-437, 66 FR 5479, Jan. 19, 2001]

### **Sec. 25.142 Bottles.**

(a) Label requirements. Each bottle of beer shall show by label or otherwise the name or trade name of the brewer, the net contents of the bottle, the nature of the product such as beer, ale, porter, stout, etc., and the place of production (city and, when necessary for identification, State). No statement as to payment of internal revenue taxes may be shown.

(b) Breweries of same ownership. (1) If two or more breweries are owned or operated by the same person, firm, or corporation (as defined in Sec. 25.181), the place of production:



(i) May be shown as the only location on the label;

(ii) May be included in a listing of the locations of breweries qualified under this part if the place of production is not given less emphasis than any of the other locations; or

(iii) Need not be shown if the brewer's principal place of business is shown in lieu of any other location. The brewer's principal place of business will be the location of a brewery operated by the brewer and qualified under this part.

(2) If the location of two or more breweries is shown on the label (paragraph (b)(1)(ii)), or if the brewer's principal place of business is shown on the label in lieu of the actual place of production (paragraph (b)(1)(iii)), the brewer shall indicate the actual place of production by printing, coding or other markings on the label, bottle, crown or lid. The coding system employed will permit an appropriate TTB officer to determine the place of production (including street address if two or more breweries are located in the same city) of the beer. The brewer must notify the appropriate TTB officer prior to employing a coding system.

(c) Distinctive names. If the brewer's name, trade name or brand name includes the name of a city which is not the place where the beer was produced, the appropriate TTB officer may require the brewer to state the actual place of production on the label.

(d) Tolerances. The statement of net contents shall indicate exactly the volume of beer within the bottle except for variations in measuring as may occur in filling conducted in compliance with good commercial practice. The barrel equivalent of bottles filled during a consecutive three month period, calculated on the basis of the brewer's fill test records, may not vary more than 0.5 percent from the barrel equivalent of bottles filled during the same period, calculated on the basis of the stated net contents of the bottles. The brewer is liable for the tax on the entire amount of beer removed, without benefit of tolerance, when the fill of bottles and cans exceeds the tolerance for the three month period, or when filling is not conducted in compliance with good commercial practice.

(e) Label approval required. Labels used by brewers shall be covered by certificates of label approval, Form 5100.31, when required by Part 7 of this chapter.

(f) Short-fill bottles. A brewer may dispose of taxpaid short-fill bottles of beer to employees for their use but not for resale. These bottles need not be labeled, but if labeled they need not show an accurate statement of net contents.

(Approved by the Office of Management and Budget under control number 1513-0085)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5412))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-225, 51 FR 8492, Mar. 12, 1986; T.D. ATF-437, 66 FR 5479, Jan. 19, 2001]

**Sec. 25.144 Rebranding barrels and kegs.**

(a) A brewer may not use a barrel or keg which bears the name of more than one brewer, and except as provided in Sec. 25.231, may not use a barrel or keg bearing the name of a brewer other than the producing brewer.

(b) A brewer who purchases or otherwise obtains barrels or kegs from another brewer shall permanently remove or durably cover the original marks and brands after notifying the appropriate TTB officer of the proposed action. A brewer may use the barrels or kegs obtained without removing or covering the original marks and brands if the brewer:

(1) Adopts a trade name substantially identical to the name appearing on the barrels or kegs; or

(2) Succeeds to a brewer who has discontinued business, in which case the brewer may add marks or brands, in accordance with Sec. 25.141, which indicate ownership.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5412))

**Sec. 25.158 Tax computation for bottled beer.**

Barrel equivalents for various case sizes are as follows:

(a) For U.S. measure bottles.

Bottle size (net contents in fluid ounces)	Number of bottles	Barrel per case equivalent
6.....	12	0.01815
6.....	24	0.03629

7.....	12	0.02117
7.....	24	0.04234
7.....	32	0.05645
7.....	35	0.06174
7.....	36	0.06351
7.....	40	0.07056
7.....	48	0.08468
8.....	12	0.02419
8.....	24	0.04839
8.....	36	0.07258
8.....	48	0.09677
10.....	12	0.03024
10.....	24	0.06048
10.....	48	0.12097
11.....	12	0.03327
11.....	24	0.06653
11.5.....	24	0.06956
12.....	12	0.03629
12.....	15	0.04536
12.....	20	0.06048
12.....	24	0.07258
12.....	30	0.09073
12.....	48	0.14516
12.....	50	0.15121
14.....	12	0.04234
14.....	24	0.08468
16 (1 pint).....	12	0.04839
16 (1 pint).....	24	0.09677
22.....	12	0.06653

22.....	24	0.13306
24.....	12	0.07258
24.....	24	0.14516
30.....	12	0.09073
32 (1 quart).....	12	0.09677
40.....	12	0.12097
64.....	1	0.01613
64.....	4	0.06452
64.....	6	0.09677
128 (1 gallon).....	1	0.03226
288.....	1	0.07258

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(b) For metric measure bottles.

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Bottle size (metric net contents)	Number of	
	bottles	Barrel per case equivalent
500 milliliters.....	24	0.10226
750 milliliters.....	12	0.07670
1 liter.....	12	0.10226
2 liters.....	6	0.10226
5 liters.....	1	0.04261

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(c) For other case sizes. If beer is to be removed in cases or bottles of sizes other than those listed in the above tables, the brewer shall notify the appropriate TTB officer in advance and request to be advised of the fractional barrel equivalent applicable to the proposed case size.

(26 U.S.C. 5412)

[T.D. ATF-345, 58 FR 40357, July 28, 1993]

**Sec. 25.167 Notice of brewer to pay reduced rate of tax.**

(a) Requirement to file notice. Every brewer who desires to pay the reduced rate of tax on beer authorized by 26 U.S.C. 5051(a)(2) by tax return, Form 5000.24, shall prepare a notice containing the information required by paragraph (b) of this section. The brewer shall file this notice with the appropriate TTB officer for the first return period (or prepayment return) during which the brewer pays tax on beer at the reduced rate. The brewer shall file the notice each year in which payment of the reduced rate of tax on beer is made by return.

(b) Information to be furnished. Each notice described in paragraph (a) of this section will contain the following information:

(1) A statement that the brewer will not or is not likely to produce more than 2,000,000 barrels of beer in the calendar year for which the notice is filed.

(2) A statement that the brewer is not a member of a controlled group of brewers, or if the brewer is a member of a controlled group of brewers, a statement that the controlled group will not or is not likely to produce more than 2,000,000 barrels of beer in the calendar year for which the notice is filed.

(3) If the brewer operates more than one brewery, a statement of the locations of all the breweries and a statement of how the 60,000 barrel limitation for the reduced rate of tax will be apportioned among the breweries. If the brewer is a member of a controlled group of brewers, a statement of the names and locations of all other brewers in the group and a statement of how the 60,000 barrels limitation will be apportioned among the brewers in the group.

(c) Perjury statement. Each notice described in this section will be executed by the brewer under penalties of perjury as defined in Sec. 25.11.

(Act of Aug. 16, 1954, 68A Stat. 749, as amended (26 U.S.C. 6065); sec. 201, Pub. L. 85-859, 72 Stat. 1390, as amended, 1395, as amended (26 U.S.C. 5415, 5555))

**Sec. 25.184 Losses in transit.**

(a) Liability for losses. The brewer is liable under the bond of the brewery to which beer is transferred for the tax on beer lost in transit. If the brewer reconsigns beer while in transit or returns beer to the shipping brewery, the

brewer is liable under the bond of the brewery to which the beer is reconsigned or returned for the tax on beer lost in transit.

(b) Losses allowable without claim. If loss of beer being transferred does not exceed two percent of the quantity shipped, the brewer is not required to file a report of loss or a claim for allowance of the loss if there are no circumstances indicating that the beer, or any portion of the beer lost, was stolen or otherwise diverted to an unlawful purpose.

(c) Losses requiring claim. If loss of beer during transit exceeds two percent of the quantity shipped, the brewer shall submit a claim under penalties of perjury for remission of the tax on the entire loss. The brewer shall prepare and submit the claim as provided in Sec. 25.286.

(d) Losses requiring immediate report. The brewer shall report to the appropriate TTB officer a loss by fire, theft, casualty or any other unusual loss as soon as it becomes known.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended 1389 (26 U.S.C. 5056, 5414))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-437, 66 FR 5479, Jan. 19, 2001]

**Sec. 25.213 Beer returned to brewery other than that from which removed.**

(a) Refund or adjustment of tax. If beer on which the tax has been determined or paid is returned to a brewery of the brewer other than the one from which removed, the brewer may make a claim for refund or relief of tax or may make an adjustment to the beer tax return, for the tax on the beer returned to the brewery. The brewer may not take an offset for beer returned to the brewery other than the one from which removed. Procedures for filing claims for refund or relief of tax or for making adjustments to the beer tax return are contained in Subpart T of this part.

(b) Notice. A brewer need not file notice of intention to return beer to a brewery other than the one from which removed unless required by the appropriate TTB officer. When a notice is required, the brewer shall serially number each notice and execute it under penalties of perjury as defined in Sec. 25.11. The brewer must file it with the appropriate TTB officer. The notice will contain the following information:

(1) The number and sizes of kegs and the actual quantity of beer, in barrels; or the number of cases and the number and sizes of bottles within the cases and the actual quantity of beer, in barrels;

(2) The name and address of the brewery from which the beer was removed;

(3) A statement that the tax on the beer has been fully paid or determined and the rate at which the tax on the beer was paid or determined; and

(4) If the title to the beer has passed, the name and address of the person returning the beer.

(c) Return of beer. If the brewer is required to file a notice of intention to return beer to the brewery, the brewer may bring the beer onto the brewery premises prior to filing the notice. The brewer shall segregate the returned beer from all other beer at the brewery and clearly identify it as returned beer. The returned beer will be retained intact for inspection by an appropriate TTB officer until the notice has been filed and disposition authorized.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-437, 66 FR 5479, Jan. 19, 2001]

**Sec. 25.222 Notice of brewer.**

(a) Beer to be destroyed. When a brewer possesses beer which has been taxpaid or tax determined and which the brewer wishes to destroy at a location other than at any of the brewer's breweries, the brewer shall give written notice of intention to destroy the beer. The brewer must submit this notice to the appropriate TTB officer.

(b) Execution of notice. The brewer shall serially number each notice and execute each notice under penalties of perjury as defined in Sec. 25.11. The brewer shall specify the date on which the beer is to be destroyed; this date may not be less than 12 days from the date the notice is mailed or delivered to the appropriate TTB officer.

(c) Information to be furnished. The notice will contain the following information:

(1) The number and sizes of kegs and the actual quantity of beer, in barrels; or the number of cases and the number and sizes of bottles within the cases, and the actual quantity of beer in barrels. When kegs containing less than the actual contents are to be destroyed, the brewer shall determine the actual content of beer by weight or by other accurate means.

(2) The date on which the beer was received for destruction.

(3) A statement that the tax on the beer has been fully paid or determined and the rate at which the tax on the beer was paid or determined.

(4) If the title of the beer has passed, the name and address of the person returning the beer.

(5) The location at which the brewer desires to destroy the beer and the reason for not returning the beer to the brewery.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-437, 66 FR 5479, Jan. 19, 2001]

**Sec. 25.225 Destruction of taxpaid beer which was never removed from brewery premises.**

(a) General. A brewer operating a taven on brewery premises under Sec. 25.25 may destroy taxpaid or tax-determined beer which was never removed from brewery premises, in accordance with the recordkeeping requirements of paragraph (b) of this section, and with the benefit of the tax refund provisions of paragraph (c) of this section.

(b) Recordkeeping. (1) When taxpaid or tax-determined beer which was never removed from brewery premises is destroyed, the brewer shall prepare a record of the quantity of beer destroyed, and the reason for, date of, and method of, destruction. The brewer may prepare this record on Form 2635 (5620.8) for submission as a claim under Sec. 25.283.

(2) When required by the appropriate TTB officer, the brewer shall notify the appropriate TTB officer prior to the intended destruction, in accordance with procedures established by the appropriate TTB officer.

(c) Refund of tax. After destruction is completed, the brewer may file a claim for refund or credit of tax, in accordance with Sec. 25.283(c).

[T.D. ATF-268, 53 FR 8629, Mar 16, 1988]



### **Sec. 25.272 Application.**

(a) Form of application. Any person desiring to establish a pilot brewing plant under the subpart shall file an application with the appropriate TTB officer. The application will be in writing and will include the following:

- (1) Name and address of the applicant;
- (2) Description of the premises and equipment to be used in the operations;
- (3) Nature, purpose, and extent of the operations; and
- (4) A statement that the applicant agrees to comply with all provisions of this part applicable to the operations to be conducted.

(b) Additional information. The appropriate TTB officer may at any time before or after approval of an application, require the submission of additional information necessary for administration of this part or for protection of the revenue.

(c) Authorization of operations. The appropriate TTB officer may authorize the operation of a pilot brewing plant if it is determined that the plant will be operated solely for one or more of the purposes specified in Sec. 25.271, and that operations will not jeopardize the revenue.

(d) Withdrawal of authorization. The appropriate TTB officer may withdraw authorization to operate a pilot brewing plant if in his or her judgment, the revenue would be jeopardized by the operations of the plant.

(e) Commencement of operations. A person may not begin operation of a pilot brewing plant until the appropriate TTB officer has approved the application required by this section.

(Sec. 4, Pub. L. 91-673, 84 Stat. 2057, as amended (26 U.S.C. 5417))

### **Sec. 25.273 Action on application.**

If the appropriate TTB officer approves the application for a pilot brewing plant, he or she will note approval on the application and forward a copy to the applicant. The applicant must file the copy of the approved application at the premises, available for inspection by an appropriate TTB officer.

[T.D. ATF-437, 66 FR 5480, Jan. 19, 2001]

## **Sec. 25.277 Discontinuance of operations.**

When operations of a pilot brewing plant are to be discontinued, the operator shall notify the appropriate TTB officer stating the purpose of the notice and giving the date of discontinuance. When operations have been completed and all beer at the premises has been disposed of and accounted for, the appropriate TTB officer will note approval on the notice and return a copy to the operator.

## **Sec. 25.282 Beer lost by fire, theft, casualty, or act of God.**

(a) General. The tax paid by any brewer on beer produced in the United States may be adjusted (without interest) on the excise tax return, may be refunded or credited (without interest) or, if the tax has not been paid, the brewer may be relieved of liability for the tax if, before transfer of title to the beer to any other person, the beer is lost, whether by theft or otherwise, or is destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God. The tax liability on excessive losses of beer from transfer between breweries of the same ownership may be remitted as provided in Sec. 25.286.

(b) Unmerchantable beer. When beer is rendered unmerchantable by fire, casualty, or act of God, refund, credit or adjustment of tax, or relief from liability of tax will not be allowed unless the brewer proves to the satisfaction of the appropriate TTB officer that the beer cannot be salvaged and returned to the market for consumption or sale.

(c) Beer lost or destroyed. When beer is lost or destroyed, whether by theft or otherwise, the appropriate TTB officer may require the brewer to file a claim for relief from the tax and to submit proof as to the cause of the loss.

(d) Beer lost by theft. When it appears that beer was lost by theft, the tax shall be collected unless the brewer proves to the satisfaction of the appropriate TTB officer that the theft occurred before removal from the brewery and occurred without connivance, collusion, fraud, or negligence on the part of the brewer, consignor, consignee, bailee, or carrier, or the employees or agents of any of them.

(e) Notification of appropriate TTB officer. (1) A brewer who sustains a loss of beer before transfer of title of the beer to another person and who desires to adjust the tax on the excise tax return or to file a claim for refund or for relief from liability of tax, must, on learning of the loss of beer, immediately notify in writing the appropriate TTB officer of the nature, cause, and extent of the loss, and the place where the loss occurred. Statements of witnesses or other supporting documents must be furnished if available.

(2) A brewer possessing unmerchantable beer and who desires to adjust the tax on the excise tax return or to file a claim for refund or for relief from liability

must notify in writing the appropriate TTB officer, of the circumstances by which the beer became unmerchantable, and must state why the beer cannot be salvaged and returned to the market for consumption or sale.

(f) Additional information. The appropriate TTB officer may require the brewer to submit additional evidence necessary to verify the tax adjustment or for use in connection with a claim.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-437, 66 FR 5480, Jan. 19, 2001]

### **Sec. 25.299 Execution under penalties of perjury.**

When a return, form, or other document is required by this part or in the instruction on or with the return, form, or other document to be executed under the penalties of perjury, as defined in Sec. 25.11, it will be so executed and will be signed by the brewer or other duly authorized person.

(Act of August 16, 1954, 68A Stat. 749, as amended (26 U.S.C. 6065))

### **Sec. 25.300 Retention and preservation of records.**

(a) Place of maintenance. Records required by this part will be prepared and kept by the brewer at the brewery where the operation or transaction occurs and will be available for inspection by any appropriate TTB officer during business hours.

(b) Reproduction of original records. Whenever any record, because of its condition, becomes unsuitable for its intended or continued use, the brewer shall reproduce the record by a process under Sec. 25.301. The reproduced record will be treated and considered for all purposes as though it were the original record, and all provisions of law applicable to the original are applicable to the reproduction.

(c) Retention of records. Records required by this part will be preserved for a period of not less than three years from the date thereof or the date of the last entry required to be made thereon, whichever is later. The appropriate TTB officer may require records to be kept for an additional period not exceeding three years in any case where such retention is deemed necessary or advisable for the protection of the revenue.

(d) Data Processing. (1) Notwithstanding any other provision of this section, record data maintained on data processing equipment may be kept at a location

other than the brewery if the original transaction (source) records required by Sec. Sec. 25.292-25.298 are kept available for inspection at the brewery.

(2) Data which has been accumulated on cards, tapes, discs, or other accepted record media will be retrievable within five business days.

(3) The applicable data processing program will be made available for examination if requested by an appropriate TTB officer.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1390, as amended (26 U.S.C. 5415))



