

1513-0118

26 U.S.C.

Sec. 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).

(Added Pub. L. 85-859, title II, Sec. 201, Sept. 2, 1958, 72 Stat. 1333; amended Pub. L. 86-75, Sec. 3(a)(6), June 30, 1959, 73 Stat. 157; Pub. L. 86-564, title II, Sec. 202(a)(8), June 30, 1960, 74 Stat. 290; Pub. L. 87-72, Sec. 3(a)(8), June 30, 1961, 75 Stat. 193; Pub. L. 87-508, Sec. 3(a)(7), June 28, 1962, 76 Stat. 114; Pub. L. 88-52, Sec. 3(a)(8), June 29, 1963, 77 Stat. 72; Pub. L. 88-348, Sec. 2(a)(8), June 30, 1964, 78 Stat. 237; Pub. L. 89-44, title V, Sec. 501(d), June 21, 1965, 79 Stat. 150; Pub. L. 94-529, Sec. 1, Oct. 17, 1976, 90 Stat. 2485; Pub. L. 95-458, Sec. 2(b)(2)(A), Oct. 14, 1978, 92 Stat. 1256; Pub. L. 101-508, title XI, Sec. 11201(c), Nov. 5, 1990, 104 Stat. 1388-416.)

Sec. 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.

(Added Pub. L. 85-859, title II, Sec. 201, Sept. 2, 1958, 72 Stat. 1333; amended Pub. L. 91-673, Sec. 1(b), Jan. 12, 1971, 84 Stat. 2056; Pub. L. 109-59, title XI, Sec. 11125(b)(15), Aug. 10, 2005, 119 Stat. 1956.)

Sec. 5053. Exemptions

(a) Removals for export

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).

(Added Pub. L. 85-859, title II, Sec. 201, Sept. 2, 1958, 72 Stat. 1334; amended Pub. L. 89-44, title VIII, Sec. 807(b), June 21, 1965, 79 Stat.

164; Pub. L. 91-673, Sec. 2, Jan. 12, 1971, 84 Stat. 2056; Pub. L. 94-455, title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-458, Sec. 2(b)(1), Oct. 14, 1978, 92 Stat. 1255; Pub. L. 105-34, title XIV, Secs. 1414(b), 1418(a), 1419(a), Aug. 5, 1997, 111 Stat. 1047-1049.)

Sec. 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 \1\ 5053(e) (relating to beer for personal or family use).

\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.

(Added Pub. L. 85-859, title II, Sec. 201, Sept. 2, 1958, 72 Stat. 1334; amended Pub. L. 94-455, title XIX, Secs. 1905(a)(5), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1818, 1834; Pub. L. 95-458, Sec. 2(b)(2)(B), Oct. 14, 1978, 92 Stat. 1256; Pub. L. 99-509, title VIII, Sec. 8011(b)(2), Oct. 21, 1986, 100 Stat. 1953; Pub. L. 100-647, title I, Sec. 1018(u)(19), Nov. 10, 1988, 102 Stat. 3591; Pub. L. 105-206, title VI, Sec. 6014(a)(1), (2), July 22, 1998, 112 Stat. 820.)

Sec. 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).

(Added Pub. L. 85-859, title II, Sec. 201, Sept. 2, 1958, 72 Stat. 1335; amended Pub. L. 94-455, title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105-34, title XIV, Sec. 1420(a), Aug. 5, 1997, 111 Stat. 1049.)

Sec. 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.

(Added Pub. L. 85-859, title II, Sec. 201, Sept. 2, 1958, 72 Stat. 1335; amended Pub. L. 91-673, Sec. 1(a), Jan. 12, 1971, 84 Stat. 2056; Pub. L. 94-455, title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105-34, title XIV, Sec. 1414(c), Aug. 5, 1997, 111 Stat. 1047; Pub. L. 105-206, title VI, Sec. 6014(a)(3), July 22, 1998, 112 Stat. 820.)

Sec. 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.

(Added Pub. L. 85-859, title II, Sec. 201, Sept. 2, 1958, 72 Stat. 1339; amended Pub. L. 95-458, Sec. 2(b)(3), Oct. 14, 1978, 92 Stat. 1256.)

Sec. 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.

(Added Pub. L. 85-859, title II, Sec. 201, Sept. 2, 1958, 72 Stat. 1388; amended Pub. L. 91-673, Sec. 3(a), Jan. 12, 1971, 84 Stat. 2056; Pub. L. 94-455, title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

Sec. 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.

(Added Pub. L. 85-859, title II, Sec. 201, Sept. 2, 1958, 72 Stat. 1389; amended Pub. L. 91-673, Sec. 3(c), Jan. 12, 1971, 84 Stat. 2057; Pub. L. 94-455, title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

Sec. 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.

(Added Pub. L. 85-859, title II, Sec. 201, Sept. 2, 1958, 72 Stat. 1389; amended Pub. L. 91-673, Sec. 3(d), Jan. 12, 1971, 84 Stat. 2057; Pub. L. 94-455, title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

Sec. 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.

(Added Pub. L. 85-859, title II, Sec. 201, Sept. 2, 1958, 72 Stat. 1389; amended Pub. L. 94-455, title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

Sec. 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.

(Added Pub. L. 85-859, title II, Sec. 201, Sept. 2, 1958, 72 Stat. 1390; amended Pub. L. 94-455, title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

Sec. 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.

(Added Pub. L. 85-859, title II, Sec. 201, Sept. 2, 1958, 72 Stat. 1390; amended Pub. L. 91-673, Sec. 3(e), Jan. 12, 1971, 84 Stat. 2057.)

Sec. 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.

(Added Pub. L. 91-673, Sec. 4(a), Jan. 12, 1971, 84 Stat. 2057; amended Pub. L. 94-455, title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

Sec. 5555. Records, statements, and returns

(a) General

Every person liable to any tax imposed by this chapter, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may prescribe.

(b) Authority to waive

Whenever in this chapter any record is required to be made or kept, or statement or return is required to be made by any person, the Secretary may by regulation waive, in whole or in part, such requirement when he deems such requirement to no longer serve a necessary purpose. This subsection shall not be construed as authorizing the waiver of the payment of any tax.

(c) Photographic copies

Whenever in this chapter any record is required to be made and preserved by any person, the Secretary may by regulations authorize such person to record, copy, or reproduce by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process, which accurately reproduces or forms a durable medium for so reproducing the original of such record and to retain such reproduction in lieu of the original. Every person who is authorized to retain such reproduction in lieu of the original shall, under such regulations as the Secretary may prescribe, preserve such reproduction in conveniently accessible files and make provision for examining, viewing, and using such reproduction the same as if it were the original. Such reproduction shall be treated and considered for all purposes as though it were the original record and all provisions of law applicable to the original shall be applicable to such reproduction. Such reproduction, or enlargement or facsimile thereof, shall be admissible in evidence in the same manner and under the same conditions as provided for the admission of reproductions, enlargements, or facsimiles of records made in the regular course of business under section 1732(b) of title 28 of the United States Code.

(Added Pub. L. 85-859, title II, Sec. 201, Sept. 2, 1958, 72 Stat. 1395; amended Pub. L. 94-455, title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90

Stat. 1834; Pub. L. 98-369, div. A, title IV, Sec. 454(c)(10), July 18, 1984, 98 Stat. 821.)

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Sec. 25.15 Materials for the production of beer.

(a) Beer must be brewed from malt or from substitutes for malt. Only rice, grain of any kind, bran, glucose, sugar, and molasses are substitutes for malt. In addition, you may also use the following materials as adjuncts in fermenting beer: honey, fruit, fruit juice, fruit concentrate, herbs, spices, and other food materials.

(b) You may use flavors and other nonbeverage ingredients containing alcohol in producing beer. Flavors and other nonbeverage ingredients containing alcohol may contribute no more than 49% of the overall alcohol content of the finished beer. For example, a finished beer that contains 5.0% alcohol by volume must derive a minimum of 2.55% alcohol by volume from the fermentation of ingredients at the brewery and may derive not more than 2.45% alcohol by volume from the addition of flavors and other nonbeverage ingredients containing alcohol. In the case of beer with an alcohol content of more than 6% by volume, no more than 1.5% of the volume of the beer may consist of alcohol derived from added flavors and other nonbeverage ingredients containing alcohol.

[T.D. TTB-21, 70 FR 235, Jan. 3, 2005]

Sec. 25.55 Formulas for fermented products.

(a) For what fermented products must a formula be filed? You must file a formula for approval by TTB if you intend to produce:

(1) Any fermented product that will be treated by any processing, filtration, or other method of manufacture that is not generally recognized as a traditional process in the production of a fermented beverage designated as "beer," "ale," "porter," "stout," "lager," or "malt liquor." For purposes of this paragraph:

(i) Removal of any volume of water from beer, filtration of beer to substantially change the color, flavor, or character, separation of beer into different components, reverse osmosis, concentration of beer, and ion exchange treatments are examples of non-traditional processes for which you must file a formula.

(ii) Pasteurization, filtration prior to bottling, filtration in lieu of pasteurization, centrifuging for clarity, lagering, carbonation, and blending are examples of traditional processes for which you do not need to file a formula.

(iii) If you have questions about whether or not use of a particular process not listed in this section requires the filing of a formula, you may request a determination from TTB in accordance with paragraph (f) of this section.

(2) Any fermented product to which flavors or other nonbeverage ingredients (other than hop extract) containing alcohol will be added.

(3) Subject to paragraph (f) of this section, any fermented product to which coloring or natural or artificial flavors will be added.

(4) Subject to paragraph (f) of this section, any fermented product to which fruit, fruit juice, fruit concentrate, herbs, spices, honey, maple syrup, or other food materials will be added.

(5) Sak[eacute], including flavored sak[eacute] and sparkling sak[eacute].

(b) Are separate formulas required for different products? (1) You must file a separate formula for approval for each different fermented

product for which a formula is required.

(2) You may file a formula for a beer base to be used in the production of one or more other fermented products. The beer base must conform to the standards set forth in Sec. 25.15.

(c) When must I file a formula? (1) Except as provided in paragraph (c)(2) of this section, you may not produce a fermented product for which a formula is required until you have filed and received approval of a formula for that product.

(2) You may, for research and development purposes (including consumer taste testing), produce a fermented product without an approved formula, but you may not sell or market this product until you receive approval of the formula for it.

(d) How long is my formula approval valid? Your formula approved under this section remains in effect until: you supersede it with a new formula; you voluntarily surrender the formula; TTB cancels or revokes the formula; or the formula is revoked by operation of law or regulation.

(e) Are my previously approved statements of process valid? Your statements of process approved before January 3, 2006 are considered approved formulas under this section, provided that any finished product that could be made under the statement of process would be in compliance with the provisions of this part. You do not need to submit a formula for approval if a statement of process that remains valid covers the product.

(f) Determinations by TTB regarding specific processes and ingredients. (1) The appropriate TTB officer may determine whether or not use of a process not listed in paragraph (a)(1) of this section requires you to file a formula for approval. The appropriate TTB officer may also exempt the use of a particular coloring, flavoring, or food material from the formula filing requirement of paragraph (a)(3) or paragraph (a)(4) of this section upon a finding that the coloring, flavoring, or food material in question is generally recognized as a traditional ingredient in the production of a fermented beverage designated as ``beer,'` ``ale,'` ``porter,'` ``stout,'` ``lager,'` or ``malt liquor.'`

(2) You may request a determination from TTB on whether or not the use of a process not listed in paragraph (a)(1) of this section will require the filing of a formula or whether the use of a particular coloring, flavoring or food material may be exempted from the formula filing requirement of paragraph (a)(3) or paragraph (a)(4) of this section. You should mail your request to the Assistant Chief, Advertising, Labeling and Formulation Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20220.

(i) When requesting a determination as to whether a process is subject to the formula filing and approval requirement, the request must include:

(A) A detailed description of the proposed process;

(B) Evidence establishing that the proposed process is generally recognized as a traditional process in the production of a fermented beverage designated as ``beer,'` ``ale,'` ``porter,'` ``stout,'` ``lager,'` or ``malt liquor''; and

(C) An explanation of the effect of the proposed process on the production of a fermented product.

(ii) When requesting an exemption from the formula filing requirement in paragraph (a)(3) or paragraph (a)(4) of this section regarding coloring, flavoring, or food material ingredients, the request must include the following information:

- (A) A description of the proposed ingredient;
- (B) Evidence establishing that the proposed ingredient is generally recognized as a traditional ingredient in the production of a fermented beverage designated as "beer," "ale," "porter," "stout," "lager," or "malt liquor"; and
- (C) An explanation of the effect of the proposed ingredient in the production of a fermented product.

Sec. 25.56 Filing of formulas.

(a) What are the general requirements for filing a formula? (1) You must file your formula in writing. Your formula must identify each brewery where the formula applies by including each brewery name, address, and registry number.

(2) You must serially number each formula, commencing with "1" and continuing in numerical sequence.

(3) You must date and sign each formula.

(4) You must file two copies of each formula with TTB.

(b) Where do I file a formula? File your formula with the Assistant Chief, Advertising, Labeling and Formulation Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20220.

(26 U.S.C. 5401, 7805)

Sec. 25.57 Formula information.

(a) Ingredient information. (1) For each formula you must list each separate ingredient and the specific quantity used, or a range of quantities used. You may include optional ingredients in a formula if they do not impact the labeling or identity of the finished product.

(2) For fermented products containing flavorings you must list for each formula: The name of the flavor; the product number or TTB drawback number and approval date of the flavor; the name and location (city and State) of the flavor manufacturer; the alcohol content of the flavor; and the point of production at which the flavor was added (that is, before, during, or after fermentation).

(3) For formulas that include the use of flavors and other nonbeverage ingredients containing alcohol, you must explicitly indicate:

(i) The volume and alcohol content of the beer base;

(ii) The maximum volumes of the flavors and other nonbeverage ingredients containing alcohol to be used;

(iii) The alcoholic strength of the flavors and other nonbeverage ingredients containing alcohol;

(iv) The overall alcohol contribution to the finished product provided by the addition of any flavors or other nonbeverage ingredients containing alcohol. You are not required to list the alcohol contribution of individual flavors and other nonbeverage ingredients containing alcohol. You may state the total alcohol contribution from these ingredients to the finished product; and

(v) The final volume and alcohol content of the finished product.

(b) Process information. For each formula you must describe in detail each process used to produce a fermented beverage.

(c) Alcohol content. For each formula you must state the alcohol content of the fermented product after fermentation and the alcohol content of the finished product.

(d) Beer base formulas. You must refer in your formula to any

approved formula number that covers the production of any beer base used in producing the formula product. If the beer base was produced by another brewery of the same ownership, you must also provide the name and address or name and registry number of that brewery.

(e) Additional information. The appropriate TTB officer may at any time require you to file additional information concerning a fermented product, ingredients, or processes, in order to determine whether a formula should be approved or disapproved or whether the approval of a formula should be continued.

(26 U.S.C. 5415, 5555, 7805(a))

Sec. 25.58 New and superseding formulas.

(a) New formulas. Except as otherwise provided in paragraph (b) of this section, you must file a new formula (with a new formula number) for approval by TTB if you--

- (1) Create an entirely new fermented product that requires a formula;
- (2) Add new ingredients to an existing formulation;
- (3) Delete ingredients from an existing formulation;
- (4) Change the quantity of an ingredient used from the quantity or range of usage in an approved formula;
- (5) Change an approved processing, filtration, or other special method of manufacture that requires the filing of a formula; or
- (6) Change the contribution of alcohol from flavors or ingredients that contain alcohol.

(b) Superseding formulas. You may file a superseding formula, instead of a new formula, if you have made any change listed in paragraphs (a)(2) through (a)(6) of this section and that change is not of a type that would require a holder of a certificate of label approval to file a new application for label approval on TTB Form 5100.31.

(1) A superseding formula replaces an existing formula, and you should file one only if you do not intend to use the existing formula any more. A superseding formula must be filed with TTB for approval. When TTB approves a superseding formula, TTB will cancel your previous formula.

(2) You may use the same formula number for a superseding formula that you used for the formula the superseding formula replaces, but you must annotate the formula number to indicate it is a superseding formula number. (For example, ``Formula 2, superseding.'')

(c) When you file a new or superseding formula with TTB, you must follow the procedures and other requirements of Sec. Sec. 25.56 and 25.57.