

wine treated with decolorizing material; and

(c) The kind and quantity of decolorizing material used to treat the juice or wine. (Sec. 201, Pub. L. 85-859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512-0298)

§ 24.322 Allied products record.

A proprietor who uses fruit, fruit juice or concentrated fruit juice in the production of allied products shall maintain a record of these materials in accordance with § 24.315. The record will also show the production and disposition of other allied products. If sugar, acids, or chemicals are used in allied products, the receipt and use will also be recorded. (Sec. 201, Pub. L. 85-859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512-0298)

§ 24.323 Excise Tax Return form.

A proprietor who removes wine subject to tax shall prepare an ATF F 5000.24, Excise Tax Return, unless exempted under the provisions of § 24.273. Any increase or decrease in tax due to previous return errors or for authorized credits will be shown on the return. The ATF F 5000.24 will be prepared and filed by the proprietor in accordance with the instructions printed on the form. (August 16, 1954, ch. 736, 68A Stat. 775, as amended, 777, as amended, 391, as amended, 917, as amended (26 U.S.C. 5061, 7805))

(Approved by the Office of Management and Budget under control numbers 1512-0467 and 1512-0492)

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AUTHORITY: 19 U.S.C. 81c; 26 U.S.C. 5002, 5051-5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401-5403, 5411-5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303-9308.

SOURCE: T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 25 appear by T.D. ATF-437, 66 FR 5478, 5479, Jan. 19, 2001.

Subpart A—Scope of Regulations

§ 25.1 Production and removal of beer.

The regulations in this part relate to beer and cereal beverages and cover the location, construction, equipment, operations and qualifications of breweries and pilot brewing plants.

§ 25.2 Territorial extent.

This part applies to the several States of the United States and the District of Columbia.

§ 25.3 Forms prescribed.

(a) The appropriate ATF officer is authorized to prescribe all forms required by this part, including bonds, applications, notices, reports, returns, and records. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part. The

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form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150-5950, or by accessing the ATF web site (<http://www.atf.treas.gov>).

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986; 51 FR 10540, Mar. 27, 1986, as amended by T.D. 372, 61 FR 20724, May 8, 1996; T.D. ATF-437, 66 FR 5478, Jan. 19, 2001]

§ 25.4 Related regulations.

Regulations relating to this part are listed below:

27 CFR Part 7—Labeling and Advertising of Malt Beverages.

27 CFR Part 29—Stills and Miscellaneous Regulations.

27 CFR Part 252—Exportation of Liquors.

31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-462, 66 FR 42737, Aug. 15, 2001]

§ 25.5 OMB control numbers assigned under the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection requirements by the Office of Management and Budget contained in 27 CFR Part 25 under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

(b) *Display, OMB control number 1512-0045.* OMB control number 1512-0045 is assigned to the following sections in 27 CFR Part 25: §§ 25.23, 25.25, 25.52, 25.61, 25.62, 25.64, 25.66, 25.67, 25.68, 25.71, 25.72, 25.73, 25.74, 25.75, 25.76, 25.77, 25.78, 25.81, 25.85, 25.103, 25.114, 25.141, 25.142, 25.144, 25.158, 25.167, 25.184, 25.213, 25.222, 25.225, 25.272, 25.273, 25.277, 25.282, 25.299.

(c) *Display, OMB control number 1512-0052.* OMB control number 1512-0052 is assigned to the following sections in 27 CFR Part 25: §§ 25.296(b), 25.297.

(d) *Display, OMB control number 1512-0079.* OMB control number 1512-0079 is assigned to the following section in 27 CFR Part 25: § 25.65.

(e) *Display, OMB control number 1512-0141.* OMB control number 1512-0141 is assigned to the following sections in 27 CFR Part 25: §§ 25.281, 25.282, 25.286.

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(f) *Display, OMB control number 1512-0333.* OMB control number 1512-0333 is assigned to the following sections in 27 CFR Part 25: §§ 25.42, 25.142, 25.186, 25.192, 25.195, 25.196, 25.211, 25.252, 25.264, 25.276, 25.284, 25.291, 25.292, 25.293, 25.294, 25.295, 25.296(a), 25.300, 25.301.

(g) *Display, OMB control number 1512-0457.* OMB control number 1512-0457 is assigned to the following section in 27 CFR Part 25: § 25.165.

(h) *Display, OMB control number 1512-0467.* OMB control number 1512-0467 is assigned to the following sections in 27 CFR Part 25: §§ 25.122, 25.160, 25.163, 25.164, 25.165, 25.166, 25.167, 25.168, 25.175, 25.224, 25.284, 25.285, 25.298.

(i) *Display, OMB control number 1512-0472.* OMB control number 1512-0472 is assigned to the following sections in 27 CFR Part 25: §§ 25.111, 25.112, 25.113, 25.114, 25.117, 25.118, 25.119, 25.121, 25.126, 25.127, 25.131, 25.132, 25.133, 25.134.

(j) *Display, OMB control number 1512-0478.* OMB control number 1512-0478 is assigned to the following sections in 27 CFR Part 25: §§ 25.24, 25.35, 25.141, 25.142, 25.143, 25.145, 25.192, 25.196, 25.231, 25.242, 25.251, 25.263.

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986; 51 FR 10540, Mar. 27, 1986; T.D. ATF-268, 53 FR 8628, Mar 16, 1988]

§ 25.6 Delegations of the Director.

Most of the regulatory authorities of the Director contained in this part 25 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.10, Delegation Order—Delegation of the Director's Authorities in 27 CFR part 25, Beer. ATF delegation orders, such as ATF Order 1130.10, are available to any interested person by mailing a request to the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150-5950, or by accessing the ATF web site (<http://www.atf.treas.gov>).

[T.D. ATF-437, 66 FR 5478, Jan. 19, 2001]

Subpart B—Definitions

§ 25.11 Meaning of terms.

When used in this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms have the meanings given in this section.

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.10, Delegation Order—Delegation of the Director's Authorities in 27 CFR part 25, Beer.

Balling. The percent by weight of dissolved solids at 60 °F. present in wort and beer, usually determined by a balling saccharometer.

Bank. Any commercial bank.

Banking day. Any day during which a bank is open to the public for carrying on substantially all its banking functions.

Barrel. When used as a unit of measure, the quantity equal to 31 U.S. gallons. When used as a container, a consumer package or keg containing a quantity of beer listed in § 25.156, or other size authorized by the appropriate ATF officer.

Beer. Beer, ale, porter, stout, and other similar fermented beverages (including sake or similar products) of any name or description containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute for malt.

Bottle. A bottle, can or similar container.

Bottling. The filling of bottles, cans, and similar containers.

Brewer. Any person who brews beer (except a person who produces only beer exempt from tax under 26 U.S.C. 5053(e)) and any person who produces beer for sale.

Brewery. The land and buildings described in the Brewer's Notice, Form 5130.10, where beer is to be produced and packaged.

Brewing. The production of beer for sale.

Business day. The 24-hour cycle of operations in effect at the brewery and described on the Brewer's Notice, Form 5130.10.

Calendar quarter. A 3-month period during the year as follows: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.

Cereal beverage. A beverage, produced either wholly or in part from malt (or

a substitute for malt), and either fermented or unfermented, which contains, when ready for consumption, less than one-half of 1 percent of alcohol by volume.

Commercial bank. A bank, whether or not a member of the Federal Reserve System, which has access to the Federal Reserve Communications System (FRCS) or Fedwire. The "FRCS" or "Fedwire" is a communications network that allows Federal Reserve System member banks to effect a transfer of funds for their customers (or other commercial banks) to the Treasury Account at the Federal Reserve Bank of New York.

Concentrate. Concentrate produced from beer by the removal of water under the provisions of subpart R of this part. The processes of concentration of beer and reconstitution of beer are considered authorized processes in the production of beer.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Director of the service center. A Director of an Internal Revenue Service Center.

District Director. A district director of internal revenue.

Electronic fund transfer or EFT. Any transfer of funds made by a brewer's commercial bank, either directly or through a correspondent banking relationship, via the Federal Reserve Communications System (FRCS) or Fedwire to the Treasury Account at the Federal Reserve Bank of New York.

Executed under penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the return, claim, form, or other document or, when no form of declaration is prescribed, with the declaration: "I declare under the penalties of perjury that this—(insert type of document such as statement, report, certificate, application, claim, or other document), including the documents submitted in support thereof, has been examined by men and, to the best of my knowledge and belief, is true, correct and complete."

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Fiscal year. The period which begins October 1 and ends on the following September 30.

Gallon. The liquid measure containing 231 cubic inches.

Losses. Known quantities of beer lost due to breakage, casualty, or other unusual cause.

Package. A bottle, can, keg, barrel, or other original consumer container.

Packaging. The filling of any package.

Person. An individual, trust, estate, partnership, association, company, or corporation.

Racking. The filling of kegs or barrels.

Removed for consumption or sale. Except when used with respect to beer removed without payment of tax as authorized by law, (a) the sale and transfer of possession of beer for consumption at the brewery, or (b) any removal of beer from the brewery.

Secretary. The Secretary of the Treasury or his or her delegate.

Service center. An Internal Revenue Service Center in any of the Internal Revenue regions.

Shortage. An unaccounted for discrepancy (missing quantity) of beer disclosed by physical inventory.

This chapter. Title 27, Code of Federal Regulations, Chapter I (27 CFR Chapter I).

Treasury account. The Department of the Treasury's General Account at the Federal Reserve Bank of New York.

U.S.C. The United States Code.

Wort. The product of brewing before fermentation which results in beer.

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-345, 58 FR 40357, July 28, 1993; T.D. ATF-437, 66 FR 5478, Jan. 19, 2001]

Subpart C—Location and Use of Brewery

§ 25.21 Restrictions on location.

A brewery may not be established or operated in any dwelling house or on board any vessel or boat, or in any building or on any premises where the revenue will be jeopardized or the ef-

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fective administration of this part will be hindered.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5402))

§ 25.22 Continuity of brewery.

Brewery premises will be unbroken except that they may be separated by public passageways, streets, highways, waterways, carrier rights-of-way, or partitions. If the brewery premises are separated, the parts will abut on the dividing medium and be adjacent to each other. If the brewer has facilities for loading, or for case packing or storage which are located within reasonable proximity to the brewery, the appropriate ATF officer may approve these facilities as part of the brewery if the revenue will not be jeopardized.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5402))

§ 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 ATF 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 § 25.25.

(c) *Application.* Except as provided in § 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 ATF officer through the appropriate regional director (compliance), an application listing the purposes. The appropriate ATF 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]

§ 25.24 Storage of beer.

(a) *Taxpaid beer.* Beer of a brewer's own production on which the tax has been paid or determined may not be stored in the brewery, except as provided in § 25.25 or § 25.213. Beer produced by other brewers may be stored at the brewery under the following conditions:

(1) Taxpaid beer will be segregated in such a manner as to preclude mixing with nontaxpaid beer;

(2) If required by Part 1 of this chapter, the brewer shall have a wholesalers or importers basic permit under the Federal Alcohol Administration Act, and keep records of the taxpaid beer as a wholesaler or importer under Part 194 of this chapter.

(3) Taxpaid beer may be stored in packages;

(4) Taxpaid beer may not be re-labeled;

(5) Taxpaid beer may not be shown on required brewery records;

(6) The brewer shall purchase a special tax stamp as a wholesaler, if required by Part 194 of this chapter; and

(7) The appropriate ATF officer may require physical segregation of taxpaid beer, or marking to show the status of

taxpaid beer, if necessary to protect the revenue.

(b) *Untaxpaid beer.* Packaged beer on which tax has not been paid or determined may be stored in any suitable location in the brewery.

(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]

§ 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, ATF F 5130.10 containing the information required by paragraph (b) of this section. If the appropriate ATF 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, ATF F 5130.10 shall constitute approval of the alternate use of brewery premises, in lieu of the application required by § 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 § 25.24.

(b) *Brewer's Notice.* In preparing the Brewer's Notice, ATF F 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.

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(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 § 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 § 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]

Subpart D—Construction and Equipment

CONSTRUCTION

§ 25.31 Brewery buildings.

Brewery buildings shall be arranged and constructed to afford adequate protection to the revenue and to facilitate inspection by appropriate ATF officers.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5402))

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EQUIPMENT

§ 25.35 Tanks.

Each stationary tank, vat, cask or other container used, or intended for use, as a receptacle for wort, beer or concentrate produced from beer shall:

(a) Be durably marked with a serial number and capacity; and

(b) Be equipped with a suitable measuring device. The brewer may provide meters or other suitable portable devices for measuring contents of tanks or containers in lieu of providing each tank or container with a measuring device.

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

§ 25.36 Empty container storage.

Empty barrels, kegs, bottles, other containers, or other supplies stored in the brewery will be segregated from filled containers.

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

Subpart E—Measurement of Beer

§ 25.41 Measuring system required.

The brewer shall accurately and reliably measure the quantity of beer transferred from the brewery cellars for bottling and for racking. The brewer may use a measuring device, such as a meter or gauge glass, or any other suitable method.

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

§ 25.42 Testing of measuring devices.

(a) *General requirements.* If a measuring device such as a meter or gauge glass is used to measure beer, the brewer shall periodically test the measuring device and adjust or repair it, if necessary. The brewer shall keep records of tests available for inspection by appropriate ATF officers. Records of tests will include:

(1) Date of test;

(2) Identity of meter or measuring device;

(3) Result of test; and

(4) Corrective action taken, if necessary.

(b) *Requirements for beer meters.* The allowable variation for beer meters as

established by testing may not exceed ± 0.5 percent. If a meter test discloses an error in excess of the allowable variation, the brewer shall immediately adjust or repair the meter. Adjustments will reduce the error to as near zero as practicable.

(c) *Authority to require tests.* If the appropriate ATF officer has reason to believe that the accuracy or reliability of a measuring device is not being properly maintained, he or she may require the brewer to test the measuring device and, if necessary, adjust or repair the measuring device.

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

Subpart F—Miscellaneous Provisions

§ 25.51 Right of Entry and Examination.

An appropriate ATF officer may enter, during normal business hours, a brewery or other place where beer is stored and may, when the premises are open at other times, enter those premises in the performance of official duties. Appropriate ATF officers may make inspections as the appropriate ATF officer deems necessary to determine that operations are conducted in compliance with the law and this part. The owner of any building or place where beer is produced, made, or kept, or person having charge over such premises, who refuses to admit an appropriate ATF officer acting under 26 U.S.C. 7606, or who refuses to permit an appropriate ATF officer to examine beer must, for each refusal, forfeit \$500.

[T.D. ATF-437, 66 FR 5478, Jan. 19, 2001]

§ 25.52 Variations from requirements.

(a) *Exceptions to construction, equipment and methods of operations* (1) *General.* The appropriate ATF 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 ATF 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 ATF officer.* The appropriate ATF 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 ATF 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 ATF 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 ATF 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 ATF officer may approve an emergency variation from requirements if:

(i) An emergency exists;

(ii) The variation from the requirements is necessary;

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(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 ATF 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 ATF officer may withdraw approval of an alternate method or procedure, approved under paragraph (a) or (b) of this section, if the appropriate ATF 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]

Subpart G—Qualification of a Brewery

ORIGINAL QUALIFICATION

§ 25.61 General requirements for notice.

(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 ATF 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 busi-

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ness as a brewer as provided in § 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 ATF 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]

§ 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 § 25.66.

(5) Description of brewery, as specified in § 25.68.

(6) A list of trade names which the brewer intends to use in doing business or in packaging beer.

(7) A statement of process for fermented beverages if required by § 25.67.

(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 §§ 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 § 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 ATF 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))

§ 25.63 Notice of registration.

The Brewer's Notice, Form 5130.10, when approved by the appropriate ATF officer, will constitute the notice of registration of the brewery. The appropriate ATF 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 ATF officer.

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

§ 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 ATF officer.

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

§ 25.65 Power of attorney.

The brewer shall execute and file a Form 1534 (5000.8) for each person authorized to sign or act on behalf of the brewer. The Form 1534 (5000.8) is not required for persons whose authority is furnished in the Brewer's Notice, Form 5130.10.

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

§ 25.66 Organizational documents.

The supporting information required by paragraph (a)(4) of § 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 ATF 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, by-laws, 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 ATF officer upon request. In the case of multiplant brewers, these documents may be made available at the

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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))

§ 25.67 Statement of process.

(a) The Brewer's Notice, Form 5130.10 will contain a statement of process for any fermented beverage which the brewer intends to produce and market under a name other than "beer," "ale," "porter," "stout," "lager," or "malt liquor."

(b) The statement of process will give the name or designation of the product, the kinds and quantities of materials to be used, the method of manufacture, and the approximate alcohol content of the finished product.

(c) A statement of process for any fermented beverage (other than sake or cereal beverage) will not be approved unless the base product has the characteristics of beer as defined in § 25.11.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended, 1388, as amended (26 U.S.C. 5052, 5401))

§ 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 ATF officers to determine the boundaries of the brewery.

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

CHANGES AFTER ORIGINAL QUALIFICATION

§ 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

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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 ATF 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 ATF 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 § 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))

§ 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 § 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 ATF 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))

§ 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]

§ 25.74 Change in stockholders.

Changes in the list of stockholders furnished under the provisions of § 25.66(c)(1) shall be submitted annually by the brewer on July 1 or on any other date approved by the appropriate ATF 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 § 25.71.

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

§ 25.75 Change in officers and directors.

When there is any change in the list of officers or directors furnished under the provisions of § 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 ATF officer that certain corporate officers listed on the original notice have no responsibilities in connection with the operations covered by the notice, the appropriate ATF 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 § 25.62(b).

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

§ 25.76 Change in statement of process.

When there is a change in the information in a statement of process required by § 25.62(a)(7) for any fermented beverage produced and marketed under a name other than "beer," "ale," "porter," "stout," "lager," or "malt liquor," the brewer shall submit an amended notice and obtain approval of the notice prior to using the changed statement of process.

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

§ 25.77 Change in location.

When there is a change in the location of the brewery, the brewer shall

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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 § 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 ATF officer approves the required documents.

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

§ 25.78 Change in premises.

Except as authorized in § 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))

ALTERNATION OF OPERATIONS

§ 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) ATF F 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

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submitted to the appropriate ATF 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 ATF 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 ATF 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]

DISCONTINUANCE OF BUSINESS

§ 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 ATF 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]

Subpart H—Bonds and Consents of Surety

§ 25.91 Requirement for bond.

(a) *General.* Every person intending to commence the business of a brewer shall file a bond, Form 5130.22, as prescribed in this subpart, covering operations at the brewery, at the time of filing the original Brewer's Notice, Form 5130.10. Every brewer intending to continue the business of a brewer shall, once every 4 years, or as provided in § 25.95, execute and file a new bond, or continuation certificate as provided in § 25.97.

(b) *Conditions of the bond.* The Brewer's Bond, Form 5130.22, will be conditioned upon the brewer faithfully complying with all provisions of law and regulations relating to the activities covered by the bond, and upon paying all taxes imposed by 26 U.S.C. Chapter 51 and all interest and penalties incurred or fines imposed for violations of those provisions.

(c) *Additional information.* The appropriate ATF officer shall require, in connection with any brewer's bond, a statement executed under the penalties of perjury, as to whether the principal or any person owning, controlling, or actively participating in the management of the business of the principal has been convicted of or has compromised any offense set forth in § 25.101(a)(1), or has been convicted of any offense set forth in § 25.101(a)(2). In the event the above statement contains an affirmative answer, the applicant shall submit a statement describing in detail the circumstances surrounding the conviction or compromise.

(d) *Bond required before beginning business.* A person may not begin business or continue business as a brewer until first receiving notice that the appropriate ATF officer has approved the

bond, continuation certificate, or consent of surety, as required by this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401); sec. 4(a), Pub. L. 91-673, 84 Stat. 2057 (26 U.S.C. 5417))

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

§ 25.92 Consent of surety.

A brewer may change the terms of any bond filed under this part by filing a consent of surety. Consents of surety will be executed on Form 1533 (5000.18) by the brewer and the surety on the bond, with the same formality and proof of authorization as required for the execution of a bond.

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

§ 25.93 Penal sum of bond.

(a) *Calculation.* The penal sum of the brewer's bond will be equal to 10 percent of the maximum amount of tax, calculated at the rates prescribed by law, which the brewer will become liable to pay during a calendar year during the period of the bond on beer:

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

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

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

(4) Removed for consumption or sale.

(b) *Concentrate.* A brewer who concentrates beer under subpart R of this part shall calculate the penal sum of the bond by computing 10 percent of the amount of tax at the rates prescribed by law, on the maximum quantity of beer used in the production of concentrate during a calendar year. The brewer shall add this amount to the penal sum calculated under paragraph (a) of this section to determine the total penal sum of the brewer's bond.

(c) *Maximum and minimum penal sums.* The maximum penal sum of the bond (or total penal sum if original and strengthening bonds are filed) is not to exceed \$150,000 when the tax on beer is to be prepaid, or \$500,000 when the tax

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is to be deferred as provided in § 25.164. The minimum penal sum of a bond is \$1,000.

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

§ 25.94 Strengthening bonds.

(a) *Requirement.* When the penal sum of the brewer's bond (calculated as provided in § 25.93) in effect is not sufficient, the principal may prepay the tax on beer as provided in subpart K of this part, or give a strengthening bond in sufficient penal sum if the surety is the same as on the bond in effect. If the surety is not the same, a new bond covering the entire liability is required.

(b) *Restrictions.* A strengthening bond may not in any way release a former bond or limit a bond to less than the full penal sum.

(c) *Date of execution.* Strengthening bonds will show the current date of execution and their effective date.

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

§ 25.95 New bond.

The appropriate ATF officer may at any time, at his or her discretion, require a new bond. A new bond is required immediately in the case of insolvency of a surety. Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity shall execute a new bond or obtain a consent of surety on all bonds in effect. When the interests of the Government so demand, or in any case when the security of the bond becomes impaired for any reason, the principal will be required to give a new bond. When a bond is found to be not acceptable by the appropriate ATF officer, the principal will be required immediately to obtain a new and satisfactory bond or discontinue business.

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

§ 25.96 Superseding bond.

When the principal submits a new bond to supersede a bond or bonds in effect, the appropriate ATF officer, after approving the superseding bond, will issue a notice of termination for the superseded bond under the provisions of this subpart. Superseding

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bonds will show the current date of execution and their effective date.

§ 25.97 Continuation certificate.

If the contract of surety between the brewer and the surety on an expiring bond or continuation certificate is continued in force for a succeeding period of not less than 4 years from the expiration date of the bond or continuation certificate, the brewer may submit, in lieu of a new bond, a Brewer's Bond Continuation Certificate on Form 5130.23, executed under the penalties of perjury, by the brewer and the surety attesting to continuation of the bond. Each continuation certificate will constitute a bond and all provisions of law and regulations applicable to bonds on Form 5130.22 given under this part, including the disapproval of bonds, are applicable to continuation certificates.

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

§ 25.98 Surety or security.

(a) *Bond coverage.* Bonds required by this part will be given with corporate surety or collateral security.

(b) *Corporate surety.* Surety bonds may be given only with surety companies holding certificates of authority from the Secretary as acceptable sureties on Federal bonds, subject to the limitations set forth in the current revision of Treasury Department Circular No. 570, Companies Holding Certificates of Authority as Acceptable Reinsuring Companies.

(c) *Revisions of Circular No. 570.* Treasury Department Circular No. 570 is published in the FEDERAL REGISTER annually as of the first workday in July. As they occur, interim revisions of the circular are published in the FEDERAL REGISTER. Copies may be obtained from the Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20226.

(d) *More than one corporate surety.* A bond may be executed by two or more corporate sureties. Each corporate surety may limit its liability in terms on the face of the bond in a specified amount. This amount may not exceed the limitations set forth for corporate security by the Secretary which are set forth in the current revision of Treasury Department Circular No. 570. The

sum of the liabilities for the sureties will equal the required penal sum of the bond.

(e) *Deposit of collateral securities in lieu of corporate surety.* Bonds or notes of the United States, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, may be pledged and deposited by principals as collateral security in lieu of corporate surety in accordance with 31 CFR Part 225.

(96 Stat. 1068, 1085 (31 U.S.C. 9304-9308); sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.99 Filing powers of attorney.

Each bond, continuation certificate, and each consent of surety will be accompanied by a power of attorney authorizing the agent or officer to execute the document. The power of attorney will be prepared on a form provided by the surety company and executed under the corporate seal of the company. If the power of attorney submitted is other than a manually signed original, it will be accompanied by a certificate of its validity.

(96 Stat. 1068, 1085 (31 U.S.C. 9304-9308))

DISAPPROVAL OR TERMINATION OF BONDS OR CONSENTS OF SURETY

§ 25.101 Disapproval of bonds or consents of surety.

(a) *Reasons for disapproval.* The appropriate ATF officer may disapprove a bond or consent of surety if the individual, firm, partnership, corporation, or association giving the bond or consent of surety, or if any of the above entities owning, controlling or actively participating in the management of a business giving a bond as a brewer, has been previously convicted in a court of competent jurisdiction of:

(1) Any fraudulent noncompliance with any provision of law of the United States if it related to internal revenue or customs taxation of distilled spirits, wines or beer, or if the offense shall have been compromised with the individual, firm, partnership, corporation, or association on payment of penalties or otherwise; or

(2) Any felony under a law of any State or the District of Columbia, or

the United States, prohibiting the manufacture, sale, importation, or transportation of distilled spirits, wines, beer, or other intoxicating liquor.

(b) *Appeal of disapproval.* If the bond or consent of surety is disapproved, the person giving the bond or consent of surety may appeal the disapproval to the appropriate ATF officer, who will grant a hearing in the matter if requested by the applicant or brewer, and whose decision will be final.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1394, as amended (26 U.S.C. 5551))

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

§ 25.102 Termination of surety's liability.

The liability of a surety on a bond required by this part will be terminated only as to liability arising on or after: (a) the effective date of a superseding bond; (b) the date of approval of the discontinuance of business of the brewer; or (c) following the giving of notice by the surety as provided in § 25.103.

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

§ 25.103 Notice by surety for relief from liability under bond.

A surety may, at any time, in writing, notify the principal and the appropriate ATF officer that the surety desires after a specified date (not less than 60 days after the date of service on the principal) to be relieved of any liability under the bond which is incurred by the principal after the date named in the notice. The surety shall include proof of service of the notice on the principal with the notice filed with the appropriate ATF officer. The notice will become effective on the date named, unless the surety withdraws the notice, in writing. The surety on the bond remains liable under the bond with respect to any liability incurred by the principal while the bond is in effect.

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

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§ 25.104 Termination of bonds.

Brewer's bonds may be terminated as to liability for future removals or receipts (a) pursuant to application of the surety as provided in § 25.103, (b) on approval of a superseding bond, or (c) on notification by the principal that the business has been discontinued. On termination of the surety's liability under a bond, the appropriate ATF officer will notify the principal and sureties.

(31 U.S.C. 9301, 9303)

§ 25.105 Release of collateral security.

Bonds, notes, and other obligations of the United States, pledged and deposited as security in connection with bonds required by this part will be released in accordance with 31 CFR Part 225. When the appropriate ATF officer determines there is no outstanding liability against the bond and that it is no longer necessary to hold the security, he or she shall fix the date or dates on which a part or all of the security will be released. At any time prior to the release of the security, the appropriate ATF officer may, for proper cause, extend the date of release of the security for an additional length of time as may be appropriate.

(31 U.S.C. 9301, 9303)

Subpart I—Special Taxes

LIABILITY FOR SPECIAL TAX

§ 25.111 Brewer's special tax.

(a) *General.* Every brewer shall pay a special (occupational) tax at the rate specified by § 25.111a or § 25.111b, whichever is applicable. The tax shall be paid on or before the date of commencing business as a brewer, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) *Transition rule.* A brewer who was engaged in business on January 1, 1988, and paid a special (occupational) tax for a taxable period which began before January 1, 1988, and included that date, shall pay an increased special tax for

the period January 1, 1988, through June 30, 1988. The increased special tax shall not exceed one-half the excess (if any) of (1) the rate of special tax in effect on January 1, 1988, over (2) the rate of such tax in effect on December 31, 1987. The increased special tax shall be paid on or before April 1, 1988.

(26 U.S.C. 5091, 5142)

[T.D. ATF-271, 53 FR 17547, May 17, 1988]

§ 25.111a Special tax rates.

(a) *Prior rates.* The special (occupational) tax imposed on brewers prior to January 1, 1988, was \$110 a year, except that the special tax for any brewer of less than 500 barrels a year was \$55 a year.

(b) *Rate effective January 1, 1988.* The special tax rate imposed on brewers (other than small brewers as defined in § 25.111b) is \$1000 a year.

(26 U.S.C. 5091)

[T.D. ATF-271, 53 FR 17547, May 17, 1988]

§ 25.111b Reduced rate of tax for small brewers.

(a) *General.* Effective January 1, 1988, 26 U.S.C. 5091(b) provides for a reduced rate of tax with respect to any brewer whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the tax imposed by § 25.111 relates) are less than \$500,000. The rate of tax for such a brewer is \$500 a year. The "taxable year" to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a "controlled group"; in that case, the rules of paragraph (b) of this section shall apply.

(b) *Controlled group.* In determining gross receipts, all persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for

purposes of paragraph (a) of this section. "Controlled group" means a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(c) *Short taxable year.* Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period as required by 26 U.S.C. 448(c)(3).

(d) *Returns and allowances.* Gross receipts for any taxable year shall be reduced by returns and allowances made during that year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5091)

[T.D. ATF-271, 53 FR 17547, May 17, 1988]

§ 25.112 Wholesaler's special tax.

A brewer shall be subject to or exempt from a wholesaler's special (occupational) tax as provided in Part 194 of this chapter.

(26 U.S.C. 5111, 5142)

[T.D. ATF-271, 53 FR 17548, May 17, 1988]

§ 25.113 Each place of business taxable.

(a) *General.* A brewer incurs special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax,

if the divisions of the premises are otherwise contiguous.

(b) *Exception for contiguous areas.* A brewer will not incur additional special tax liability for sales of beer made at a location other than on brewery premises described on the brewer's notice, Form 5130.10, if the location where such sales are made is contiguous to the brewery premises in the manner described in paragraph (a) of this section.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1347, as amended (26 U.S.C. 5143))

§ 25.114 Exemptions from dealer's special taxes.

(a) *Brewer.* A brewer is not required to pay special tax 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 tax-paid storeroom operated in connection with the brewery. Each brewer shall have only one exemption from dealer's special tax for each brewery. The brewer may designate, in writing to the appropriate ATF officer, that the principal place of business will be exempt from dealer's special tax; otherwise, the exemption will apply to the brewery.

(b) *Wholesale dealer.* A wholesale dealer in beer who has paid the appropriate special tax will not again be required to pay special tax 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))

EXECUTION OF SPECIAL TAX RETURNS

§ 25.117 Special tax returns.

Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

[T.D. ATF-271, 53 FR 17548, May 17, 1988]

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§ 25.118 Preparation of ATF Form 5630.5.

All of the information called for on Form 5630.5 shall be provided, including:

- (a) The true name of the taxpayer.
- (b) The trade name(s) (if any) of the business(es) subject to special tax.
- (c) The employer identification number (see § 25.121).
- (d) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).
- (e) The class(es) of special tax to which the taxpayer is subject.
- (f) Ownership and control information: that is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF in connection with the Brewer's Notice, and if the information previously provided is still current.

[T.D. ATF-271, 53 FR 17548, May 17, 1988]

§ 25.119 Multiple locations and/or classes of tax.

A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

- (a) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and
- (b) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, ad-

dress, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 25.300(c).

[T.D. ATF-271, 53 FR 17548, May 17, 1988]

§ 25.120 Signing of ATF Forms 5630.5.

(a) *Ordinary returns.* The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(b) *Fiduciaries.* Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(c) *Agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the ATF office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(d) *Perjury statement.* ATF Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 5142, 6061, 6065, 6151, 7011)

[T.D. ATF-271, 53 FR 17548, May 17, 1988]

EMPLOYER IDENTIFICATION NUMBERS

§ 25.121 Employer identification number.

The employer identification number (defined in 26 CFR 301.7701-12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns,

filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in § 70.113 of this chapter.

(26 U.S.C. 6109, 6676)

[T.D. ATF-271, 53 FR 17548, May 17, 1988, as amended by T.D. ATF-301, 55 FR 47605, Nov. 14, 1990]

§ 25.122 Application for employer identification number.

Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS-4 to apply for one. The taxpayer shall apply for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a special tax return. The employer identification number shall be applied for no later than 7 days after the filing of the taxpayer's first special tax return. IRS Form SS-4 may be obtained from the director of an IRS service center or from any IRS district director.

(26 U.S.C. 6109)

[T.D. ATF-271, 53 FR 17548, May 17, 1988]

§ 25.123 Preparation and filing of IRS Form SS-4.

The taxpayer shall prepare and file IRS Form SS-4, together with any supplementary statement, in accordance with the instructions on the form or issued in respect to it.

(26 U.S.C. 6109)

[T.D. ATF-271, 53 FR 17549, May 17, 1988]

SPECIAL TAX STAMPS

§ 25.125 Issuance of special tax stamps.

Upon filing a properly executed return on ATF Form 5630.5, together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by § 25.119, but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place

of business (or principal office in the case of a corporate taxpayer).

(26 U.S.C. 6806)

[T.D. ATF-271, 53 FR 17549, May 17, 1988]

§ 25.126 Distribution of stamps for multiple locations.

On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to Form 5630.5. The taxpayer shall designate one stamp for each location and type on each stamp the address of the business conducted for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-251, 52 FR 19313, May 22, 1987]

§ 25.127 Examination of special tax stamps.

All stamps denoting payment of special tax will be kept available for inspection by appropriate ATF officers, at the location for which designated, during business hours.

(Act of August 16, 1954 68A Stat. 831, as amended (26 U.S.C. 6806); sec. 201, Pub. L. 85-859, 72 Stat. 1348, as amended (26 U.S.C. 5146))

CHANGES IN SPECIAL TAX STAMPS

§ 25.131 Change in name.

If there is a change in the corporate or firm name, or in the trade name, as shown on Form 5630.5, the brewer shall file an amended special tax return as soon as practicable after the change covering the new corporate or firm name, or trade names. No new special tax is required to be paid. The brewer shall attach the special tax stamp for endorsement of the change in name.

(26 U.S.C. 7011)

[T.D. ATF-271, 53 FR 17549, May 17, 1988]

§ 25.132 Change in proprietorship.

(a) *General.* If there is a change in the proprietorship of a brewery, the successor shall obtain the required special tax stamps.

(b) *Exemption for certain successors.* Persons having the right of succession provided for in § 25.133 may carry on

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the business for the remainder of the period for which the special tax was paid, if within 30 days after the date on which the successor begins to carry on the business, the successor files a return on Form 5630.5, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business.

(Act of August 16, 1954, 68A Stat. 845, as amended (26 U.S.C. 7011); sec. 201, Pub. L. 85-859, 72 Stat. 1347, as amended (26 U.S.C. 5143))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-251, 52 FR 19313, May 22, 1987]

§ 25.133 Persons having right of succession.

Under the conditions indicated in § 25.132, the right of succession will pass to certain persons in the following cases:

(a) *Death*. The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer;

(b) *Succession of spouse*. A husband or wife succeeding to the business of his or her spouse (living);

(c) *Insolvency*. A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(d) *Withdrawal from firm*. The partner or partners remaining after death or withdrawal of a member.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1347, as amended (26 U.S.C. 5143))

§ 25.134 Change in location.

If there is a change in location of a taxable place of business, the brewer shall, within 30 days after the change, file with ATF an amended special tax return covering the new location. The brewer shall attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax is required to be paid. However, if the brewer does not file the amended return within 30 days, the brewer is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

[T.D. ATF-271, 53 FR 17549, May 17, 1988]

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Subpart J—Marks, Brands, and Labels

§ 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 § 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 ATF 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 ATF 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 1512-0474)

(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]

§ 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 §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 ATF 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 ATF 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 ATF 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 1512-0474)

(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]

§ 25.143 Cases.

(a) *Brewer's name.* The brewer's name or trade name will be shown on each case or other shipping container of bottled beer. A brewer may use unmarked cases to hold:

(1) Cartons of beer, if the visible portion of the cartons shows the required name; or

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(2) Bottles or cans with plastic carriers, if the visible portion of the bottles or cans shows the required name.

(b) *Other information.* The brewer may show on a case or shipping container the place of production (city and, when necessary for identification, State), and the addresses of other breweries owned by the same person, firm, or corporation (as defined in §25.181). If only one address is shown, it will be that of the producing brewery, or of the brewer's principal place of business.

(Approved by the Office of Management and Budget under control number 1512-0474)

(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]

§ 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 §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 ATF 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 §25.141, which indicate ownership.

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

§ 25.145 Tanks, vehicles, and vessels.

(a) Each brewer who transfers beer to another brewery of the same ownership (as defined in §25.181), or who exports beer without payment of tax, as provided in §25.203, shall plainly and durably mark each tank, tank car, tank truck, tank ship, barge, or deep tank of a vessel in accordance with paragraph

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(b) of this section. These marks may be placed on a label securely affixed to the route board of the container.

(b) The brewer shall mark each container with—

(1) The designation “Beer”;

(2) The brewer's name;

(3) The address of the brewery from which removed;

(4) The address of the brewery to which transferred or the marks required for exportation in Part 252 of this chapter, as applicable;

(5) The date of shipment; and

(6) The quantity, expressed in barrels.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended, 1389, as amended (26 U.S.C. 5053, 5414))

Subpart K—Tax on Beer

LIABILITY FOR TAX

§ 25.151 Rate of tax.

All beer, brewed or produced, and removed for consumption or sale, is subject to the tax prescribed by 26 U.S.C. 5051, for every barrel containing not more than 31 gallons, and at a like rate for any other quantity or for the fractional parts of a barrel as authorized in §25.156.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended (26 U.S.C. 5051, 5052))

§ 25.152 Reduced rate of tax for certain brewers.

(a) *General.* Section 5051(a)(2) of Title 26 U.S.C. provides for a reduced rate of tax on the first 60,000 barrels of beer removed for consumption or sale by a brewer during a calendar year. To be eligible to pay the reduced rate of tax, a brewer:

(1) Shall brew or produce the beer at a qualified brewery in the United States;

(2) May not produce more than 2,000,000 barrels of beer per calendar year; and

(3) May not be a member of a “controlled group” of brewers whose members together produce more than 2,000,000 barrels of beer per calendar year.

The appropriate ATF officer shall deny use of the reduced rate of tax provided

by 26 U.S.C. 5051(a)(2) where it is determined that the allowance of such a reduced rate would benefit a person who would otherwise fail to qualify for use of such rate.

(b) *Definitions.* For the purpose of determining eligibility for payment of the reduced rate of tax on beer, terms have the following meanings:

(1) *Controlled group.* A related group of brewers as defined in 26 U.S.C. 5051(a)(2)(B). Controlled groups include, but are not limited to:

(i) Parent-subsidiary controlled groups as defined in 26 CFR 1.1563-1(a)(2);

(ii) Brother-sister controlled groups as defined in 26 CFR 1.1563-1(a)(3); and

(iii) Combined groups as defined in 26 CFR 1.1563-1(a)(4). Stock ownership in a corporation need not be direct and 51% constructive ownership, defined in 26 CFR 1.1563-3, may be acquired through:

- (A) An option to purchase stock;
- (B) Attribution from partnerships;
- (C) Attribution from estate or trusts;
- (D) Attribution from corporations; or
- (E) Ownership by spouses, children, grandchildren, parents, and grandparents.

(2) *Production of beer.* The production of beer as recorded in the brewer's daily records and reported in the Brewer's Report of Operations, Form 5130.9. For the purpose of determining compliance with the 2,000,000 barrel limitation, production of beer by a brewer or a controlled group of brewers includes both beer produced at qualified breweries within the United States and beer produced outside the United States.

(c) *Brewers operating more than one brewery.* Brewers who operate more than one brewery shall include the combined production of beer at all their breweries when determining eligibility under the 2,000,000 barrel limitation. The reduced rate of tax applies to the first 60,000 barrels of beer removed for consumption or sale in a calendar year by the brewer; the brewer shall apportion the 60,000 barrels among the breweries in the manner described in the notice as provided by § 25.167(b)(3).

(d) *Controlled groups of brewers.* Members of a controlled group of brewers shall include the combined production of beer by all member brewers when de-

termining eligibility under the 2,000,000 limitation. The reduced rate of tax applies to the first 60,000 barrels of beer removed for consumption or sale in a calendar year by the controlled group of brewers; the controlled group of brewers shall apportion the 60,000 barrels among member brewers in the manner described in each brewer's notice as provided by § 25.167(b)(3).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended (26 U.S.C. 5052))

[T.D. ATD-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-307, 55 FR 52738, Dec. 21, 1990; T.D. ATF-345, 58 FR 40357, July 28, 1993]

§ 25.153 Persons liable for tax.

The tax imposed by law on beer (including beer purchased or procured by one brewer from another) shall be paid by the brewer of the beer at the brewery where produced. The tax on beer transferred to a brewery from other breweries owned by the same brewer in accordance with subpart L of this part shall be paid by the brewer at the brewery from which the beer is removed for consumption or sale.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended, 1389, as amended (26 U.S.C. 5054, 5413, 5414))

DETERMINATION OF TAX

§ 25.155 Types of containers.

Beer may be removed from a brewery for consumption or sale only in barrels, kegs, bottles, and similar containers, as provided in this part. A container which the appropriate ATF officer determines to be similar to a bottle or can will be treated as a bottle for purposes of this part. A container which the appropriate ATF officer determines to be similar to a barrel or keg and which conforms to one of the sizes prescribed for barrels or kegs in § 25.156 will be treated as such for purposes of this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended, 1390, as amended (26 U.S.C. 5412, 5416))

§ 25.156 Determination of tax on keg beer.

(a) In determining the tax on beer removed in kegs, a barrel is regarded as

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a quantity of not more than 31 gallons. The authorized fractional parts of a barrel are whole barrels, halves, thirds, quarters, sixths, and eighths, and beer may be removed in kegs rated at those capacities. The following keg sizes are also authorized at the stated barrel equivalents:

| Size of keg | Barrel equivalent |
|-----------------|-------------------|
| 5 gallons | 0.16129 |
| 30 liter | 0.25565 |
| 50 liter | 0.42608 |

(b) If any barrel or authorized size keg contains a quantity of beer more than 2 percent in excess of its rated capacity, tax will be determined and paid on the actual quantity of beer (without benefit of any tolerance) contained in the keg.

(c) The quantities of keg beer removed subject to tax will be computed to 5 decimal places. The sum of the quantities computed for any one day will be rounded to 2 decimal places and the tax will be calculated and paid on the rounded sum.

(26 U.S.C. 5051)

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

§ 25.157 Determination of tax on bottled beer.

The quantities of bottled beer removed subject to tax shall be computed to 5 decimal places in accordance with the table and instructions in § 25.158. The sum of the quantities computed for any one day will be rounded to 2 decimal places and the tax will be calculated and paid on the rounded sum.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended (26 U.S.C. 5051))

§ 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 per case | Barrel 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 |

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| Bottle size (net contents in fluid ounces) | Number of bottles per case | Barrel equivalent |
|--|----------------------------|-------------------|
| 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 |

(b) *For metric measure bottles.*

| Bottle size (metric net contents) | Number of bottles per case | Barrel 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 |

(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 ATF 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]

§ 25.159 Time of tax determination and payment; offsets.

(a) *Time and payment.* The tax on beer will be determined at the time of its removal for consumption or sale, and will be paid by return as provided in this part.

(b) *Offsets.* During any business day, the quantity of beer returned to the same brewery from which removed is to be taken as an offset against or deducted from the total quantity of beer removed for consumption or sale from that brewery on the day that the beer is returned.

(c) *Offsets not allowed.* An offset or deduction for returned beer will not be allowed if:

(1) The brewer was indemnified by insurance or otherwise in respect of the tax; or

(2) The brewer does not issue credit to the customer for the tax on the returned beer within 30 days of the return of the beer. If the tax is not timely credited after the offset or deduction is taken, the brewer shall make an increasing adjustment on the next tax return.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended, 1335, as amended (26 U.S.C. 5054, 5056, 5061))

§ 25.160 Tax adjustment for brewers who produce more than 2,000,000 barrels of beer.

Each brewer who has paid tax on beer by return, Form 5000.24, at the reduced rate of tax during a calendar year, but whose production (or the production of a controlled group of brewers of which the brewer is a member) exceeds 2,000,000 barrels of beer in that calendar year, is no longer eligible to pay tax on beer at the reduced rate of tax for any beer removed that calendar year for consumption or sale. The brewer shall make a tax adjustment for the payment of additional tax no later than the return period in which production (or the production of a controlled group of brewers of which the brewer is a member) exceeds 2,000,000 barrels of beer. The adjustment will be determined by multiplying the difference between the higher and lower rates of tax applicable to beer by the number of barrels removed by the brewer that year at the reduced rate of tax. The brewer shall make tax adjustments for all breweries where tax was paid at the lower rate that year, and shall include interest payable from the date on which tax was paid at the lower rate. In the case of a controlled group of brewers whose production exceeds

2,000,000 barrels of beer, all member brewers who paid tax at the lower rate shall make tax adjustments as determined in this section.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended (26 U.S.C. 5051))

PREPARATION AND REMITTANCE OF TAX RETURNS

§ 25.163 Method of tax payment.

A brewer shall pay the tax on beer by return on Form 5000.24, as provided in §§ 25.164, 25.164a, 25.173 and 25.175. The brewer shall pay the tax by remittance at the time the tax return is rendered, and the remittance will be by check or money order payable to the "Bureau of Alcohol, Tobacco and Firearms" and mailed with the return, or will be effected by an electronic fund transfer. In paying the tax, a fractional part of a cent will be disregarded unless it amounts to one-half cent or more, in which case it will be increased to one cent.

[T.D. ATF-251, 52 FR 19314, May 22, 1987, as amended by T.D. ATF-365, 60 FR 33669, June 28, 1995]

§ 25.164 Semimonthly return.

(a) *Requirement for filing.* Each brewer shall pay the tax on beer (unless prepaid) by semimonthly return on Form 5000.24. The brewer shall file Form 5000.24 as a semimonthly return regardless of whether tax has been prepaid as provided in § 25.175 during the return period. The brewer shall file a return on Form 5000.24 for each return period even though no beer was removed for consumption or sale.

(b) *Payment of tax.* The brewer shall include for payment with the return the full amount of tax required to be determined (and which has not been prepaid) on all beer removed for consumption or sale during the period covered by the return.

(c) *Return periods.* Except as provided in § 25.164a, return periods run from the brewer's business day beginning on the first day of each month through the brewer's business day beginning on the 15th day of that month, and from the brewer's business day beginning on the 16th day of the month through the brewer's business day beginning on the last day of the month.

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(d) *Time for filing returns and paying tax.* Except as provided in § 25.164a the brewer shall file the semimonthly tax return, Form 5000.24, for each return period, and make remittance as required by this section, not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday, except as provided by § 25.164a(c).

(e) *Timely filing.* (1) When the brewer sends the semimonthly tax return, Form 5000.24, by U.S. mail, in accordance with the instructions on the form, as required by this section, with remittance as provided for in this section, or without remittance as provided for in § 25.165, the date of the official postmark of the United States Postal Service stamped on the cover in which the return and remittance were mailed is considered the date of delivery of the return and the date of delivery of the remittance, if enclosed with the return. When the postmark on the cover is illegible, the burden is on the brewer to prove when the postmark was made.

(2) When the brewer sends the semimonthly return with or without remittance by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail be treated as the date of delivery of the semimonthly return and of the remittance, if enclosed with the return.

(Approved by the Office of Management and Budget under control number 1512-0467)

(Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-246, 52 FR 668, Jan. 8, 1987; T.D. ATF-251, 52 FR 19314, May 22, 1987, T.D. ATF-365, 60 FR 33669, June 28, 1995]

§ 25.164a Special rule for taxes due for the month of September (effective after December 31, 1994).

(a)(1) Except as provided in paragraph (a)(2) of this section, the second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The brewer

shall file a return on Form 5000.24, and make remittance, for the period September 16-26, no later than September 29. The brewer shall file a return on Form 5000.24, and make remittance, for the period September 27-30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 25.165, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The brewer shall file a return on Form 5000.24, and make remittance, for the period September 16-25, no later than September 28. The brewer shall file a return on Form 5000.24, and make remittance, for the period September 26-30, no later than October 14.

(b) *Amount of payment: Safe harbor rule.* (1) Taxpayers are considered to have met the requirements of paragraph (a)(1) of this section, if the amount paid no later than September 29 is not less than $\frac{11}{15}$ (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(2) Taxpayers are considered to have met the requirements of paragraph (a)(2) of this section, if the amount paid no later than September 28 is not less than $\frac{2}{3}$ (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(c) *Last day for payment.* If the required due date for taxpayment for the periods September 16-25 or September 16-26 as applicable, falls on a Saturday or legal holiday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

(d) *Example. Payment of tax for the month of September—(1) Facts.* X, a brewer required to pay taxes by electronic fund transfer, incurred tax liability in the amount of \$30,000 for the

first semimonthly period of September. For the period September 16–26, X incurred tax liability in the amount of \$45,000, and for the period September 27–30, X incurred tax liability in the amount of \$2,000.

(2) *Payment requirement.* X's payment of tax in the amount of \$30,000 for the first semimonthly period of September is due no later than September 29 (§ 25.164(d)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 25.164a(a)(1)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 25.164a(b)). Under the safe harbor rule, X's payment of tax must equal \$21,990.00, $\frac{1}{4}$ ths of the tax liability incurred during the first semimonthly period of September. Additionally, X's payment of tax in the amount of \$2,000 for the period September 27–30 must be paid no later than October 14 (§ 25.164a(a)(1)). X must also pay the underpayment of tax, \$23,010.00, for the period September 16–26, no later than October 14 (§ 25.164a(b)).

[T.D. ATF-365, 60 FR 33669, June 28, 1995]

§ 25.165 Payment of tax by electronic fund transfer.

(a) *Eligible brewers.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and parts 26 and 251 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of beer taxes during the succeeding calendar year. Payment of beer taxes by cash, check, or money order, as described in § 25.163, is not authorized for a taxpayer who is required by this section to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable removals, determined in accordance with § 25.159, and importations (including beer brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments

are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place it appears in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of determining who is required to make remittances by EFT.

(3) A taxpayer who is required by this section to make remittances by EFT shall make a separate EFT remittance and file a separate return, Form 5000.24, for each brewery from which beer is removed upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and parts 26 and 251 of this chapter, during the previous calendar year, shall notify, in writing the appropriate ATF officer. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank to make an electronic fund transfer in the amount of the taxpayment to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in §§ 25.164 or 25.175. The request shall take into account any time limit established by the bank.

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(3) If a taxpayer was liable for less than five million dollars in beer taxes during the preceding calendar year, combining tax liabilities incurred under this part and parts 26 and 251 of this chapter, the taxpayer may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by § 25.164. Upon filing the first return on which the taxpayer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the taxpayer shall notify the appropriate ATF officer by attaching a written notification to Form 5000.24, stating that no taxes are due by EFT because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance will be filed with the tax return.

(c) *Remittance.* (1) Each taxpayer shall show on the return, Form 5000.24, information about remitting the tax for that return by EFT and shall file the return with ATF, in accordance with the instructions on Form 5000.24.

(2) Remittances shall be considered as made when the taxpayment by electronic fund transfer is received by the Treasury Account. For purposes of this section, a taxpayment by electronic fund transfer shall be considered as received by the Treasury Account when it is paid to a Federal Reserve Bank.

(3) When the taxpayer directs the bank to effect an electronic fund transfer message as required by paragraph (b)(2) of this section, any transfer data record furnished to the taxpayer, through normal banking procedures, will serve as the record of payment, and will be retained as part of required records.

(d) *Failure to make a taxpayment by EFT.* The taxpayer is subject to a penalty imposed by 26 U.S.C. 5684, 6651, or 6656, as applicable, for failure to make a taxpayment by EFT on or before the close of business on the prescribed last day for filing.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the appropriate ATF officer will issue to the taxpayer an ATF Procedure entitled "Payment of Tax by Electronic Fund Transfer." This publication outlines the procedure a tax-

payer is to follow when preparing returns and EFT remittances in accordance with this part. The U.S. Customs Service will provide the taxpayer with instructions for preparing EFT remittances for payments to be made to the U.S. Customs Service.

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-245, 52 FR 532, Jan. 7, 1987; T.D. ATF-251, 52 FR 19314, May 22, 1987; T.D. ATF-262, 52 FR 47560, Dec. 15, 1987; T.D. ATF-437, 66 FR 5479, Jan. 19, 2001; T.D. ATF-459, 66 FR 38550, July 25, 2001]

§ 25.166 Payment of reduced rate of tax.

(a) *By return, Form 5000.24.* A brewer who is eligible to pay the reduced rate of tax on beer may, upon filing the notice required by § 25.167, pay the reduced rate of tax on beer by semi-monthly return as provided in § 25.164 or by prepayment return as provided in § 25.175. Payment of reduced rate of tax on beer by return, Form 5000.24, may commence with any tax return filed during a calendar year and will continue until the brewer has taxpaid 60,000 barrels of beer at the lower rate of tax, or taxpaid the number of barrels of beer apportioned under § 25.167(b)(3) for that calendar year.

(b) *By claim for refund of tax.* A brewer, eligible to pay the reduced rate of tax on beer during a calendar year, but who has not paid the reduced rate of tax by return during that year, may file a claim, Form 2635, (5620.8) for refund of tax excessively paid on beer during that year. Claims for refund of tax will be filed as provided in § 25.285.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended (26 U.S.C. 5051))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1987, as amended by T.D. ATF-251, 52 FR 19313, May 22, 1987]

§ 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 ATF 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 § 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))

§ 25.168 Employer identification number.

The employer identification number (defined at 26 CFR 301.7701-12) of the taxpayer who has been assigned the number will be shown on each return on Form 5000.24, filed under this part. Failure of the taxpayer to include the employer identification number on Form 5000.24 may result in imposition of the penalty specified in § 70.113 of

this chapter. A brewer shall apply for an employer identification number on IRS Form SS-4 as provided in §§ 25.122 and 25.123.

(Pub. L. 87-397, 75 Stat. 828, as amended (26 U.S.C. 6109, 6676))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-301, 55 FR 47605, Nov. 14, 1990]

PREPAYMENT OF TAX

§ 25.173 Brewer in default.

(a) When a remittance in payment of taxes on beer is not paid upon presentation of check or money order tendered, or when the brewer is otherwise in default in payment of tax under § 25.164, beer may not be removed for consumption or sale or taken from the brewery for consumption or sale until the tax has been prepaid as provided in § 25.175. The brewer shall continue to prepay while in default and thereafter until the appropriate ATF officer finds the revenue will not be jeopardized by deferred payment of tax as provided in § 25.164.

(b) Any remittance made while the brewer is required to prepay under this section will be in cash or in the form of a certified, cashier's or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States, or under the law of any State, Territory, or possession of the United States, or in the form of a money order as provided in § 70.61 of this chapter (payment by check or money order), or will be made in the form of an electronic fund transfer as provided by §§ 25.164 and 25.165.

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1987, as amended by T.D. ATF-251, 52 FR 19313, May 22, 1987; T.D. ATF-301, 55 FR 47605, Nov. 14, 1990]

§ 25.174 Bond not sufficient.

When the penal sum of the brewer's bond is in less than the maximum amount, the brewer shall prepay the tax on any withdrawal which would cause the outstanding liability for tax to exceed the limits of coverage of the bond. Prepayments will be made in accordance with § 25.175.

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§ 25.175 Prepayment of tax.

(a) *General.* When a brewer is required to prepay tax under § 25.173, or if the penal sum of the bond, Form 5130.22, is insufficient for deferral of payment of tax on beer to be removed for consumption or sale, or if a brewer is not entitled to defer the tax under the provisions of this subpart, the brewer shall prepay the tax before any beer is removed for consumption or sale, or taken out of the brewery for removal for consumption or sale.

(b) *Method of prepayment.* (1) Prepayment will be made by forwarding a tax return, Form 5000.24, with remittance, covering the tax on beer.

(2) If a brewer is required by § 25.165 to make payment of tax by electronic fund transfer, the brewer shall prepay the tax before any beer can be removed for consumption or sale by completing the return and by forwarding it, in accordance with the instructions on the form. At the same time, the brewer shall direct his or her bank to make remittance by EFT.

(3) For the purpose of complying with this section, the term *forwarding* means depositing in the U.S. mail, properly addressed in accordance with the instructions on the form.

(Act of Aug. 16, 1954, 68A Stat. 777, as amended (26 U.S.C. 6311); sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1987, as amended by T.D. ATF-251, 52 FR 19313, May 22, 1987]

FAILURE TO PAY TAX

§ 25.177 Evasion of or failure to pay tax; failure to file a tax return.

Sections 5671, 5673, 5684, 6651, and 6656 of Title 26 United States Code provide penalties for evasion or failure to pay tax on beer or for failure to file a tax return.

(Act of Aug. 16, 1954, 68A Stat. 821, as amended, 826, as amended (26 U.S.C. 6651, 6656); sec. 201, Pub. L. 85-859, 72 Stat. 1408, 1410, as amended (26 U.S.C. 5671, 5673, 5684))

Subpart L—Removals Without Payment of Tax

TRANSFER TO ANOTHER BREWERY OF SAME OWNERSHIP

§ 25.181 Eligibility.

A brewer may remove beer without payment of tax for transfer to any other brewery of the same ownership. These removals include a removal from a brewery owned by one corporation to a brewery owned by another corporation if (a) one corporation owns the controlling interest in the other corporation, or (b) the controlling interest in each corporation is owned by the same person. Beer removed under this section may, while in transit, be re-allocated to another brewery of the same ownership or be returned to the shipping brewery.

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

§ 25.182 Kinds of containers.

A brewer may transfer beer without payment of tax from one brewery to another brewery belonging to the same brewer (a) in the brewer's packages or (b) in bulk containers, subject to limitations and conditions as may be imposed by the appropriate ATF officer. The brewer shall mark, brand or label containers as provided by subpart J of this part.

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

§ 25.183 Determination of quantity transferred.

The shipping brewer shall determine the quantity of beer shipped at the time of removal from the consignor brewery, and the receiving brewer shall determine the quantity of beer received at the time of receipt at the consignee brewery. The brewer shall equip the consignor and consignee breweries with suitable measuring devices to allow accurate determination

of the quantities of beer to be shipped and received in bulk conveyances.

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

§ 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 § 25.286.

(d) *Losses requiring immediate report.* The brewer shall report to the appropriate ATF 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]

§ 25.185 Mingling.

Beer transferred without payment of tax from one brewery to another brewery belonging to the same brewer may be mingled with beer of the receiving brewery. The brewer may handle the beer transferred in accordance with the requirements of this part relating to beer produced in the receiving brewery.

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

§ 25.186 Record of beer transferred.

(a) *Preparation of invoice.* When beer is transferred between breweries without payment of tax, the shipping brewer shall prepare a serially numbered invoice or commercial record, in duplicate, covering the transfer. The invoice will be marked "transfer without payment of tax" and will contain the following information:

- (1) Name and address of shipping brewer;
- (2) Date of shipment;
- (3) Name and address of receiving brewer;
- (4) For cases, the number and size of cases and the total barrels;
- (5) For kegs, the number and size of kegs and the total barrels;
- (6) For shipments in bulk containers, the type of container, identity of the container and the total barrels.

(b) *Reconsignment of beer.* When beer is reconsigned in transit to another brewery of the same ownership, the shipping brewer shall (1) prepare a new invoice showing reconsignment to another brewery and shall void all copies of the original invoice, or (2) shall mark all copies of the original invoice with the words "Reconsigned to _____," followed by the name and address of the brewery to which the beer is reconsigned.

(c) *Disposition of invoice.* On shipment of the beer, the shipping brewer shall send the original copy of the invoice to the receiving brewer, and shall retain the other copy for the brewery records. On receipt of the beer, the receiving brewer (including a brewer to whom beer was returned or reconsigned in transit) shall note on the invoice any discrepancies in the beer received, and retain the invoice in the brewery records.

(d) *Preparation of records and report.* The shipping brewer shall use the invoice showing beer removed to another brewery without payment of tax in preparing daily records under § 25.292 and in preparing the Brewer's Report of Operations, Form 5130.9. The receiving brewer (including a brewer to whom beer was returned or reconsigned in transit) shall use the invoice showing beer received from another brewery without payment of tax in preparing

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daily records under § 25.292 and in preparing the Brewer's Report of Operations, Form 5130.9.

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

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-345, 58 FR 40357, July 28, 1993]

REMOVAL OF BEER UNFIT FOR BEVERAGE USE

§ 25.191 General.

A brewer may remove sour or damaged beer, or beer which the brewer has deliberately rendered unfit for beverage use, from the brewery without payment of tax for use in manufacturing. Unfit beer may be removed under this section for use as distilling material at alcohol fuel plants qualified under subpart Y of part 19 of this chapter.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 25.192 Removal of sour or damaged beer.

(a) *Containers.* The brewer shall remove sour or damaged beer (1) in casks or other packages, containing not less than one barrel each and unlike those ordinarily used for packaging beer, or (2) in tanks, tank cars, tank trucks, tank ships, barges, or deep tanks of a vessel. The brewer shall mark the nature of the contents on each container.

(b) *Beer meter.* The brewer shall remove sour or damaged beer without passing it through the meter (if any) or racking machine.

(c) *Records and reports.* The brewer shall record the removal of sour or damaged beer in daily records under § 25.292 and on the Brewer's Report of Operations, Form 5130.9.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5033))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-345, 58 FR 40357, July 28, 1993]

REMOVALS FOR ANALYSIS, RESEARCH, DEVELOPMENT OR TESTING

§ 25.195 Removals for analysis.

A brewer may remove beer, without payment of tax, to a laboratory for

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analysis to determine the character or quality of the product. Beer may be removed for analysis in packages or in bulk containers. The brewer shall record beer removed for analysis in daily records under § 25.292 and on the Brewer's Report of Operations, Form 5130.9.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-345, 58 FR 40357, July 28, 1993]

§ 25.196 Removals for research, development or testing.

(a) A brewer may remove beer, 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. Beer may be removed for research, development or testing in packages or in bulk containers.

(b) The brewer shall mark each barrel, keg, case, or shipping container with the name and address of the brewer and of the consignee, the identity of the product, and the quantity of the product. If necessary to protect the revenue, the appropriate ATF officer may require a brewer to mark each container with the words "Not for Consumption or Sale." If beer is removed in a bulk conveyance, the brewer shall place the marks on the route board of the conveyance.

(c) The brewer shall record beer removed for research, development, or testing in daily records under § 25.292 and on the Brewer's Report of Operations, Form 5130.9.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-345, 58 FR 40357, July 28, 1993]

REMOVAL OF BEER TO A CONTIGUOUS DISTILLED SPIRITS PLANT

§ 25.201 Removal by pipeline.

A brewer may remove beer from the brewery, without payment of tax, by pipeline to the bonded premises of a

distilled spirits plant which is authorized to produce distilled spirits and which is located contiguous to the brewery.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1365, as amended, 1389, as amended (26 U.S.C. 5222, 5412))

EXPORTATION

§ 25.203 Exportation without payment of tax.

A brewer may remove beer without payment of tax (a) for exportation, (b) for use as supplies on vessels and aircraft, or (c) for transfer to and deposit in foreign-trade zones for exportation or for storage pending exportation, in accordance with Part 252 of this chapter. Beer may be removed from a brewery in bottles, kegs, or in bulk containers.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

BEER FOR PERSONAL OR FAMILY USE

§ 25.205 Production.

(a) Any adult may produce beer, without payment of tax, for personal or family use and not for sale. An adult is any individual who is 18 years of age or older. If the locality in which the household is located requires a greater minimum age for the sale of beer to individuals, the adult shall be that age before commencing the production of beer. This exemption does not authorize the production of beer for use contrary to State or local law.

(b) The production of beer per household, without payment of tax, for personal or family use may not exceed:

(1) 200 gallons per calendar year if there are two or more adults residing in the household, or

(2) 100 gallons per calendar year if there is only one adult residing in the household.

(c) Partnerships except as provided in § 25.207, corporations or associations may not produce beer, without payment of tax, for personal or family use.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 25.206 Removal of beer.

Beer made under § 25.205 may be removed from the premises where made for personal or family use including use at organized affairs, exhibitions or competitions such as homemaker's contests, tastings or judging. Beer removed under this section may not be sold or offered for sale.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 25.207 Removal from brewery for personal or family use.

Any adult, as defined in § 25.205, who operates a brewery under this part as an individual owner or in partnership with others, may remove beer from the brewery without payment of tax for personal or family use. The amount of beer removed for each household, without payment of tax, per calendar year may not exceed 100 gallons if there is one adult residing in the household or 200 gallons if there are two or more adults residing in the household. Beer removed in excess of the above limitations will be reported as a taxable removal.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

Subpart M—Beer Returned to Brewery

§ 25.211 Beer returned to brewery.

(a) *General.* Beer, produced in the United States, on which the brewer has paid or determined the tax may be returned to any brewery of the brewer. Upon return of the beer to the brewery, the brewer shall determine the actual quantity of beer received, expressed in barrels. For cases or bottles, the label may be used to determine the quantity. When kegs or cases containing less than the original contents are received, the brewer shall determine the actual quantity of beer by weight or by other accurate means. The brewer shall determine the balling and alcohol content of returned keg beer unless the keg is equipped with tamper-proof fittings. The quantity of beer returned may be established by weighing individual packages and subtracting package weight, or by weighing accumulated beer and subtracting tare weight

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of dumpsters, pallets, packages and the like.

(b) *Disposition of returned beer.* The brewer may dispose of beer returned under this subpart in any manner prescribed for beer which has never left the brewery. If returned beer is again removed for consumption or sale, tax will be determined and paid without respect to the tax which was determined or paid at the time of prior removal of the beer.

(c) *Records.* For beer returned to the brewery under this subpart, the brewer's daily records under § 25.292 will show:

- (1) Date;
- (2) Quantity of beer returned;
- (3) If the title to the beer has passed, the name and address of the person returning the beer; and
- (4) Name and address of the brewery from which the beer was removed, if different from the brewery to which returned.

(d) *Supporting records.* The records of returned beer will be supported by invoices, credit memoranda or other commercial papers, and will differentiate between beer returned to the brewery from which removed and beer returned to a brewery different from the one from which removed.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended, 1335, as amended, 1390, as amended (26 U.S.C. 5054, 5056, 5415))

§ 25.212 Beer returned to brewery from which removed.

If beer on which the tax has been determined or paid is returned to the brewery from which removed, the brewer shall take the quantity of beer as an offset or deduction against the quantity of beer removed for consumption or sale from the brewery on that business day, as provided in § 25.159

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended, 1390, as amended (26 U.S.C. 5056, 5415))

§ 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 ATF officer. When a notice is required, the brewer shall serially number each notice and execute it under penalties of perjury as defined in § 25.11. The brewer must file it with the appropriate ATF 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 ATF 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]

Subpart N—Voluntary Destruction**§ 25.221 Voluntary destruction of beer.**

(a) *On brewery premises.* (1) A brewer may destroy, at the brewery, beer on which the tax has not been determined or paid.

(2) A brewer operating a tavern on brewery premises under § 25.25 may destroy taxpaid or tax-determined beer stored on brewery premises, in accordance with the requirements of § 25.225.

(b) *Destruction without return to brewery.* A brewer may destroy beer on which the tax has been paid or determined at a location other than any of the breweries operated by the brewer, upon compliance with this subpart.

(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; 51 FR 9190, Mar. 18, 1986; T.D. ATF-268, 53 FR 8629, Mar. 16, 1988, as amended by T.D. 372, 61 FR 20724, May 8, 1996]

§ 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 ATF officer.

(b) *Execution of notice.* The brewer shall serially number each notice and execute each notice under penalties of perjury as defined in § 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 ATF 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]

§ 25.223 Destruction of beer off brewery premises.

(a) *Destruction without supervision.* A brewer may destroy beer without supervision if the appropriate ATF officer does not advise the brewer before the date specified in the notice that destruction of the beer is to be supervised.

(b) *Destruction with supervision.* The appropriate ATF officer may require that an appropriate ATF officer verify the information in the notice of destruction or witness the destruction of the beer. The appropriate ATF officer may also require a delay in the destruction of the beer or, if the place of destruction is not readily accessible to an appropriate ATF officer, may require that the beer be moved to a more convenient location. In this case, the brewer may not destroy the beer except under the conditions imposed by the appropriate ATF officer.

(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]

§ 25.224 Refund or adjustment of tax.

(a) *Claim for refund or relief of tax.* The tax paid by a brewer on beer produced in the United States and destroyed in accordance with this subpart may be refunded to the brewer. If the tax has not been paid, the brewer may be relieved of liability for the tax. Claims

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for refund or relief of tax will be filed as provided in subpart T of this part.

(b) *Adjustments to the excise tax return.* A brewer may make an adjustment (without interest) to the excise tax return, Form 5000.24, covering the tax paid on beer produced in the United States and destroyed in accordance with this subpart. Procedures for making adjustments to tax returns are contained in subpart T of this part.

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

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

(a) *General.* A brewer operating a taven on brewery premises under § 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 § 25.283.

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

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

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

Subpart O—Beer Purchased From Another Brewer

§ 25.231 Finished beer.

(a) A brewer may obtain beer in barrels and kegs, finished and ready for sale from another brewer. The purchasing brewer may furnish the producing brewer barrels and kegs marked with the purchasing brewer's name and

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location. The producing brewer shall pay the tax as provided in subpart K of this part.

(b) A brewer may not purchase taxpaid or tax determined beer from another brewer in bottles or cans which bear the name and address of the purchasing brewer.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5413))

§ 25.232 Basic permit.

A brewer who engages in the business of purchasing beer for resale is required to possess a wholesaler's or importer's basis permit under the provisions of section 3(c) of the Federal Alcohol Administration Act and Part 1 of this chapter.

Subpart P—Cereal Beverage

§ 25.241 Production.

Brewers may produce cereal beverage and remove it without payment of tax from the brewery. The method of production shall insure that the alcohol content of the cereal beverage will not increase while in the original container after removal from the brewery. The brewer shall keep cereal beverage separate from beer, and shall measure the quantity of cereal beverage transferred for packaging in accordance with § 25.41.

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

§ 25.242 Markings.

(a) *Designation.* When bottled or packaged, cereal beverage may be designated "Cereal Beverage," "Malt Beverage," "Near Beer," or other distinctive name. If designated "Near Beer," those words will be printed identically in the same size or style of type, in the same color of ink, and on the same background.

(b) *Barrels and kegs.* A brewer may remove cereal beverage in barrels and kegs if the sides are durably painted at each end with a white stripe not less than 4 inches in width and the heads are painted in a solid color, with conspicuous lettering in a contrasting color reading "Nontaxable under section 5051 I.R.C." The brewer shall also legibly mark the brewer's name or

trade name and the address on the container.

(c) *Bottles.* Bottle labels shall show the name or trade name and address of the brewer, the distinctive name of the beverage, if any, and the legend "Non-taxable under section 5051 I.R.C." Other information which is not inconsistent with the requirements of this section may be shown on bottle labels.

(d) *Cases.* The brewer shall mark cases or shipping containers to show the nature of the product and the name or trade name and address of the brewer.

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

Subpart Q—Removal of Brewer's Yeast and Other Articles

§ 25.251 Authorized removals.

(a) *Brewer's yeast.* A brewer may remove brewer's yeast, in liquid or solid form containing not less than 10 percent solids (as determined by the methods of analysis of the American Society of Brewing Chemists), from the brewery in barrels, tank trucks, in other suitable containers, or by pipeline.

(b) *Containers.* Containers will bear a label giving the name and location of the brewery and including the words "Brewer's Yeast."

(c) *Pipeline.* If brewer's yeast is removed by pipeline, the pipeline will be described in the Brewer's Notice, Form 5130.10. The premises where the brewer's yeast is received is subject to inspection by an appropriate ATF officer during ordinary business hours.

(d) *Other articles.* A brewer may remove malt, malt syrup, wort, and other articles from the brewery.

(e) *Methods of Analysis of the American Society of Brewing Chemists, Seventh Edition (1976).* In reference to paragraph (a) of this section, this incorporation by reference was approved by the Director of the Federal Register on March 23, 1981, and is available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. This publication is available from the American Society of

Brewing Chemists, 40 Pilot Knob Road, St. Paul, Minnesota 55121.

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

§ 25.252 Records.

(a) *Production.* The brewer shall keep records of the production of malt syrup, wort, and other articles which are removed from the brewery. The record shall include the quantities and kinds of materials used, and in the case of wort and concentrated wort, the balling.

(b) *Removals.* The brewer shall keep records of removals of brewer's yeast, malt and other articles from the brewery. The record shall include the quantity and date of removal of each lot, and the name and address of the consignee. These records may consist of invoices or shipping documents.

(c) *Inspection.* All records under this section shall be available for inspection at the brewery by an appropriate ATF officer during normal business hours.

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

Subpart R—Beer Concentrate

§ 25.261 General.

(a) *Authorized processes.* A brewer may, in accordance with this subpart—

- (1) Produce concentrate from beer,
- (2) Reconstitute beer from concentrate,
- (3) Transfer concentrate from one brewery to another brewery of the same ownership, and
- (4) Remove concentrate without payment of tax for exportation, or for transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation in accordance with Part 252 of this chapter.

(b) *Brewery treatment of concentrate.* Beer reconstituted from concentrate in accordance with this subpart shall (except with respect to the additional labeling of reconstituted beer under § 25.263) be treated the same as beer which has not been concentrated and reconstituted.

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

§ 25.262 Restrictions and conditions on processes of concentration and reconstitution.

(a) *Conditions on concentration.* A brewer may not employ any process of concentration which separates alcohol spirits from any fermented substance.

(b) *Conditions on reconstitution*—(1) The process of reconstitution of beer will consist of the addition to the concentrate of carbon dioxide and water only.

(2) A brewer may not employ any process of concentration or reconstitution unless the beer upon reconstitution will, without the addition of any substance other than carbon dioxide and water, possess the taste, aroma, color, and other characteristics of beer which has not been concentrated.

(3) The process of reconstitution shall provide for the addition of sufficient water to restore the concentrate to a volume not less than, and an alcohol content not greater than, that of the beer used to produce the concentrate.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1315, as amended, 1388, as amended (26 U.S.C. 5002, 5401))

§ 25.263 Production of concentrate and reconstitution of beer.

(a) *Operations at brewery.* A brewer may concentrate beer or reconstitute beer only at a brewery.

(b) *Marking of containers.* Containers of concentrate transferred to other breweries of the same ownership, and containers of concentrate removed for export shall be marked, branded and labeled in the same manner as prescribed for containers of beer in subpart J of this part. All containers shall be identified as containers of beer concentrate.

(c) *Mingling with beer.* A brewer may not mingle concentrate with unconcentrated beer. A brewer may mingle reconstituted beer with other beer at the brewery.

(d) *Additional labeling.* Barrels, kegs, and bottles containing beer produced from concentrate will show by label or otherwise the statement "PRODUCED FROM . . . CONCENTRATE," the blank to be filled in with the appropriate class designation of the beer (beer, lager, ale, stout, etc.) from which

the concentrate was made. The statement will be conspicuous and readily legible and, in the case of bottled beer, will appear in direct conjunction with, and as a part of, the class designation. All parts of the class designation will appear in lettering of substantially the same size and kind.

(e) *Records and reports.* Brewers producing concentrate and brewers reconstituting beer from concentrate shall keep the records and reports required by subpart U of this part.

§ 25.264 Transfer between breweries.

(a) *Authorized transfers.* A brewer may remove from the brewery, without payment of tax, concentrate produced from beer for transfer to any other brewery of the same ownership (within the limits of ownership described in § 25.181).

(b) *Record of concentrate transferred.* When transferring concentrate between breweries, the shipping brewer shall prepare for each conveyance a serially numbered invoice or commercial record covering the transfer. The invoice will be clearly marked to indicate that concentrate produced from beer is being transferred. The invoice will contain the following information:

- (1) Name and address of shipping brewer;
- (2) Date of shipment;
- (3) Name and address of receiving brewer;
- (4) The number of containers transferred, the balling, percentage of alcohol by volume, and the total barrels of concentrate; and
- (5) A description of the beer from which the concentrate was produced including the number of barrels, balling, and percentage of alcohol by volume.

(c) *Disposition of invoice.* On shipment of the concentrate, the shipping brewer shall send the original copy of the invoice to the receiving brewer and shall retain a copy for the brewery records. On receipt of the concentrate, the receiving brewer shall note on the invoice any discrepancies in the concentrate received and retain the invoice in the brewery records.

Subpart S—Pilot Brewing Plants**§ 25.271 General.**

(a) *Establishment.* A person may establish and operate a pilot brewing plant off the brewery premises for research, analytical, experimental, or developmental purposes relating to beer or brewery operations. Pilot brewing plants will be established as provided in this subpart.

(b) *Authorized removals.* Beer may be removed from a pilot brewing plant only for analysis or organoleptic examination.

(c) *Transfers between brewery and pilot brewing plant.* Subject to subpart L of this part, beer may be transferred to a pilot brewing plant from a brewery of the same ownership, and beer may be transferred without payment of tax from a pilot brewing plant to a brewery of the same ownership.

(d) *Other regulations applicable.* The provisions of subparts A, B, F, I, K, and of §§ 25.63, 25.64, and 25.21 are applicable to pilot brewing plants established under this subpart. Also, the provisions of §§ 25.72–25.75, 25.77, 25.92 and 25.94–25.105 relating to bonds, and consents of surety, and of §§ 25.131–25.134 are applicable to bonds and consents of surety given, and to changes in the proprietorship, location, and premises of pilot brewing plants established under this subpart.

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

§ 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 ATF 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 ATF officer may at any time be-

fore 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 ATF 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 § 25.271, and that operations will not jeopardize the revenue.

(d) *Withdrawal of authorization.* The appropriate ATF 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 ATF 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))

§ 25.273 Action on application.

If the appropriate ATF 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 ATF officer.

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

§ 25.274 Bond.

(a) *Requirement.* Any person requesting authorization to establish a pilot brewing plant under this subpart shall execute and file a brewer's bond, Form 5130.22. A person may not begin operation of a pilot brewing plant until receiving notice from the appropriate ATF officer of the approval of the bond. Operations may continue only as long as an approved bond is in effect.

(b) *Penal sum.* The penal sum of a bond covering the premises of a pilot brewing plant will be an amount equal to the potential tax liability of the maximum quantity of beer on hand, in transit to the plant, and unaccounted for at any one time, computed by multiplying the quantity of beer in barrels by the rate of tax in 26 U.S.C. 5051. The

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penal sum of the bond (or total penal sum if original and strengthening bonds are filed) may not exceed \$50,000 or be less than \$500.

(c) *Conditions of bonds.* The bond will be conditioned that the operator of the pilot brewing plant shall pay, or cause to be paid, to the United States according to the laws of the United States and the provisions of this part, the taxes, including penalties and interest for which the operator shall become liable, on all beer brewed, produced, or received on the premises.

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

§ 25.275 Special tax.

The special tax imposed on a brewer by 26 U.S.C. 5091 shall be paid in accordance with subpart I of this part.

§ 25.276 Operations and records.

(a) *Commencement of operations.* A person may commence operation of a pilot brewing plant upon receipt of the approved application and bond.

(b) *Reports.* The operator of a pilot brewing plant is not required to file the Brewer's Report of Operations, Form 5130.9.

(c) *Records.* The operator of a pilot brewing plant must maintain records which, in the opinion of the appropriate ATF officer, are appropriate to the type of operation being conducted. These records will include information sufficient to account for the receipt, production, and disposition of all beer received or produced on the premises, and the receipt (and disposition, if removed) of all brewing materials. These records will be available for inspection by an appropriate ATF officer.

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

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-345, 58 FR 40357, July 28, 1993; T.D. ATF-437, 66 FR 5480, Jan. 19, 2001]

§ 25.277 Discontinuance of operations.

When operations of a pilot brewing plant are to be discontinued, the operator shall notify the appropriate ATF officer stating the purpose of the notice and giving the date of discontinuance. When operations have been com-

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pleted and all beer at the premises has been disposed of and accounted for, the appropriate ATF officer will note approval on the notice and return a copy to the operator.

Subpart T—Refund or Adjustment of Tax or Relief From Liability

§ 25.281 General.

(a) *Reasons for refund or adjustment of tax or relief from liability.* The tax paid by a brewer on beer produced in the United States may be refunded, or adjusted on the tax return (without interest) or, if the tax has not been paid, the brewer may be relieved of liability for the tax on:

(1) Beer returned to any brewery of the brewer subject to the conditions outlined in subpart M of this part;

(2) Beer voluntarily destroyed by the brewer subject to the conditions outlined in subpart N of this part;

(3) Beer lost by fire, theft, casualty, or act of God subject to the conditions outlined in § 25.282.

(b) *Refund of beer tax excessively paid.* A brewer may be refunded the tax excessively paid on beer subject to the conditions outlined in § 25.285.

(c) *Rate of tax.* Brewers who have filed the notice required by § 25.167 and who have paid the tax on beer at the reduced rate of tax shall make claims for refund or relief of tax, or adjustments on the tax return, based upon the lower rate of tax. However, a brewer may make adjustments or claims for refund or relief of tax based on the higher rate of tax if the brewer can establish to the satisfaction of the appropriate ATF officer that the tax was paid or determined at the higher rate of tax.

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

§ 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 § 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 ATF 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 ATF 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 ATF 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 ATF 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 ATF 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 ATF 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 ATF 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]

§ 25.283 Claims for refund of tax.

(a) *Beer returned to brewery or voluntarily destroyed at a location other than a brewery.* Claims for refund of tax on beer returned to a brewery under the provisions of § 25.213 or voluntarily destroyed at a location other than a brewery shall include:

(1) The name and address of the brewer filing the claim, the address of the brewery from which the beer was removed, and the address of the brewery to which the beer was returned, as applicable;

(2) The quantity of beer covered by the claim and the rate(s) of tax at which the beer was tax paid or determined;

(3) The amount of tax for which the claim is filed;

(4) The reason for return or voluntary destruction of the beer and the related facts;

(5) Whether the brewer is indemnified by insurance or otherwise in respect of the tax, and if so, the nature of the indemnification;

(6) The claimant's reasons for believing the claim should be allowed;

(7) The date the beer was returned to the brewery, if applicable;

(8) The name of the person from whom the beer was received;

(9) A statement that the tax has been fully paid or determined; and

(10) A reference to the notice (if required) filed under §§ 25.213 or 25.222.

(b) *Beer lost, destroyed, or rendered unmerchantable.* Claims for refund of tax on beer lost, whether by theft or otherwise, or destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God shall contain:

(1) Information required by paragraphs (a)(1), (2), (3), (5), and (6) of this section;

(2) A statement of the circumstances surrounding the loss;

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(3) When applicable, the reason the beer rendered unmerchantable cannot be returned to the market for consumption or sale;

(4) Date of the loss, and if lost in transit, the name of the carrier;

(5) A reference incorporating the notice required by § 25.282; and

(6) When possible, affidavits of persons having knowledge of the loss, unless the affidavits are contained in the notice given under § 25.282.

(c) *Voluntary destruction of taxpaid beer which was never removed from brewery premises.* Claims for refund or credit of tax on beer voluntarily destroyed under the provisions of § 25.225, shall include:

(1) Information required by paragraphs (a)(1), (a)(2), (a)(3), (a)(5), and (a)(9) of this section; and

(2) The information contained in the record required by § 25.225(b).

(d) *Additional evidence.* The appropriate ATF officer may require the submission of additional evidence in support of any claim filed under this section.

(e) *Filing of claim.* Claim for refund of tax shall be filed on Form 2635 (5620.8). Claims shall be filed within 6 months after the date of the return, loss, destruction, or rendering unmerchantable. Claims will not be allowed if filed after the prescribed time or if the claimant was indemnified by insurance or otherwise in respect of the tax.

(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, 1987, as amended by T.D. ATF-251, 52 FR 19314, May 22, 1987; T.D. ATF-268, 53 FR 8629, Mar 16, 1988; T.D. ATF-437, 66 FR 5480, Jan. 19, 2001]

§ 25.284 Adjustment of tax.

(a) *Adjustment of tax in lieu of refund.* In lieu of filing a claim for refund of tax as provided in § 25.283, a brewer may make an adjustment (without interest) to the excise tax return, Form 5000.24, for the amount of tax paid on beer returned to the brewery, voluntarily destroyed, lost, destroyed, or rendered unmerchantable.

(b) *Beer returned to brewery other than from which removed.* An adjustment may be made on the excise tax return for the amount of tax paid on beer re-

turned to the brewery under § 25.213. The adjustment will be made on the tax return filed for the brewery to which the beer was returned. The adjustment may not be made prior to the return of beer to the brewery. If the brewer is required to file a notice under § 25.213, the adjustment may not be made until the appropriate ATF officer authorizes disposition of the beer.

(c) *Beer voluntarily destroyed.* An adjustment may be made on the excise tax return for the amount of tax paid on beer voluntarily destroyed under subpart N of this part. The adjustment will be made on the tax return filed for the brewery from which the beer was removed. The adjustment may not be made prior to the destruction of the beer.

(d) *Beer lost, destroyed or rendered unmerchantable.* An adjustment may be made on the excise tax return for the amount of tax paid on beer lost, destroyed, or rendered unmerchantable under § 25.282. The adjustment will be made on the tax return filed for the brewery from which the beer was removed. A brewer may not make an adjustment prior to notification required under § 25.282(e). When beer appears to have been lost due to theft, the brewer may not make an adjustment to the tax return until establishing to the satisfaction of the appropriate ATF 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) *Condition of adjustments.* (1) All adjustments will be made within 6 months of the return, destruction, loss, or rendering unmerchantable of the beer.

(2) Adjustment of the tax paid will be made without interest.

(3) An adjustment may not be taken if the brewer was indemnified by insurance or otherwise in respect of the tax.

(f) *Records.* When brewers make adjustments on the excise tax return in lieu of filing a claim, they shall keep the following records;

(1) For beer returned to the brewery or voluntarily destroyed, the records

required by §§25.283(a)(1), (2), (4), (5), (7), (8), and (10).

(2) For beer lost, destroyed, or rendered unmerchantable, the records required by §25.283 (a)(1), (2), (5), (b) (2), (3), (4), (5), and (6).

(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; T.D. ATF-437a, 66 FR 17809, Apr. 4, 2001]

§ 25.285 Refund of beer tax excessively paid.

(a) *Eligibility.* A brewer who, under the provisions of §25.152, is eligible to pay the reduced rate of tax on beer prescribed by 26 U.S.C. 5051 (a)(2), but who did not pay tax at the reduced rate by return, Form 5000.24, during the calendar year for which the brewer was eligible, may file a claim for refund of tax excessively paid on beer for that year. The brewer shall file the claim for refund to tax on Form 2635 (5620.8) within the period of limitation prescribed in 26 U.S.C. 6511(a). For rules relating to the period of limitation on filing claims, see §§70.82 and 70.83.

(b) *Calculation of refund.* The brewer shall file the claim based on the quantity of beer eligible to be taxpaid at the lower rate of tax, but which was paid at the higher rate of tax, subject to a maximum of 60,000 barrels of beer per calendar year or the limitation as determined in §25.152(d). The brewer shall exclude from the claim the quantity of beer removed that calendar year on which a credit or refund at the higher rate of tax has been taken.

(c) *Information to be furnished.* Each claim for refund of tax filed under this section shall include the following information:

- (1) Name and address of the brewer.
- (2) Quantity of beer covered by the claim as determined in paragraph (b) of this section.
- (3) Amount of tax paid in excess.
- (4) A statement of the exact number of barrels of beer which the brewer produced during the calendar year.
- (5) A statement that the brewer is not a member of a controlled group of brewers (as defined in §25.152(b)(1) or, if the brewer is a member of a controlled group of brewers, a list of the names

and addresses of all the members of the controlled group of brewers and a statement of the combined number of barrels of beer produced by all members of the controlled group in the calendar year.

(6) If the brewer is a member of a controlled group of brewers, a statement of how the 60,000 barrel limitation for the reduced rate of tax is to be apportioned among the members of the controlled group of brewers.

(Act of August 16, 1954, 68A Stat. 791, as amended (26 U.S.C. 6402); sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended (26 U.S.C. 5051))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1987, as amended by T.D. ATF-251, 52 FR 19314, May 22, 1987; T.D. ATF-437, 66 FR 5480, Jan. 19, 2001]

§ 25.286 Claims for remission of tax on beer lost in transit between breweries.

(a) *Filing of claim.* Claims for remission of tax on beer lost in transit between breweries of the same ownership shall be prepared on Form 2635 (ATF F 5620.8) by the brewer or the brewer's authorized agent and submitted with the Form 5130.9 of the receiving brewery for the reporting period in which the shipment is received. When the loss is by casualty, the claim will be submitted with the Form 5130.9 for the reporting period in which the loss is discovered. When, for valid reason, the required claim cannot be submitted with Form 5130.9, the brewer shall attach a statement to Form 5130.9 stating the reason why the claim cannot be filed at the time and stating when it will be filed. A claim will not be allowed unless filed within 6 months of the date of the loss.

(b) *Information to be shown.* The claim will show the following information:

- (1) The date of the shipment;
- (2) The quantity of beer lost (number and size of packages and their equivalent in barrels), and the rate(s) of tax at which the beer would have been removed for consumption or sale;
- (3) The percent of loss;
- (4) The specific cause of the loss;
- (5) The nature of the loss (leakage, breakage, casualty, etc.);
- (6) Information as to whether the claimant has been indemnified by insurance or otherwise in respect to the

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tax, or has any claim for indemnification; and

(7) For losses due to casualty or accident, statements from the carrier or other persons having personal knowledge of the loss, if available.

(27 U.S.C. 5056, 5414)

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986; 51 FR 9190, Mar. 18, 1986; T.D. ATF-345, 58 FR 40357, July 28, 1993]

Subpart U—Records and Reports

§ 25.291 Records.

(a) *General.* (1) The records to be maintained by brewers include:

(i) All individual transaction forms, records, and summaries specifically required by this part;

(ii) All supplemental, auxiliary, and source data used in the compilation of required forms, records, and summaries, and for preparation of reports, returns, and claims; and

(iii) Copies of notices, reports, returns, and approved applications and other documents relating to operations and transactions.

(2) The records required by this part may consist of the brewer's commercial documents, rather than records prepared expressly to meet the requirements of this part, if those documents contain all the details required by this part, are consistent with the general requirements of clarity and accuracy, and do not result in difficulty in their examination.

(b) *Entries.* (1) Each entry required by this part to be made in daily records will be made not later than the close of the business day next succeeding the day on which the transaction occurs.

(2) When the brewer prepares transaction or business records concurrently with the individual operation or transaction and these records contain all the required information with respect to the operation or transaction, entries in daily records may be made not later than the close of business the third business day succeeding the day on which the operation or transaction occurs.

(c) *Content.* (1) All entries in the daily records required by this subpart will show the date of the operation or transaction.

(2) Daily records will accurately and clearly reflect the details of each operation or transaction and, as applicable, contain all data necessary to enable—

(i) Brewers to prepare summaries, reports, and returns required by this part, and

(ii) Appropriate ATF officers to verify removals of beer and cereal beverages, to verify claims, and to ascertain if there has been compliance with law and regulations.

(d) *Format.* (1) The brewer's copies of prescribed forms which bear all required details will be utilized as daily records.

(2) When a form is not prescribed, the records required by this subpart will be those commercial records used by the brewer in the accounting system and will bear all required details.

(3) The brewer shall maintain daily records required by this part so they clearly and accurately reflect all mandatory information. When the format or arrangement of the daily records is such that the information is not clearly or accurately shown, the appropriate ATF officer may require a format or arrangement which will clearly and accurately show the information.

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

§ 25.292 Daily records of operations.

(a) *Daily records.* A brewer shall maintain daily records of operations which show by quantity the following:

(1) Each kind of material received and used in the production of beer and cereal beverage (including the balling and the quantity of each type of material used in the production of wort or concentrated wort).

(2) Beer and cereal beverage produced (including water added after production is determined).

(3) Beer and cereal beverage transferred for and returned from bottling.

(4) Beer and cereal beverage transferred for and returned from racking.

(5) Beer and cereal beverage bottled.

(6) Beer and cereal beverage racked.

(7) Cereal beverage removed from the brewery.

(8) Beer removed for consumption or sale. For each removal, the record will show the date of removal, the person to whom the beer was shipped or delivered

(not required for sales in quantities of one-half barrel or less for delivery at the brewery), and the quantities of beer removed in kegs and in bottles.

(9) Beer removed without payment of tax. For each removal, the record will show the date of removal, the person to whom the beer was shipped or delivered, and the quantities of beer removed in kegs, bottles, tanks, tank cars, tank trucks, tank ships, barges or deep tanks of vessels.

(10) Packaged beer used for laboratory samples at the brewery.

(11) Beer consumed at the brewery.

(12) Beer returned to the brewery from which removed.

(13) Beer returned to the brewery after removal from another brewery owned by the brewer.

(14) Beer reconditioned, used as material, or destroyed.

(15) Beer received from other breweries or received from pilot brewing plants.

(16) Beer and cereal beverage lost due to breakage, theft, casualty, or other unusual cause.

(17) Brewing materials sold or transferred to pilot brewing plants (including the name and address of the person to whom shipped or delivered) and brewing materials used in the manufacture of wort, wort concentrate, malt syrup, and malt extract for sale or removal.

(18) Record of tests of measuring devices.

(19) Beer purchased from other brewers in the purchasing brewer's barrels and kegs and such beer sold to other brewers.

(b) *Daily summary records.* A brewer shall maintain daily summaries of the following transactions:

(1) Beer and cereal beverage bottled;

(2) Beer and cereal beverage racked;

(3) Beer removed for consumption or sale;

(4) Beer returned to the brewery from which removed;

(5) Beer returned to the brewery after removal from another brewery owned by the brewer; and

(6) Brewing materials, beer and cereal beverage in process, and finished beer and cereal beverage on hand.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1390, as amended, 1395, as amended (26 U.S.C. 5415, 5555))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986; 51 FR 9190, Mar. 18, 1986]

§ 25.293 Record of ballings and alcohol content.

The brewer shall maintain a record of the ballings of the wort produced, and of the ballings and the alcohol content of beer and cereal beverage transferred for bottling and racking, between breweries in bulk conveyances, and to pilot brewing plants. Records showing ballings and alcohol content need not be consolidated and averaged daily unless the brewer so desires.

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

§ 25.294 Inventories.

(a) The brewer shall take a physical inventory of beer and cereal beverage at least once each calendar month. The brewer may take this inventory within 7 days of the close of the calendar month for which made.

(b) The brewer shall make a record of inventories of beer or cereal beverage which will show the following:

(1) Date taken;

(2) Quantity of beer and cereal beverage on hand;

(3) Losses, gains, and shortages; and

(4) Signature, under penalties of perjury of the brewer or person taking this inventory.

(c) The brewer shall retain inventory records and make them available for inspection by an appropriate ATF officer.

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

§ 25.295 Record of unsalable beer.

A brewer having unsalable beer in packages or tanks in the brewery may destroy, recondition, or use the beer as material. The brewer shall report the quantity of the beer destroyed, reconditioned, or used as materials, in daily records and on Form 5130.9. If the

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unsalable beer consists of rejects from the packaging operations, the beer may be destroyed without being included in the packaging production records, and, when so destroyed, will be so reported in the brewer's daily records and on Form 5130.9. When reject bottled beer is to be consumed at the brewery or sold to brewery employees, or is cased or otherwise accumulated pending other disposition, the quantity will be included in the packaging production and be so reported in the brewer's daily records and on Form 5130.9.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389 as amended, 1390, as amended, 1395 as amended (26 U.S.C. 5411, 5415, 5555))

§ 25.296 Record of beer concentrate.

(a) *Daily records.* A brewer who produces concentrate or reconstitutes beer shall maintain daily records which accurately reflect the balling, quantity, and alcohol content of—

- (1) Beer entered into the concentration process;
- (2) Concentrate produced;
- (3) Concentrate transferred to other breweries;
- (4) Concentrate exported;
- (5) Concentrate received;
- (6) Concentrate used in reconstituting beer; and
- (7) Beer reconstituted.

(b) *Summary report of operations.* A brewer who produces concentrate or reconstitutes beer shall report by specific entries on Form 5130.9, the quantity of beer entered into the concentration process, and the quantity of beer reconstituted from concentrate. In addition, the brewer shall prepare on Form 5130.9, a summary accounting of all concentrate operations at the brewery for the reporting period. This summary accounting will show, in barrels of 31 gallons with fractions rounded to 2 decimal places:

- (1) Concentrate on hand beginning of the reporting period;
- (2) Concentrate on hand end of the reporting period;
- (3) Concentrate produced;
- (4) Concentrate received; and
- (5) Specific disposition of concentrate such as "used in reconstitution," "removed for export," "removed to for-

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eign-trade zone," or "transferred to other breweries."

(26 U.S.C. 5415)

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-345, 58 FR 40358, July 28, 1993]

§ 25.297 Brewer's Report of Operations, Form 5130.9.

(a) *Monthly report of operations.* Except as provided in paragraph (b) of this section, each brewer shall prepare and submit a monthly report of brewery operations on Form 5130.9.

(b) *Quarterly report of operations.* (1) For calendar quarters commencing on or after October 1, 1993, a brewer who produces less than 10,000 barrels of beer per calendar year may file the report of brewery operations quarterly. The report will be filed on Form 5130.9. For the purpose of establishing whether a quarterly report may be filed, the brewer will determine annual production of beer by adding up the quantities of beer produced, water/liquids added in cellars, and beer received from other breweries and from pilot brewing plants for all months of the previous calendar year.

(2) To begin the quarterly filing of a Brewer's Report of Operations, a brewer will state such intent in the "Remarks" section when filing the last monthly Form 5130.9 before the calendar quarter during which the brewer will commence quarterly filings. A brewer beginning business may file Form 5130.9 quarterly if the brewer states in the "Remarks" section of its initial monthly Form 5130.9 that the annual production of beer is not likely to exceed 10,000 barrels.

(3) If a brewer determines that the 10,000 barrel quantity for a calendar year will be exceeded in any month, the brewer shall file a Form 5130.9 for that month and for all subsequent months of the calendar year.

(4) The appropriate ATF officer may at any time require a brewer who is filing a Brewer's Report of Operations quarterly to file such report monthly if there is a jeopardy to the revenue.

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

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

[T.D. ATF-345, 58 FR 40358, July 28, 1993, as amended by T.D. ATF-437, 66 FR 5480, Jan. 19, 2001]

§ 25.298 Excise tax return, Form 5000.24.

All entries on the excise tax return, Form 5000.24, will be fully supported by accurate and complete records. The brewer shall file a copy of Form 5000.24 as a part of the records at the brewery.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended, 1390, as amended, 1395, as amended (26 U.S.C. 5061, 5415, 5555))

§ 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 § 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))

§ 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 ATF 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 § 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

ATF 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 §§ 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 ATF officer.

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

§ 25.301 Photographic copies of records.

(a) *General.* Brewers may record, copy, or reproduce records required by this part. Brewers may use any process which accurately reproduces the original record and which forms a durable medium for reproducing and preserving the original record.

(b) *Copies of records treated as original records.* Whenever records are reproduced under this section, the reproduced records will be preserved in conveniently accessible files, and provisions will be made for examining, viewing and using the reproduced record the same as if it were the original record, and it will be treated and considered for all purposes as through it were the original record. All provisions of law and regulations applicable to the original are applicable to the reproduced record. As used in this section, "original record" means the record required by this part to be maintained or preserved by the brewer, even though it may be an executed duplicate or other copy of the document.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1390, as amended, 1395, as amended (26 U.S.C. 5415, 5555))