Common Compliance and Tax Issues Found During Brewery Audits

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Contact Information

- For general questions regarding recordkeeping, reporting, excise tax, or other compliance matters, you may contact the National Revenue Center (NRC) toll free at 1-877-882-3277 or via email at ttbquestions@ttb.treas.gov.
Brewery Audit Compliance Tutorial

Details common tax and compliance issues found at breweries and discusses how to avoid these problems.

- [http://www.ttb.gov/rss/ttb.xml](http://www.ttb.gov/rss/ttb.xml)
Records, Brewery Operations, Taxes and Reporting
Pursuant to 27 CFR Part 25, brewers must complete and maintain daily records and reports that capture information about brewery operations.

The records must support the entries that are made on the Brewer’s Report of Operations or the Brewpub Report of Operations and on the Excise Tax Return.
ATF F 5130.9 BREWER'S REPORT OF OPERATIONS

INVENTORY
PHYSICAL
INVENTORY OF
BEER EACH

CELLAR OPERATIONS

CELLAR OPERATIONS
PART 1 - COLUMN A

Beer Produced
Returned from Racking or Bottling
Transferred for Racking or Bottling
*Tax Determined for use at Tavern
Removed w/o Payment of Tax:
Export
Research/Lab
Consumed on Premises
Destroyed

Received for Kegging
*Racked into Kegs
Losses

*Racked into Kegs

*Return after Removal
*Tax Determined for Use @ Tavern
Removed w/o Payment of Tax:
Export
Research
Consumed on Premises
Destroyed

Losses

BOTTLING OPERATIONS

BULK COLUMN D

Received for Bottling
*Bottled
Losses

BULK COLUMN E

CASE BEER
COLUMN E

*Record Summarized on Daily Basis

Tax Return
Recordkeeping Mistakes

Brewers do not:

- Maintain daily records that support the Brewer’s Report of Operations (BROP) (TTB 5130.9) or the Brewpub Report of Operations (TTB 5130.26).

- Prepare summary records.

- Maintain bills of lading.
Recordkeeping Mistakes

- **Brewers do not:**
  - Accurately report the amount of beer returned to the brewery;
  - Maintain records regarding destruction of beer;
  - Record beer that is removed for lab analysis;
  - Document and explain losses and shortages;
  - Maintain or make the book inventory record available.
Recommendation: Complete each entry required under part 25 on the daily records no later than the close of the next business day after the day of the transaction.

Build recordkeeping duties into the brewery’s daily work schedule.
Retention and Preservation of Records

- Pursuant to 27 CFR 25.300, brewers must prepare and maintain records regarding brewery operations that take place at the brewery.

- These records must be maintained for a period of at least three years and they must be made available for inspection.

- Brewers may store records off the brewery premises, but they must obtain TTB approval to do so.
Record Retention and Preservation Issues

- Records are not retained for the required 3 year retention period.

- Brewers do not retain original commercial records that support removals, such as invoices, bills of lading, receiving and inspection reports, and sales memorandum.

- Brewers store records offsite without TTB approval.
Brewery Operations
Inventory

- Pursuant to 27 CFR 25.294, brewers are required to take a physical inventory of beer and cereal beverage once a month.

- The brewer are required to retain inventory records and make them available for inspection when a TTB officer requests them.
Inventory

- The record of the inventory must include the following:
  - Date taken;
  - Quantity of beer and cereal beverage on hand;
  - Losses, gains, and shortages; and
  - Signature—under penalties of perjury—of the brewer or person taking the inventory.
Inventory Mistakes

- Brewers fail to take inventory each month.
- Brewers fail to maintain inventory records or fail to make inventories available for inspection.
- Inventory sheets are not signed.
- Brewers do not report and document shortages and losses revealed by physical inventory.
- Inventory records do not agree with the BROP.
Inventory Mistakes

- **Recommendation**: Make sure an authorized individual signs the inventory sheets under penalty of perjury.

- Before signing an inventory summary, the signee should make sure the inventory record is accurate and complete.
Losses and Shortages

- It’s important to know the difference between losses and shortages.
  - **Losses** – “known quantities of beer lost due to breakage, casualty, or other unusual cause.”
  - **Shortage** – “an unaccounted for discrepancy (missing quantity) of beer disclosed by physical inventory.”
Losses and Shortages

- No tax liability exists for documented losses.

- Shortages are taxable unless the brewer can establish that the shortage is not associated with the removal of beer for consumption or sale from the brewery.
Issues with Losses and Shortages

• Losses are reported on the shortage line of the BROP;

• Shortages are reported on the losses line of the BROP;

• Losses and shortages are not reported;

• Losses are netted against overages.
Issues with Losses and Shortages

- TTB suggests that you complete reports and gather any supporting information regarding losses and shortages immediately after you identify the discrepancy. Review [TTB Industry Circular 2007-1, Shortages of Inventoried Packaged Beer](https://www.ttb.gov/industry/circulars/2007-1) for more information on the proper recording and documentation of shortages.
Beer Returned to the Brewery

- Pursuant to 27 CFR 25.211, beer which is produced in the United States and on which the brewer has paid or determined the tax, may be returned to any brewery that the brewer owns.

- When the beer is returned to the premises, the brewer must determine the actual quantity of beer received, expressed in barrels.
Beer Returned to the Brewery

- If the beer is returned to the brewery from which originally removed the brewer may take an offset against daily removals.

- If the beer is returned to a brewery that is owned by the brewer but is not the brewery from which the beer was originally removed, the brewer makes an adjustment on the next Federal excise tax return (TTB F 5000.24).
Common Errors with Returned Beer

- Brewers fail to record and maintain the detailed information on returned beer required in Part 25.

- Brewers fail to maintain supporting records of returned beer, such as invoices, credit memoranda, or other commercial papers.

- Records do not differentiate between beer returned to the brewery from which it was removed, and beer returned to a brewery different from the one from which a brewer removed it.
Common Errors with Returned Beer

- The brewer takes an offset for returned beer when it is not permissible.
Notice of Intent to Destroy Beer

- If a brewer desires to destroy taxpaid or tax-determined beer at a location other than at their brewery, the brewer must give written notice (Notice of Intent (NOI)) to TTB.
Common NOI Issues

- Fail to notify TTB of their intent to destroy beer off premises;

- Fail to maintain required information and supporting documents regarding voluntary destructions that are required in order to obtain an adjustment or refund of tax paid.
Tanks

- Every tank, vat, cask, or other container that a brewer uses or intends to use as a receptacle for wort, beer, or concentrate produced from beer, must be “durably marked with a serial number and capacity.”

- Tanks must be “equipped with a suitable measuring device” or, alternatively, provide meters or other suitable portable devices for measuring contents of tanks.
Brewers fail to mark all tanks, vats, casks, or other types of containers that they use or intend to use in the production and storage of beer with a unique serial number and the container’s capacity.
Brewer’s must periodically test and adjust or repair all measuring devices they use to measure beer.

Records of such tests must be available to TTB officers for inspection and these records must include:

- Date of test;
- Result of test; and
- Corrective action taken, if any.
Testing and Measuring Devices Issues

- The brewer does not test and recalibrate all their testing and measuring devices on a periodic basis.

- The brewer does not maintain records to support periodic testing of measuring devices.
Testing and Measuring Devices Issues

- The TTB regulations do not define “periodic” testing.

- TTB suggests that you perform calibration testing at least once each year.
Taxes
Excise Tax Returns

- A brewer is required to file a Federal Excise Tax Return (TTB F 5000.24), regardless of whether a tax liability exists, and submit payment of the full amount of tax required for beer removed for consumption or sale during the period covered by the return.
Excise Tax Returns

- **Semi-Monthly Returns:** Except in the case of a brewer who qualifies for quarterly return periods, all brewers must file semimonthly returns for deferred payment of tax.

- **Quarterly Tax Returns:** A brewer who “reasonably expects” to be liable for less than $50,000 in Federal beer excise taxes for the current calendar year, and who was not liable for more than $50,000 in Federal beer excise taxes in the preceding calendar year, may choose to file quarterly.

- Brewers must file the return and remit payment for each return period, no later than the 14th day after the last day of the return period.
The most common tax return issue that TTB finds is brewers file tax returns after the due date.
Determination of Tax

- Brewers who produce more than 2,000,000 barrels of beer per year must pay the tax rate of $18 for every barrel removed from the brewery for consumption or sale.

- Brewers who produce less than 2,000,000 barrels per year may pay a reduced tax rate of $7 per barrel on the first 60,000 barrels of beer removed for consumption or sale within a calendar year.
Computation of Tax

- When removing beer from the premises for consumption or sale, brewers must compute quantities removed to five decimal places.

- Brewers must total the quantities computed for any one day, round to two decimal places, and calculate and pay the tax on the rounded sum.
Tax Determination Issues

- Fail to record taxable removals.
- Fail to pay tax on removals of beer for promotional events and samples.
- Inappropriately record and pay tax on beer consumed at the taxpayer's retail operations.
Tax Determination Issues

- Using incorrect conversion factors in calculating the barrel equivalent amounts. For example, brewers often use incorrect conversion factors for 12 oz, 22 oz, and 750 ml bottle sizes, and 1/6 barrel kegs.

- 1/6 barrel kegs contain 5.16666 gallons, but brewers often use the conversion factor for a 5 gallon keg (0.16129). (Underpayment)

- Barrel equivalency conversion factors are found at 27 CFR 25.158.
The tax is determined on beer at the time of its removal from the brewery for consumption or sale.
Time and Determination of Tax Payment Issues

- Brewers determine the tax based on production instead of the quantity of beer that is removed from the brewery.

- Brewers transfer beer without payment of tax to other brewers who are not under the same ownership.

- Brewers remove beer from their bonded premises without paying the tax. For example, removing beer to an offsite location for repackaging into a variety pack.
Reporting
Brewer’s Report of Operations

- A brewer who produces 10,000 or more barrels of beer per calendar year, must prepare and submit the BROP monthly. Brewers who produce less than 10,000 barrels of beer per calendar year and do not file a Brewpub Report of Operations may file the BROP quarterly.

- Brewers must submit BROPs by the fifteenth day after the end of the reporting period.
Brewpubs that produce 5,000 barrels of beer per calendar year or less and do not bottle or keg their beer for removal from their breweries may report their operations on the Brewpub Report of Operations (TTB F 5130.26).

The Report must submit the by the fifteenth day after the end of the reporting period.
The most frequent audit issue concerning BROPs is brewers file the BROP late or they do not submit it at all.

*Line 2 – We produced by fermentation* – The brewer’s daily production records do not support the amount entered at line 2.
Brewers Report of Operations Issues

**Line 5– Beer received in bond from other breweries of the same ownership** – Beer under bond from another brewery or a pilot brewery may not be brought on to a brewery premises *unless* all parties are under the same ownership.
Line 8 – Beer returned to this brewery after removal from another brewery of the same ownership – Beer returned to this brewery after removal from another brewery of the same ownership means one corporation owns two or more breweries.
Brewers Report of Operations Issues

- **Line 11 – Physical inventory disclosed an overage** – Brewers improperly use line 11 (physical inventory disclosed overage) and line 31 (physical inventory disclosed shortage) to balance an inventory discrepancy.
Brewers Report of Operations Issues

- **Line 14 – Removed for consumption or sale**

- The quantity reported at line 14 must agree with the excise tax return.

- Remember taxpaid or tax–determined beer returned to the brewery as an offset is reported at line 7.
Brewers Report of Operations Issues

- **Line 15 – Removed tax-determined for use at tavern on brewery premises**  Brewers improperly report “beer consumption on premises” as a “tavern removal”.

- “Tavern” means a portion of brewery premises where the brewer sells beer to consumers.

- Beer sold from a tavern is taxable. Beer consumed on premises without charge, for example in a tasting room, is not taxable.
Brewers Report of Operations Issues

- **Line 16 – Removed without payment of tax for export** Brewers who report beer removed without payment of tax for export often do not enter the correct amount of beer removed for export during the reporting period.
**Brewers Report of Operations Issues**

- **Line 18** – *Removed without payment of tax for use in research, development, or testing.* Brewers must ensure that all such removals from the brewery without payment of tax are accurately reported as exact amounts or TTB may treat the discrepancy as a taxable removal.

- **Line 21** – *Beer consumed on premises.* Brewers may not consider beer “removed tax determined for use at tavern on brewery premises” as beer “consumed on premises” under line 21.
Brewers Report of Operations Issues

- **Line 30 – Recorded losses and line 31 – Physical inventory disclosed shortages**

- Brewers confuse losses (such as losses occurring during cellar operations), which are reported on line 30, with “Physical inventory disclosed as a shortage,” which are reported on line 31.