

Cider and Fruit Beers regulation

**Presented by Bernard J. Kipp
Alcohol Compliance Advisor at Stoel Rives
Northwest Master Brewers Association
October 15, 2016**

Can Breweries Produce Cider or Perry Products?

- Under Federal law and TTB regulations, only a bonded wine premises approved by TTB may commercially produce wine (including cider or perry products)
- A brewer may request TTB approval to alternate the premises from a brewery to a bonded wine premises or *vice versa*
- TTB regulations require that the bonded wine premises be approved, bonded, and operated independently from the brewery and *vice versa*

How does TTB define Cider and Perry?

- The words “cider” and “perry” only appear a handful of times in TTB regulations
- •Yet cider and perry products made and sold as alcohol beverages are extensively regulated
- •Since “cider,” “perry” and “hard cider” are defined in TTB regulations we’ll use “cider and perry products” as umbrella terms

How does TTB regulate Cider and Perry?

- Cider/perry products are potentially regulated under 3 different laws that are enforced by TTB and even more TTB regulatory parts (CFR)

Its an Alcoholic Beverage

- Cider and perry products containing at least 0.5% alcohol by volume are regulated as alcohol beverages under the Internal Revenue Code of 1986 (IRC)

Its Wine

- Cider and perry products are regulated by TTB as **wines** under Chapter 51 of the IRC
- See implementing regulations in 27 CFR part 24 (domestic wine premises) and part 27 (imports)

IRC Requirements for Wine

- Qualification/Registration of Bonded Wine Premises
- Production Requirements
- Formulas (for some)
- Recordkeeping/Reports
- Taxes
- Basic labeling/marketing
- Other requirements

Tax Exempt Cider

- The IRC sets forth a narrow category of cider that is not subject to tax
 - To qualify, this cider must meet all of the conditions of the law and regulations:
 - **Produced solely from the noneffervescent fermentation of apple juice without the use of any preservative method or materials**
 - **Produced at a place other than a bonded wine premises; and**
 - **Sold or offered for sale as cider, and not as wine or a substitute for wine**
- This exemption typically applies to cider produced by farmers and sold at roadside stands

Tax Classification of Cider/Perry Products

- In general, the tax classification of cider and perry products is determined by:
- Alcohol content
- Level and origin of carbon dioxide
- Fruit content (“hard cider” only)

Cider Products Recap

*

- **Cider products containing at least 0.5% alcohol by volume:**
 - Regulated as wine
 - Must be made at qualified bonded wine premises
 - May be eligible for the hard cider tax rate
 - May require formula approval
 - Must be labeled in compliance with: 27 CFR part 24 – Wine (domestic)
 - 27 CFR part 16 – Health Warning Statement
 - 27 CFR part 4 – Wine (if 7% or more alc. by vol.)
 - FDA labeling regulations (if under 7% alc. by vol.)
 - U.S. Customs regulations (if imported)

Perry Products Recap

*

- **Perry products containing at least 0.5% alcohol by volume:**
 - Regulated as wine
 - Must be made at qualified bonded wine premises
 - **Not** eligible for the hard cider tax rate
 - May require formula approval
 - Must be labeled in compliance with: 27 CFR part 24 – Wine (domestic) (or part 27 for imports)
 - 27 CFR part 16 – Health Warning Statement
 - 27 CFR part 4 – Wine (if 7% or more alc. by vol.)
 - FDA labeling regulations (if under 7%)

When is a formula required for a Cider or Perry Product?

*

- TTB regulations require formulas for “special natural wine” and “other than standard wines” 27 CFR 24.80 –24.82
- •What are the most common types of cider or perry products that require a formula? **Wine produced by blending two finished fruit wines produced from different kinds of fruit (e.g., cider blended with blueberry wine)**
- Cider or perry products made with **materials not authorized** for use in natural wine (e.g., added color, flavors, or spices)
- Cider or perry products made with **excess sugar or water** or other cellar treatments not authorized for “natural wine

Before You Apply

*

- You must be able to produce in a reasonable amount of time
- You must have a securable building
- You may have a production area in your residence, with proper segregation.
- If using a surety bond, obtain an execute

Cider Application

- Select “Cider Producer^{*} – Under 7% Alcohol” if you only plan to produce cider with an alcohol content of less than 7%
- Select “Bonded Winery – Full Operations” if you plan to produce cider with an alcohol content of 7% or higher

Alternating Premises

*

- **Some Permissible Alternations for Bonded Wineries:**
 - Brewery
 - Distilled Spirits Plant
 - Taxpaid Wine Bottling House

Alternating Premises

*

- If both operations are new, original applications for each type of operation should be submitted simultaneously
- If the winery/cidery operation already exists, an amended application to add the alternation operation should be submitted

Alternating Premises

- **Required:**
- Lease –must allow for the activity
- Diagram –must show designated areas
- Evidence of existing bond, TTB F 5000.18 –
Change in Bond (Consent of Surety), or new bond
covering the alternation
- Notice of Alternation (Brewery Only)
- Physical segregation between operations

Wording for TTB F 5000.18, Change in Bond (Consent of Surety)

- **For Winery Consent:** This consent extends the terms of the bond identified above to cover the alternation of the winery premises between the winery and our brewery, periodically suspending and resuming operations, by extension and curtailment of premises, in accordance with the procedures described in the original winery registration and the amended brewer's notice. In addition, this consent extends the terms of the bond to cover the conveyance of non-tax paid wine across brewery premises.

Wording for TTB F 5000.18, Change in Bond (Consent of Surety)

- **For Brewery Consent:** This consent extends the terms of the bond identified above to cover the alternation of the brewery premises between the brewery and our winery, periodically suspending and resuming operations, by extension and curtailment of premises, in accordance with the procedures described in the amended brewer's notice and the original winery registration. In addition, this consent extends the terms of the bond to cover the conveyance of non-taxpaid beer across winery premises.

Processing Times??

- Processing times can be found on TTB.gov
- Current processing times for Bonded Wineries is about 141 days as of August 2016

New Rules for Cider

- Many changes are effective **on or after 1/1/2017**

Changes to:

- -Bonds
- -Tax due dates
- -Tax definition for hard cider

Hard Cider (HC)

- Section 335 of the PATH Act modifies the definition of wine that is eligible for the “hard cider” tax rate by:
 - increasing the allowable alcohol content from **less than 7 percent to less than 8.5 percent alcohol** by volume;
 - increasing the allowable carbonation level from **0.392 to 0.64 gram of carbon dioxide** per hundred milliliters of wine; and
 - authorizing the **use of pears, pear juice concentrate** and pear products and flavorings
- These changes apply to hard cider removed after December 31, 2016

In Plain Language:

Effective on removals after 12/31/2016:

- Apple or pear juice or reconstituted apple or pear concentrate may be used in this HC tax class
- Alcohol ceiling lifted-must contain at least .05% and less than 8.5% alcohol by volume
- Effervescence ceiling lifted-apple OR pear ciders may contain up to .64 grams of CO₂ per 100 ml (removed “still” from the definition)

Comparison of Hard Cider Definitions:

Current

Modified

		IRC §5041: Cider Removed After 2016
Fruit Ingredients	Apples Apple Concentrate	Apples Apple Juice Concentrate Pears Pear Juice Concentrate
Alcohol content	at least 0.5% and less than 7% alcohol by volume	at least 0.5% and less than 8.5% alcohol by volume
Carbonation	not more than 0.392 gram of carbon dioxide per hundred milliliters of wine	not more than 0.64 gram of carbon dioxide per hundred milliliters of wine

Possible problems:

- Current “less than 7% wine” registry holders MAY now need a Basic Permit-for products between 7% and less than 8.5%.
- Apple + berry/orange/”other fruit” ciders will NOT be eligible for the higher alcohol or effervescence levels
- This creates a “window of danger” for these 7 to less-than-8.5% abv products.

(Problems and Pitfalls 1)

- If 7% + ABV, must be packaged as a wine-no 22 oz, 12 oz bottles (metric only) (4.72)
- Not a beer, so, no grain/cereal/malt/molasses in cider or on wine premises (24.200)
- Hops ok in some wines, including mead and cider.

(Problems and Pitfalls 2)

- Cideries want effervescence for “mouth feel”
- If not “still” (currently more than .392 grams of co2 per 100 ml) is sparkling or artificially carbonated.
- BIG tax consequences !!! 17 cents to \$3.40

(Problems and Pitfalls 3)

- Still apple wine and hard cider have “tax equality” for small producers-goes to 17 cents per gallon with credit
- **For large producers, and those not eligible for the credit, misclassifying is expensive: Hard Cider: 22.6 cents**

Still table wine: \$ 1.07 per gallon

TTB Ruling 2015-1

- **Ingredients and Processes Used in the Production of Beer**
- **Expanded list of materials and processes **Not Subject to Formula Requirements****

TTB Ruling 2015-1

- *The TTB is exempting from the formula requirements of 27 CFR 25.55 malt beverages made with certain ingredients, such as honey, certain fruits, certain spices, and certain food ingredients, upon a finding that such ingredients are traditionally used in the production of fermented beverages designated as beer, ale, porter, stout, lager, or malt liquor.*
- *TTB also has determined that certain processes, such as aging beer in barrels that were previously used in the production or storage of wine or distilled spirits, do not require the filing of a formula*

TTB Ruling 2015-1

- *Some examples allowed with no formula– Apples, Cherries, Chocolate, Vanilla, Thyme, Sage, Strawberries, Peppers, Pumpkin and Tea*
- *Some examples of process that do not require formula*
- *Aging beer in plain barrels or with plain woodchips, spirals or staves made of any type of wood.*
- *Aging beer in barrels, containing no discernible quantity of wine or distilled spirits, that were previously used in the production or storage of wine or distilled spirits.*

•



Bernie Kipp – 971-202-3219

Elaine Albrich – 503-294- 9394

Chris Hermann – 503-294-9236

**Presented by Bernard J. Kipp
Northwest Master Brewers Association
October 15, 2016**