

When Life Gives you Apples, Alternate Your Brewery Premises and Make Cider

By: James Niekamp on February 6, 2018 on graydon.law

It's no secret the [hard cider movement is gaining traction](#), and it's no secret within the craft beer industry why. The two niche styles of alcohol share similar target demographics and offer something unique in terms of an alternative to the typical macro-brew lager you grew up with.

But what may surprise consumers are the economic driving forces behind the movement – that is, craft breweries all across America essentially already have the equipment in place (fermentation tanks) and the know-how to make hard cider. And with the [Alcohol & Tobacco Tax & Trade Bureau](#) (“TTB”) allowing for industry members to make both beer and cider on the same premises, it's a simple solution to a common problem of under-utilized fermentation tanks during off-seasons.

Adding a Cidery to Your Craft Brewery

So, legally speaking, how do you add a cidery to your craft brewery? First, you will need to apply for a new winery permit (TTB considers cider to be a wine) or brewer's notice with the TTB. This new permit will be at the same location and can be under the same legal entity, but will be treated as an “alternating premises”. Note this is different from an “alternating proprietorship”, which refers to rotating out space and equipment between two different entities (usually both breweries or wineries). Under an alternating premises setup, the same legal entity controls the premises, however it alternates (or “extends and curtails”) the premises. That is, on Monday your facility could be treated as a brewery, but on Tuesday the same space could be treated as a cidery.

[27 CFR § 25.81](#) outlines the legal requirements for this process, and subsection (c) states that the brewery or cidery must either: “(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.” The wording of this regulation is far from eloquent, but essentially it says that you cannot have beer and wine (cider) in the alternating area at the same time. That is, the area must be either used entirely for beer or used entirely for cider, no mixed-use allowed.

Subsection (e) also provides that the premises must have some degree of ongoing separation, but it is not entirely clear on what that entails. As usual, our friend, “the appropriate TTB officer”, has a lot of latitude in what is permitted. The regulation states that the TTB “may require that the portion of brewery or bonded or taxpaid wine premises extended or curtailed under this section be separated, in a manner satisfactory to the appropriate TTB officer, from the remaining portion of the brewery or bonded or taxpaid premises.” However, the general consensus seems to suggest that having separate permanent designated space for finished beer and finished cider storage is the intent.

The Bottom Line

Bottom line - ensure your diagram reflects (i) the area that is permanently devoted to beer operations, (ii) the area that is permanently devoted to cider operations, and (iii) the area that will switch back and forth between the two. TTB’s policy requires that the brewery notify the agency each time it intends to alternate the premises. However, you can request a variance from TTB to allow for internal recordkeeping of the alternation schedule instead. Lastly, do not forget about state licensing requirements, which can vary greatly.

As cider continues to serve as an economical option for breweries and a unique alternative for consumers, I expect 2018 will be a strong year for the drink, which until recently has mostly held a small carve-out in the alcohol industry.