

**For the Control of Volume
for the Purposes of Duty
Payment on Packaged Beer**

CONTENTS

1.	INTRODUCTION	
	1.1 Purpose of Guidelines	2
	1.2 Official Requirements	2
	1.3 Context of Guidelines	2
	1.4 Scope of Guidelines	2
	1.5 Involvement of HMRC in the preparation of these Guidelines	2
	1.6 Importance of Record Keeping	3
2.	DUTY PAYMENT – BASIS OF CHARGE	
	2.1 Calculation of Duty	5
	2.2 Due Diligence	5
3.	GUIDELINES – SMALL PACK	
	3.1 What am I required to do under Weights and Measures Regulations?	6
	3.2 In what circumstances will HMRC permit me to use the contents, as declared on the container, as the volume of beer for duty purposes?	6
	3.3 What are the Three Packer’s Rules?	6
	3.4 Where can I find out how to apply these rules?	6
	3.5 What is the practical result of applying the Three Packer’s Rules?	6
	3.6 What standard of care will HMRC require in order to limit overfilling?	7
	3.7 What standard of control must I exercise over the filling process?	7
	3.8 Does that mean there will be no surcharges for overfilling?	8
	3.9 Are there any special arrangements for cans or bottles containing widgets?	8
	3.10 What happens if I overfill a short run of a one-off product?	8
	3.11 For how long do I need to keep records?	8
4.	GUIDELINES – LARGE PACK	
	4.1 What volume can I use for duty purposes?	9
	4.2 How do I determine my Sampling Protocol?	9
	4.3 Where can I find out how to apply the Code?	9
	4.4 What does the Code say about the contents of kegs and casks?	10
	4.5 Are special monitoring and control procedures required?	10
	4.6 Is it sufficient to apply only the Code and its associated monitoring procedures?	10
	4.7 Is there an upper limit on overfill beyond which extra duty is payable?	10
	4.8 When would any additional duty be due?	11
	4.9 On what volume and HL% do I pay any additional duty?	11
	4.10 What happens if I deliver overfilled containers under duty suspense?	12
	4.11 What happens if I do not use the BBPA Code of Practice on the Contents of Kegs and Casks?	12
	4.12 What about cask conditioned beer?	12
	4.13 For how long do I need to keep records?	12
APPENDIX A	Example application of the Three Packer’s Rules	

1. INTRODUCTION

1.1 Purpose of Guidelines

The aim of these guidelines is to provide consistent advice to brewers and packers about what controls and records are required in order to comply fully with Regulations and HM Revenue & Customs [HMRC] requirements.

1.2 Official Requirements

HMRC Notice 226 sets out the main features of the beer duty system, and specifies official requirements only when they are necessary for revenue protection. In many instances it will be for brewers and packers themselves to determine how to meet their legal obligations. HMRC compliance activity will primarily be based on auditing traders' systems to ensure that they provide adequate revenue protection. In order to co-ordinate its approach to operational matters, HMRC have created an 'Alcohol Unit of Expertise' [UoE], whose major aim is to ensure a consistent approach by all HMRC staff to the assurance of beer duty collected from brewers and packagers. This service is specifically for HMRC staff and is not available to the trade.

1.3 Context of Guidelines

HMRC emphasise that it will be for brewers and packagers themselves to determine how to meet their obligations. In this respect, and to achieve a consistent approach across the industry, the British Beer and Pub Association [BBPA] has produced five sets of guidelines:-

- Guidelines for the Management of Beer Warehousing and Duty Suspension on Registered Premise
- Guidelines for the Control of Volume for the Purposes of Duty Payment for Beer in Large and Small Pack
- Guidelines for the Control of Alcohol Content for the Purposes of Duty Payment
- Guidelines for Obtaining Duty Relief on Unmerchantable Beer
- Guidelines for Exporting and Importing Beer

1.4 Scope of Guidelines

These guidelines refer only to the duty management of beer in brewery registered premises.

Different rules apply to authorised warehouses which are approved to hold and move duty suspended beer – these are covered by HMRC Notice 197.

1.5 Involvement of HMRC in the preparation of these Guidelines

These guidelines, which have been compiled with help from and in consultation with HM Revenue & Customs, complement the relevant HMRC Notice and offer advice: they do not relieve brewers and packagers of their legal obligations. All HMRC Notices are available on their website (www.hmrc.gov.uk)

1.6 Importance of Record Keeping

Notice 206, sets out the law concerning the keeping of records by all Revenue Traders.

Are there other records I need to keep?

If you are...	you...
responsible for payment of excise duty	<p>must maintain a permanent record, in summary form, of all the excise duty payable in each duty accounting period.</p> <p>These periods are prescribed in the publications about the specific kinds of excise duties or duty suspension regimes. This record is called the "excise duty account"</p>
a REDS or a warehousekeeper or are otherwise involved with duty suspended goods	<p>may also need to maintain records relating to the production, transportation, or storage of excise goods and to operations or processes carried out on them.</p> <p>Examples of some of these additional records are:</p> <ul style="list-style-type: none"> • receipt and delivery notes; • stock records; • checks by trading standards officers; • bonds and guarantees; • records of clients' VAT registration numbers and • DANs; • stocktaking records; • records of losses or increases in transit, stock, • operations, processes, packaging or production; • analysis results; • equipment records.
a wholesaler, retailer or distributor of excise goods	<p>should ensure that duty has been paid on excisable goods in your possession, as you may need to satisfy us of this.</p> <p>If HMRC have evidence to show that duty has not been paid you will not be able to rely on your business records to show otherwise. In these circumstances, we may seize your goods.</p>

What must an excise duty account show?

The excise duty account must show:	for:
<ul style="list-style-type: none">• every figure that goes on a return;• the total duty due to us;• the total duty due from us;• the net duty due from, or to, us;• payment details or a payment reference	<ul style="list-style-type: none">• each kind of duty and/or duty suspension regime; and• each duty accounting period.

The account must have an audit trail. This means that each entry in the account must be traceable back to the relevant source document. Similarly it must be possible to trace any source document to the relevant entry in the duty account.

The account should be audited by an independent accountant.

Amendments to standing data on a computer system also require an audit trail. This will involve a log of any amendments to the tables (e.g. product and duty) in the system

Notice 206 also deals with the use of computers for record keeping purposes.

What if I keep my records on computer?

If you keep all or part of your records and accounts on a computer, you must make sure that you can account for duty properly so that HMRC can carry out full inspections when they visit. If your system does not meet their requirements they can ask you to change it.

Examples of computer documentation include:

- user guide;
- system specification;
- file layouts;
- system flowcharts;
- database management documentation;
- data dictionary;
- program specifications;
- schemas and sub-schemas.

If you have any queries on the computer records you hold, please contact the HMRC National Advice Service or your allocated Large Business Office.

2. DUTY PAYMENT - BASIS OF THE CHARGE

2.1 Calculation of Duty

Duty is based on the quantity and alcoholic strength of the beer and the rate of duty applicable when it passes the duty point.

HMRC can require duty to be accounted for on the actual quantity of beer in each container as it passes the duty point. Where packers operate a system of quantity control in which the average quantity of beer in a batch of containers is also the declared (nominal) contents, then the quantity for duty purposes will be accepted as the declared contents on each container - subject to the maintenance of satisfactory controls and records. Such systems are:

- “The Small Pack Code”:

The BBPA Code of Practice and Guidelines on Monitoring and Control Procedures for the Contents of Bottles and Cans - November 1997

- “The Large Pack Code”

The BBPA Code of Practice and Guidelines on Monitoring and Control Procedures for the Contents of Kegs and Casks - November 1997

It is recognised that under an average contents system, any individual pack may have a volume above or below the declared volume but that duty is based on the declared volume.

However, where beer is sold by specified quantity (as opposed to container description) in large pack, sale is deemed to take place under the Weights and Measures (Packaged Goods) Regulations 2006 and the declared quantity is defined as the minimum quantity. In these circumstances, duty will need to be calculated on the actual quantity in each container **not** on the declared quantity. It is therefore very important that your commercial documents (delivery notes / invoices etc) reflect only container descriptions and not units of measure.

2.2 Due Diligence

The concept of due diligence has been increasingly used as a defence in law and is enshrined in the Food Safety Act, 1990. A person charged with an offence under the regulations has a defence if he can demonstrate that “he took all reasonable steps and exercised all due diligence to avoid committing the offence”. Whilst under the Food Safety Act there is no absolute requirement to exercise due diligence, it is very much more difficult to defend successfully against a prosecution if due diligence cannot be demonstrated.

In the context of beer duty payment, HMRC has accepted that a defence of due diligence can equally be applied where a challenge is made as to the correct amount of duty being paid. If the brewer/packer can demonstrate that he has been diligent in the control of packaged volume, as is consistent with the requirements of relevant Regulations/Codes of Practice, and that corrective action has been applied where necessary, then Excise officers should be satisfied that the volumes as declared are correct and that the right amount of duty is being accounted for.

This approach of using the due diligence as a defence against a challenge of excessive overfill was previously applicable to both smallpack and largepack. However, from 1 January 2001 the rules governing largepack were amended such that the measurement of overfill became subject to absolute tolerance limits. The due diligence approach is still applicable to smallpack containers.

3. GUIDELINES - SMALL PACK

3.1 What am I required to do under the Weights and Measures Regulations?

A packer of beer into small containers has a legal duty under the Weights and Measures Act either to fill the contents to a minimum of the declared contents or to fill under the three Packers' Rules such that the average contents of the containers meets or exceeds the declared volume.

3.2 In what circumstances will HMRC permit me to use the contents, as declared on the container, as the volume of beer for duty purposes?

When you observe the three Packer's Rules such that the average contents of a batch of containers meets or exceeds the declared volume, **provided you take care to limit any overfill.**

3.3 What are the Three Packer's Rules?

Rule 1 The actual contents of packages must not be less, on average, than the quantity declared on the packages (the nominal quantity, Q_n).

Rule 2 Not more than 1 in 40 ($2\frac{1}{2}\%$) may be non standard (below a specified tolerance limit T_1).

Rule 3 No package may be inadequate (below an absolute tolerance limit T_2)

3.4 Where can I find out how to apply these rules?

Guidance on the filling of beer in small pack is given in the BBPA "Small Pack Code" which was re-issued in November 1997. The code also contains the following table which provides the T_1 & T_2 constraints for typical product sizes.

Package Nominal Contents (ml)	TNE (ml)	T_1 (ml)	T_2 (ml)
180	8.1	172	164
250	9.0	241	232
275	9.0	266	257
330	9.9	320	310
440	13.2	427	414
500	15.0	485	470
1,000	15.0	985	970
2,000	30.0	1,970	1,940
3,000	45.0	2,955	2,910

For other pack sizes the appropriate Tolerable Negative Error can be found in Part V of The Weights and Measures (Packaged Goods) Regulations 2006 (SI 2006 No. 659).

3.5 What is the practical result of applying the Three Packer's Rules?

Appendix A illustrates the practical application of the Three Packers Rules for a distribution of fills for a container with a nominal volume of 500ml.

For the population of fills reported on Chart 1, if the target fill level was set to the nominal, Rule 1 would not be achieved.

Rule 1

In order to ensure that the average volume of each and every batch meets the nominal volume under Rule 1, the packer's target volume must exceed the nominal volume by a small amount. (Target (a) on Chart 2).

Rule 2

Similarly, to avoid violation of Packer's Rule 2, the target fill volume may need to be moved further from the nominal to ensure that not more than 2½% of the population lie within the lower and upper tolerance limits. (Target (b) on Chart 3)

Rule 3

The filling regime may then need to be adjusted so as to minimise rejects since underweight packages (i.e. those below the lower tolerance limit) are not permissible and must be rejected. (Target (c) on Chart 4)

Whilst the rules allow for some under-filling below the nominal volume, in practical terms, it is necessary to set the target fill volume above the nominal in order to achieve the requirement to meet the average for each batch. The fill volume will vary not only within the population in any particular batch, but also between batches.

The degree of variation of fill volumes from the nominal value will differ from one packaging line to another, depending on the technology used, the size of the container and the nature of the product. In most cases there are in-built constraints on the maximum contents due to the limiting size of the package itself; in addition, the process of in-package pasteurisation will impose an additional constraint on overfilling.

3.6 What standard of care will HMRC require in order to limit overfilling?

HMRC expect packers to exercise diligence both in meeting the requirements of the Weights and Measures Act and in ensuring that the degree of overfilling is consistent only with meeting those requirements and not in excess of such requirements. Providing that the packer can demonstrate from his records control of the filling process with "due diligence", that will be sufficient justification so as to permit him to use the nominal volume as the volume for duty purposes.

It must be borne in mind by both the trade and HMRC that with any filling process, the distribution of results will require targeting above nominal in varying degrees according to the capability of each individual packaging line. The charts contained within Appendix A give an example of a typical filling process that requires a target considerably above nominal in order to meet Trading Standards rules and yet still demonstrates due diligence for duty purposes.

3.7 What standard of control must I exercise over the filling process?

The "Small Pack" Code of Practice describes the basic control systems that are recommended as a minimum requirement for both control and record keeping. Importantly, so far as HMRC is concerned, it is essential that you can also demonstrate that you have regulated the process so as to limit overfill to the practical minimum consistent with meeting your obligations under the Weights and Measures Act.

3.8 Does that mean that there will be no surcharges for overfilling?

Providing you monitor and control the filling process so as to ensure that the quantity put into package does not regularly, excessively exceed the amount declared on the label and can provide the evidence to support your case then your defence of “due diligence” will be accepted by HMRC and no additional duty will be due. However, you should expect to be charged extra duty if you consistently and avoidably overfill containers, whatever the overfill volume.

3.9 Are there any special arrangements for cans or bottles containing widgets?

Yes. If the widget retains beer then this quantity of beer may be disregarded for duty purposes. The average quantity of beer retained must be agreed with HMRC who will then allow you to demonstrate due diligence around nominal plus the average retained widget volume.

3.10 What happens if I overfill a short run of a “one off” product?

If in exceptional circumstances, for example where a small amount of seasonal product is packaged, and separate monitoring would produce an inequitable outcome, HMRC will consider a request to combine the results for a number of products.

3.11 For how long do I need to keep records?

Under the Weights & Measures Act you are required to keep your records for one year. HMRC normally require that you keep your business records for six years, but may consent to a shorter period for some records. When HMRC conduct a beer duty audit they could well be checking to see that you have been controlling fill levels with due diligence over a period of up to three years. You must obtain agreement before destroying any of your business records that are less than six years old.

4. GUIDELINES - LARGE PACK

4.1 What volume can I use for duty purposes?

The Beer Regulations require that duty is payable on the actual volume of beer in each container as it passes the duty point. However, if you fill containers in accordance with the BBPA's Large Pack Code, you may use the "declared contents" for duty purposes.

Additionally, HMRC require you to submit to them a copy of your Sampling Protocol for compliance with the BBPA Large Pack Code.

On the other hand, if you decide to operate outside the Code, you will need to find an alternative method of determining volume for duty purposes which, in all the circumstances, will come up with a realistic result. Your method will need to be agreed with HMRC.

4.2 How do I determine my Sampling Protocol?

There is no prescribed solution as long as it complies with the minimum sampling levels as laid down by Trading Standards and the BBPA Large Pack Code.

It should be noted that choice of Sampling Protocol will affect the likelihood of additional duty being payable. For instance segregating production into specific qualities for the protocol may increase the chance of the tolerance being breached but additional duty would only be payable on the qualities affected in the period. Combining results together would probably reduce the chance of the tolerance being breached, but if it were, the additional duty would be payable on all qualities.

It should also be remembered that there may be a need to review the Sampling Protocol following any changes to the packaging lines, container sizes used and beer qualities packaged.

4.3 Where can I find out how to apply the Code?

The BBPA Large Pack Code (available to members from www.beerandpub.com), provides both the code of practice and advice on monitoring and control procedures. In appendix A of the Code is the following table of declared contents for common container sizes.

Description of Container	Declared Contents (litres)
"Hogshead" or "54"	245.4
"Barrel" or "36"	163.6
"Euro 150" or "33"	150.0
"Euro 100" or "22"	100.0
"Kilderkin" or "18"	81.8
"Euro 50" or "11"	50.0
"10"	45.4
"Firkin" or "9"	40.9
"Euro 30"	30.0
"Euro 25" or "5 ¹ / ₂ "	25.0
"5"	22.7
"Pin" or "4 ¹ / ₂ "	20.4
"Euro 20"	20.0

4.4 What does the Code say about the contents of kegs and casks?

When beer in a large container is sold on the basis that the sale complies with the requirements of this Code, this means that:-

- (a) the beer is sold by container description, the declared contents of which are given in the Code;
- (b) the average contents of the large containers of the batch from which this container is drawn is not less than the declared contents;
- (c) the actual contents of that container is not less than 98% of the declared contents in the case of kegs or 97% of the declared contents in the case of casks; and,
- (d) a proper record is kept of the monitoring and control procedures used by the packer to ensure that the requirements of sub-paragraphs (a) and (b) of this paragraph are met.

4.5 Are special monitoring and control procedures required?

The BBPA Large Pack Code describes procedures which packers of beer may follow to ensure that the contents of their large containers meet their obligations, but it is not suggested that these are the only procedures which would achieve this result.

The scheme falls into two parts:-

- (a) Tests to ensure that current cask and keg contents are satisfactory.
- (b) Ongoing tests to ensure that cask and keg contents do not contravene the Code.

4.6 Is it sufficient to apply only the Code and its associated monitoring and control procedures?

No. HMRC additionally require that you limit the average overfill to specific tolerance levels.

4.7 Is there an upper limit on overfill beyond which extra duty is payable?

Yes, additional duty is due if, at the end of the accounting period, the monitoring you have undertaken in complying with the average system, and detailed in your Sampling Protocol, indicates that there has been an average overfill on a packaging line in excess of the following volume.

Control Method	Intended Contents	Overfill Tolerance
Meter or Weighing	Up to 100 litres	Declared contents plus 0.5 litre
Meter or Weighing	Above 100 litres	Declared contents plus 0.5%
Other Systems	Up to 100 litres	Declared contents plus 1 litre
Other Systems	Exceeding 100 litres but not exceeding 200 litres	Declared contents plus 2 litres
Other Systems	Exceeding 200 litres but not exceeding 400 litres	Declared contents plus 3 litres

Where the above tolerances are breached, additional duty will be due on all excess volume above the nominal contents. The calculation method for the average is to record individual samples truncated to two decimal places, and then determine the monthly average truncated to one decimal place.

4.8 When would any additional duty be due?

HMRC Notice 226 states that ‘duty becomes due at the end of the accounting period in which a container of beer is delivered for home use’ and this additional duty should be added to the appropriate return.

However the practicalities of such a situation would probably mean that it would be easier to account for the additional duty on the containers produced within the period, thus removing the need to trace the “overfilled” containers through the stock records to the point that they are delivered for home use. If you select this approach it should be agreed with either the National Advice Service or your allocated Large Business Office before the relevant return is submitted. Remember that if you use this method, you must also build in a reduction for containers subsequently delivered in duty suspension – see paragraph 4.10 below

4.9 On what volume do I pay any additional duty?

If your records show that the contents of a population of containers, as defined by your Sampling Protocol, are above tolerance in an accounting period the additional duty is due on all of the volume in excess of the nominal quantity.

For example if you packed by meter or weight control and your target population comprised:

1,000 x 50 litre - containers at 3.6% ABV, and
500 x 50 litre - containers at 4.2% ABV

and, at the end of the accounting period, your monitoring record shows that the average contents of each container was 50.7 litres, additional duty will be due on the quantity in excess of the nominal quantity, that is, 0.7 litres multiplied by the number of containers delivered to home-use from the target population during the accounting period.

So assuming no closing stock or deliveries under duty suspense:-

The production volume of 1,500 containers at 0.7 litres per container is an additional 1,050 litres of beer, (1,500 x 0.7).

However as the target population comprises beers at different ABVs the HL% on which the duty is payable is calculated as:

1,000 x 0.7 litres at 3.6%ABV
= (1,000 x 0.7)/100 x 3.6%
= 25.2 HL%

500 x 0.7 litres at 4.2%ABV
= (500 x 0.7)/100 x 4.2%
=14.7 HL%

So a total of 39.9 HL% of Beer is payable at the appropriate duty rate.

4.10 What happens if I deliver overfilled containers under duty suspense?

Where you have delivered these containers under duty suspense to an unconnected third party, HMRC would not normally seek to recover the additional duty.

4.11 What happens if I do not use the BBPA Code of Practice on the Contents of Kegs and Casks?

If you do not use the average system, duty should be charged on the actual quantity of beer in each container or the nominal quantity whichever is the larger.

4.12 What about cask conditioned beer?

Duty need not be charged on undrinkable sediment in cask conditioned beer.

You must regularly, monitor and record sediment levels and agree dutiable volumes with HMRC on at least an annual basis. Remember that if during the year there are any significant process changes, you must advise HMRC immediately and consider changing the dutiable volumes as necessary.

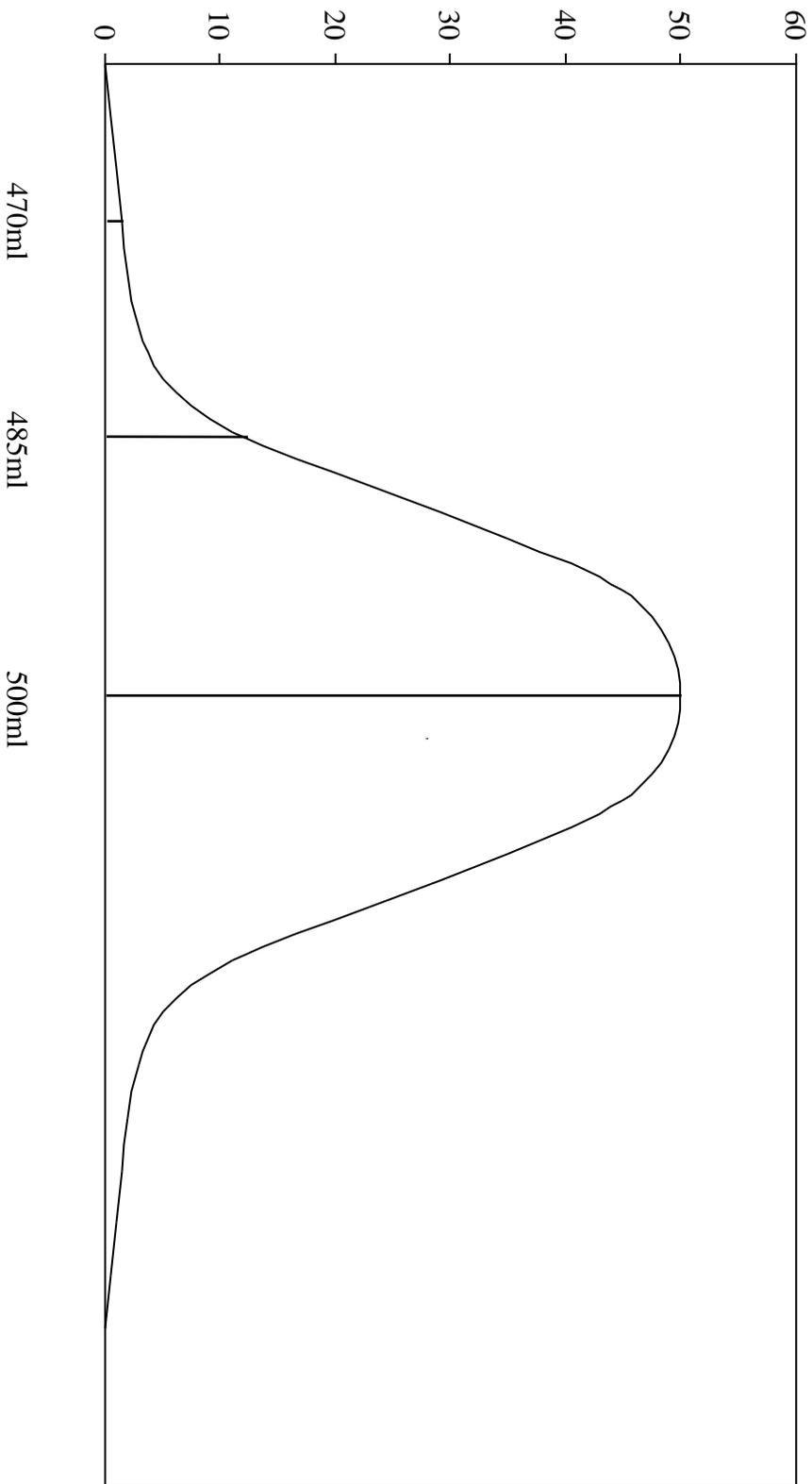
You are required to advise your customer at or before the time of receipt, of the quantity of beer on which duty has been charged. This information can be conveyed via the container label, delivery note or in other commercial documentation, such as price-lists etc.

Remember, you will not be able to reclaim duty on the sediment element of returned unmerchantable beer, as duty will not have been charged on it in the first place.

4.13 For how long do I need to keep records?

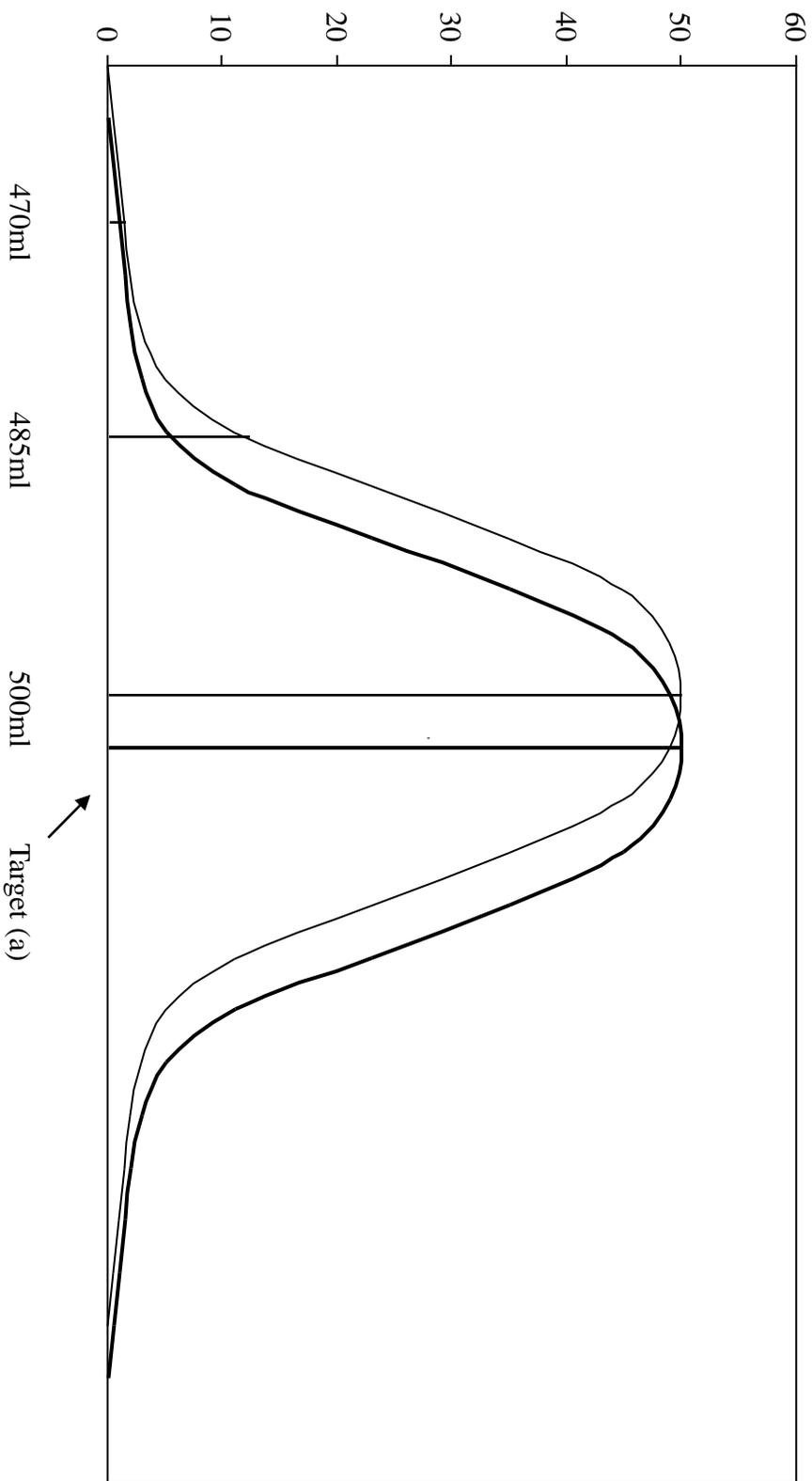
Under the Weights & Measures Act you are required to keep your records for one year. HMRC normally require that you keep your business records for six years, but may consent to a shorter period for some records. When HMRC conduct a beer duty audit they could well be checking to see that you have been controlling fill levels with due diligence over a period of up to three years. You must obtain agreement before destroying any of your business records that are less than six years old.

The Three Packers Rules & Smallpack Fill

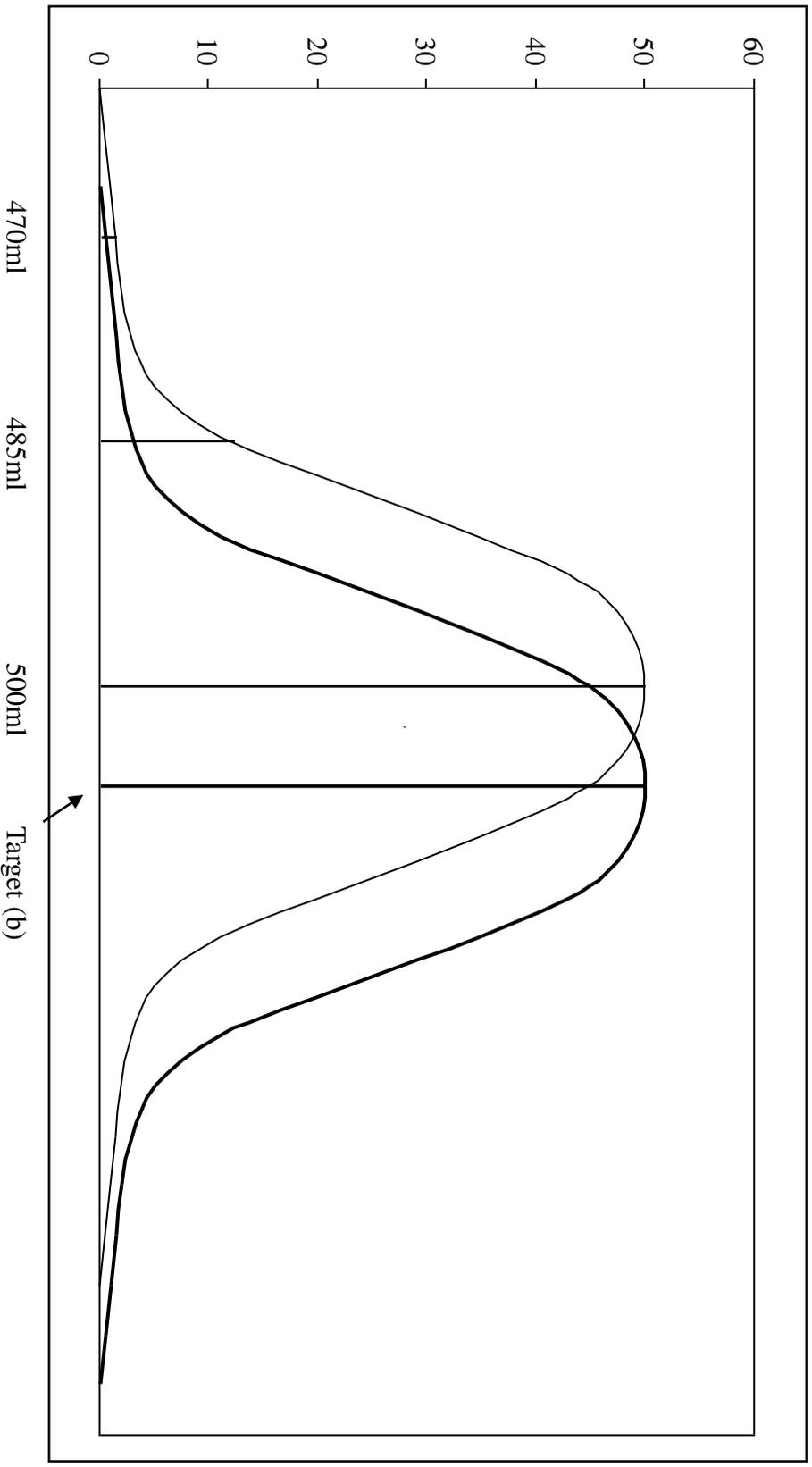


Appendix A Chart 1

The Three Packers Rules & Smallpack Fill (Achieving Rule 1)



The Three Packers Rules & Smallpack Fill (Achieving Rules 1&2)



The Three Packers Rules & Smallpack Fill (Achieving Rules 1, 2 & 3)

