

Pitfalls [to avoid] of Artisan Distillers

Presented by
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Artisan or Not?

- Is there a category of distilled spirits plant for small/artisan distillers?
 - The answer is “No.”
- Small “artisan” distilled spirits plants:
 - Need the same Federal basic permit and plant registration to engage in business as a distilled spirits plant and
 - Must follow the same laws [FAA and IRC] and regulations [e.g., Part 5 and Part 19]
- **So why should you attend this session?**

Why Should You Attend this Session?

- Because there are compliance issues that are unique to the small, “artisan” distiller
- This session will cover pitfalls to avoid for small, “artisan” distillers

Overview

- State law vs. Federal law
- Location and use of premises
- Standards of Identity
- Gauging of Spirits
- Batch vs. Continuous Distillation
- Records and Reports

State Law vs. Federal Law

State vs. Federal Law

- State law and regulations do not supersede Federal law and regulations:
 - You need to comply with all relevant city, county, state and federal requirements.
- Federal Alcohol Administration Act, Webb- Kenyon Act, and 21st Amendment:
 - Violations of State law may result in suspension or revocation of a proprietor's Federal Basic Permit

State vs. Federal Law (Continued)

- There may be significant differences:
 - Licensing requirements
 - Labeling requirements
 - Tax rates and periods for filing
 - Reporting of operations
 - Trade practice restrictions
 - Distribution/direct shipment
 - Operations allowed on premises

Licensing

[State vs. Federal Law]

- Even though your State law may not require special licensing to engage in business as a distilled spirits plant;
 - You must have an approved Federal basic permit and plant registration to engage in business as a distilled spirits plant.

Licensing Issue- Example

[State vs. Federal Law]

340A.315 – MN Farm Winery License:

- Subd. 7 – Distilled spirits permitted —
 - Farm wineries licensed under this section are permitted to manufacture distilled spirits as defined under section 340A.101, subdivision 9, which may exceed 25 percent alcohol by volume, made from Minnesota-produced or -grown grapes, grape juice, other fruit bases, or honey
[Amendment – May 12, 2008]

Labeling Requirements [State vs. Federal Law]

- State Requirements:
 - Some States adopt Federal labeling requirements
 - Some States do not impose any labeling requirements
 - Some States have minimal “brand registration”
- Federal Requirements:
 - You must also comply with all of the labeling requirements imposed by the IRC, FAA Act, and the Alcoholic Beverage Labeling Act [as well as all State requirements]

Legal Resources

[State vs. Federal Law]

TTB provides information on both at:

- Federal Requirements —
 - TTB Web site at www.TTB.gov
 - Distilled Spirits Tab
 - Laws and Regulations
- State Requirements —
 - TTB website at www.TTB.gov
 - Distilled Spirits Tab
 - Quick Links - [Alcohol Beverage Control Boards](#)

Location and Use of Premises

Restrictions as to Location

- Distilled spirits plants shall not be located:
 - In any dwelling house, or in any shed, yard, or enclosure connected with any dwelling house
 - On board any vessel or boat
 - On premises where beer or wine is produced
 - Where liquors of any description are retailed
 - On premises where any other business is conducted (except as provided in §19.133)

Distilled spirits plants shall not be located:

“In any dwelling house, or in any shed, yard, or enclosure connected with any dwelling house.”

“Connected with any Dwelling House”

- Examples:
 - Land back behind the wood lot
 - An outbuilding next to a farm residence
 - An attached or detached garage on residential property
 - A commercial building with attached apartments or condominiums

Distilled spirits plants shall not be located:

“On board any vessel or boat.”

Distilled spirits plants shall not be located:

“Where beer or wine are produced.”

“Where Wine or Beer are Produced”

- DSP must be physically separated from a winery or brewery.
 - Separate building; or same building but different floor;
 - Different rooms on the same floor with separate means of entrance/egress.
- Alternation of equipment may occur only after TTB approval.
 - Wine, beer, or spirits must be removed to permanent premises at the conclusion of alternation of equipment.

Distilled spirits plants shall not be located:

“Where liquors of any kind
[wine, beer or spirits] are retailed. ”

No Retail Sales

- Unlike brewpubs and bonded winery premises, DSPs cannot sell at retail from the bonded premises:
 - DSP premises must be physically separated from retail sales area.
 - That means separated by a wall with a separate means of access.

Distilled spirits plants shall not be located:

“Where any other business is conducted.”

“Where any other Business is Conducted”

- “Bonded premises shall be used exclusively for distilled spirits operations”
 - i.e., Production, Storage, and Processing of spirits
 - No tasting room
 - No banquet facilities
 - Etc.
 - Exception: TTB officer may approve an alternative method or procedure.

Standards of Identity

Standards of Identity

- There are 12 standards of identity for distilled spirits under 27 CFR part 5.
 - Issue: Small DSPs may have difficulty meeting certain standards.
 - We will cover two of them to highlight certain issues:
 - 5.22(a)(1)Vodka
 - 5.22(d) Brandy

27 CFR 5.22

Can I Call it Vodka?

“A rose by any other name...”

Vodka

[Standards of Identity]

Class 1; neutral spirits or alcohol

- “Neutral spirits” or “alcohol” are distilled spirits produced from any material at or above 190° proof, and, if bottled, bottled at not less than 80° proof.
- Vodka is produced from neutral spirits

27 CFR 5.22(a)(1)

Vodka

[Standards of Identity]

- “Vodka” is neutral spirits so distilled, or so treated after distillation, with charcoal or other materials, as to be without distinctive character, aroma, taste, or color:
 - Must be distilled at or above 190° proof and
 - Bottled at not less than 80° proof

27 CFR 5.22(a)(1)

Vodka

[Standards of Identity]

- If it wasn't distilled at or above 190° proof...
 - Then you cannot label it as vodka
 - The label must identify an accurate class/type designation; for example:
 - “Spirits distilled from corn”
 - “Spirits distilled from grape wine”

27 CFR 5.22(a)(1)

Vodka

[Standards of Identity]

Production of Vodka:

- Neutral spirits can be “re-designated” as vodka, or vodka can be “produced after distillation” by treatment with charcoal or other materials...
 - Provided, that the spirits are without distinctive character, aroma, taste, or color

27 CFR 5.22(a)(1)

Vodka

[Standards of Identity]

- Question: What are the conditions under which bottlers may use on labels of vodka the terms “distilled by,” “produced by,” “prepared by,” or “bottled by”?
 - [Answer: Rev. Ruling 69-496]

27 CFR 5.22(a)(1)

Vodka

(Rev. Ruling 69-496)

“Distilled by”

- A bottler who actually redistills neutral spirits in the production of vodka or who is the proprietor of the bonded production facilities where the eligible neutral spirits were distilled may use on labels the term “distilled by”
 - Must be distilled or redistilled at or above 190° proof

27 CFR 5.22(a)(1)

Vodka

(Rev. Ruling 69-496)

“Produced by”

- A bottler who treats neutral spirits on bottling premises or on production premises (1) with a least one ounce of activated carbon for each 100 wine gallons of neutral spirits or (2) by any other approved method of purifying or refining neutral spirits for the purpose of producing vodka may indicate on labels that the vodka was “**produced by**” him

27 CFR 5.22(a)(1)

Vodka

(Rev. Ruling 69-496)

“Bottled by” or “Prepared by”

- Where neutral spirits are given any lesser treatment than that indicated in the previous slides, then the bottler may show on labels only that the vodka was “bottled by” or “prepared by” him
- In such case, the term “produced by” is not authorized

27 CFR 5.22(a)(1)

Additions to Vodka

- Citric acid and sugar are not considered to be flavoring ingredients that would materially affect the taste of vodka or change its basic character, so long as...
 - The sugar does not exceed two-tenths of 1% and
 - Citric acid is only added in a “trace amount” not to exceed 1,000 ppm

Revenue Ruling 56-98

Class 4 - *Brandy*

27 CFR 5.22(d)

“Eau de vie”, Brandy, Grappa...

Standards of Identity

Class 4; Brandy

- Distillate from fermented juice, mash, or wine of fruit, or from the residue thereof
- Distilled at less than 190° proof and bottled at not less than 80° proof
- Possesses taste, aroma, and characteristics generally attributed to Brandy
- Different types:
 - Fruit Brandy
 - Grappa
 - Pomace Brandy
 - Neutral Brandy
 - Immature Brandy

27 CFR 5.22(d)

Brandy

“Fruit Brandy” must be stored in oak for a minimum of two years to be labeled as such

Fruit Brandy

[Standards of Identity]

- If stored for less than 2 years, then statement of class and type shall be immediately preceded, in the same size and kind of type, by the word “immature”
 - Example: “Immature Grape Brandy”
 - Note: Storage for 2 years is NOT required for neutral brandy, pomace brandy, marc brandy, or grappa brandy.

Final Thoughts on Standards of Identity

- 27 CFR 5.22 lists all of the standards
- Become familiar with the parameters and limitations of each standard regarding:
 - Distillation proof
 - Bottling proof
 - Mixing or blending by type
 - Storage in oak containers
 - New, used, charred or uncharred
 - Time in storage
 - Adding coloring, flavoring, or blending materials

Gauging of Spirits

Gauging Manual

- The term “gauging” means the determination of the proof and the quantity of distilled spirits.
 - Subpart A – Scope
 - Subpart B – Definitions
 - Subpart C – Gauging Instruments
 - Subpart D – Gauging Procedures
 - Subpart E – Prescribed Tables
 - Subpart F – Optional Gauging Procedures

Prescribed Tables

[Gauging Manual]

- **Link to Gauging Manual Tables**
 - TTB website at www.TTB.gov
 - Under the Distilled Spirits Tab
- http://www.ttb.gov/foia/gauging_manual_toc.shtml

Gauging Instruments

- Tanks w/ sight glass or on scales, etc.
- Hydrometers and Thermometers:
 - Should be “precision” instruments
 - Should include manufacturer’s charts for correction over a range of different proof/temperature readings
 - Example charts are included with handouts

Gauging Instruments (Continued)

- Precision Instrument?
 - Probably not
- Correct procedure?
 - Definitely not



Precision Hydrometers (§ 30.22)

Precision	Range	Subdivision
F	0 – 20	0.2 ⁰
G	20 – 40	0.2 ⁰
H	40 – 60	0.2 ⁰
I	60 – 80	0.2 ⁰
K	75 – 95	0.2 ⁰
L	90 – 110	0.2 ⁰
M	105 – 125	0.2 ⁰
N	125 – 145	0.2 ⁰
P	145 – 165	0.2 ⁰
Q	165 – 185	0.2 ⁰
R	185 – 206	0.2 ⁰

Precision Thermometers (§ 30.22)

Precision	Range	Subdivision
Pencil type	$10^{\circ} - 100^{\circ}$	1°
V-back	$10^{\circ} - 100^{\circ}$	1°
Glass shell (earlier model)	$40^{\circ} - 100^{\circ}$	$\frac{1}{2}^{\circ}$
Glass shell 4 (later model)	$0^{\circ} - 100^{\circ}$	$\frac{1}{4}^{\circ}$

Gauging Procedures

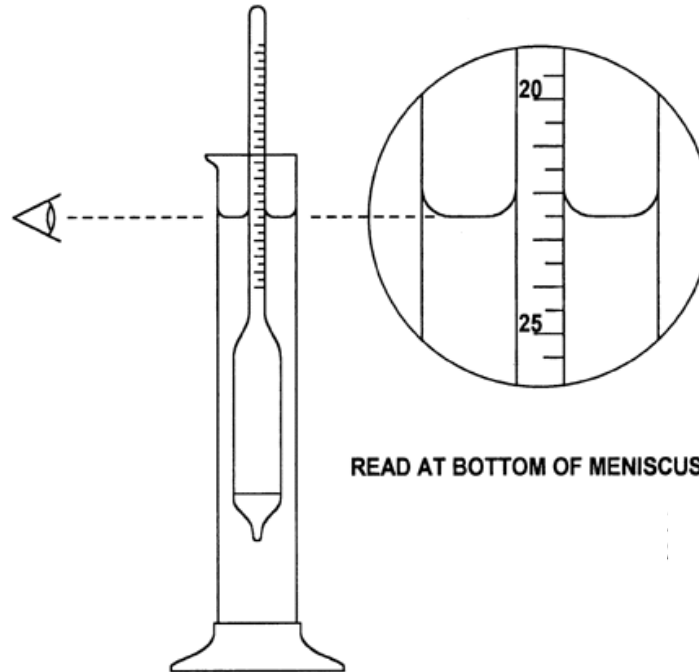
Determination of proof.

- Shall be determined to nearest tenth of a degree.
- If solids content not more than 600 milligrams:
 - If 400 milligrams or less, then proof can be determined directly;
 - If over 400 milligrams, then see 27 CFR 30.32.
- Solids content greater than 600 milligrams
 - Requires distillation of test sample

27 CFR 30.31

Gauging Procedures (Continued)

- Hydrometer Readings — Do not read the top of the meniscus.



Gauging Procedures (Continued)

Determination of Proof and Volume

- Apparent proof and temperature readings should be taken together and as quickly as possible:
 - Readings will change as the sample heats up
- Readings should be recorded on a Bulk Gauge Worksheet.
 - This will allow for accuracy adjustments, temperature corrections and interpolation.

Bulk Gauge Worksheet

[Gauging Procedures]

Determination of Proof and Volume

- Hydrometer and thermometer readings
 - Adjusted based on correction charts
 - Corrected readings may be same, higher, or lower than actual measurement taken, over a range of temperatures.
- BGW also allows you to interpolate between two whole degrees proof / temperature

True Percent Proof

[Gauging Procedures]

- Table 1 of the Gauging Manual must be used to determine the true percent of proof spirit for any indication of the hydrometer at temperatures between zero and 100 degrees Fahrenheit

Table 1 – True Percent Proof

TABLE No. 1

TRUE PERCENT PROOF

Hydrometer reading	Temperature °F.									
	61°	62°	63°	64°	65°	66°	67°	68°	69°	70°
101	100.6	100.2	99.8	99.3	98.9	98.5	98.1	97.7	97.3	96.8
102	101.6	101.2	100.8	100.3	99.9	99.5	99.1	98.7	98.3	97.8
103	102.6	102.2	101.8	101.3	100.9	100.5	100.1	99.7	99.3	98.9
104	103.6	103.2	102.8	102.3	101.9	101.5	101.1	100.7	100.3	99.9
105	104.6	104.2	103.8	103.4	102.9	102.5	102.1	101.7	101.3	100.9
106	105.6	105.2	104.8	104.4	104.0	103.5	103.1	102.7	102.3	101.9
107	106.6	106.2	105.8	105.4	105.0	104.6	104.2	103.7	103.3	102.9
108	107.6	107.2	106.8	106.4	106.0	105.6	105.2	104.8	104.3	103.9
109	108.6	108.2	107.8	107.4	107.0	106.6	106.2	105.8	105.4	104.9
110	109.6	109.2	108.8	108.4	108.0	107.6	107.2	106.8	106.4	106.0
111	110.6	110.2	109.8	109.4	109.0	108.6	108.2	107.8	107.4	107.0
112	111.6	111.2	110.8	110.4	110.0	109.6	109.2	108.8	108.4	108.0
113	112.6	112.2	111.8	111.4	111.0	110.6	110.2	109.8	109.4	109.0
114	113.6	113.2	112.8	112.4	112.0	111.6	111.2	110.8	110.4	110.0
115	114.6	114.2	113.8	113.4	113.0	112.6	112.2	111.8	111.4	111.0

Temp Corrected Volume

[Gauging Procedures]

Determination of Quantity

- Use Table 7 of the Gauging Manual for correction of volume of spirituous liquors to 60 degrees Fahrenheit

Table 7 – Correction of Volume to 60° F

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TABLE No. 7

TABLE FOR CORRECTION OF VOLUME TO 60° F.

Per- cent Proof	Temperature °F.									
	60°	62°	64°	66°	68°	70°	72°	74°	76°	78°
0	1.000	1.000	1.000	0.999	0.999	0.999	0.999	0.998	0.998	0.998
5	1.000	1.000	1.000	.999	.999	.999	.999	.998	.998	.998
10	1.000	1.000	1.000	.999	.999	.999	.999	.998	.998	.998
15	1.000	1.000	1.000	.999	.999	.999	.999	.998	.998	.998
20	1.000	1.000	1.000	.999	.999	.999	.998	.998	.998	.997
25	1.000	1.000	1.000	.999	.999	.999	.998	.998	.998	.997
30	1.000	1.000	.999	.999	.999	.998	.998	.998	.997	.997
35	1.000	1.000	.999	.999	.999	.998	.998	.998	.997	.997
40	1.000	1.000	.999	.999	.998	.998	.998	.997	.997	.996
45	1.000	1.000	.999	.999	.998	.998	.997	.997	.996	.996
50	1.000	1.000	.999	.999	.998	.998	.997	.997	.996	.995

Volume by Weight

[Gauging Procedures]

Determination of Quantity

- Use Table 4, showing the fractional part of a gallon per pound at each percent and each tenth percent of proof of spirituous liquor.

Table 4 – Gallons per Pound by ° Proof

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TABLE NO. 4

GALLONS PER POUND—Continued

Proof	Wine gal- lons per pound	Proof gal- lons per pound	Proof	Wine gal- lons per pound	Proof gal- lons per pound
141. 0	0. 13512	0. 19052	146. 0	0. 13609	0. 19869
141. 1	. 13514	. 19068	146. 1	. 13611	. 19886
141. 2	. 13516	. 19085	146. 2	. 13613	. 19902
141. 3	. 13518	. 19101	146. 3	. 13615	. 19919
141. 4	. 13520	. 19117	146. 4	. 13617	. 19935
141. 5	. 13522	. 19134	146. 5	. 13619	. 19952
141. 6	. 13523	. 19149	146. 6	. 13621	. 19968
141. 7	. 13525	. 19165	146. 7	. 13623	. 19985
141. 8	. 13527	. 19181	146. 8	. 13625	. 20002
141. 9	. 13529	. 19198	146. 9	. 13627	. 20018

Subpart E—Prescribed Tables

http://www.ttb.gov/foia/gauging_manual_toc.shtml

- Table 1 True % of proof for spirits between 0°-100 F°
- Table 2 Wine gallons and proof gallons by weight
- Table 3 Proof gallons from weight and proof of spirits
- Table 4 Fractional part of a gal/lb for each % proof
- Table 5 Weight per wine gallon (at 60° F) and PG
- Table 6 Volumes of alcohol and water and specific gravity of spirituous liquor
- Table 7 Correction of volume of spirits to 60° F

Gauging Procedures (Continued)

Why make such a big deal about gauging?

- Tax Ramifications:
 - Improper gauging may result in unexplained shortages
 - \$13.50 per Proof Gallon
- Standards of Identity Concerns
 - The identity of spirits produced must be clearly established [e.g., proof limits for vodka]
- Bottle Labeling Considerations

Gauging Procedures (Continued)

Why make such a big deal about gauging?

- 27 CFR 19.386(b) – Variations in alcohol content and fill:
 - The proprietor shall rebottle, recondition, or re-label spirits if the bottle contents do not agree with the respective data on the label or bottle as to:
 - Alcohol Content (Proof)
 - Quantity (Fill)

27 CFR 5.37(b); 5.38

Tolerance – Proof

- 27 CFR 19.386(b)(2) – Alcohol content, subject to a normal drop in alcohol content which may occur during bottling operations not to exceed:
 - 0.25% alcohol by volume for spirits containing solids in excess of 600 mg per 100 ml or
 - 0.25% alcohol by volume for any spirits product bottled in 50 or 100 ml size bottles or
 - 0.15% alcohol by volume for all other spirits and bottle sizes

Proof – Example

- A product with a solids content of less than 600 mg per 100 ml, labeled as containing 40 percent alcohol by volume and bottled in a 750 ml bottle, would be acceptable if the test for alcohol content found that it contained 39.85 percent alcohol by volume:
 - 80 proof can be 79.7 to 80 proof
 - 80.1 proof is taxable at a higher rate

Batch Distillation Issues

General Requirements

[Batch Distillation]

- Spirits must pass through a continuous system from the first still until production of the spirits is complete.
- Distiller may, in the course of production, convey the product through as many distilling operations as desired, provided operations are continuous.
- Distilling operations are continuous when the spirits are conveyed through the various steps of production as expeditiously as plant operation will permit.

27 CFR 19.316

General Requirements

[Batch Distillation]

- Collection of unfinished spirits for purpose of redistillation is not deemed to be a break in the continuity of the distilling procedure.
- However, unfinished spirits shall be gauged and recorded before any mingling with other materials or before any further operations [e.g. Storage]
- Spirits may be held, prior to the production gauge, only for so long as is reasonably necessary to complete production procedure.

Batch Distillation

(Continued)

When must I make a production gauge?

- Heads
- Heart
- Tails

Production Gauge

[Batch Distillation]

Unfinished spirits (to be redistilled):

- Must be gauged and recorded at end of business day.
- Should be entered for deposit into Storage Account unless immediately processed.
- Storage records must be kept pursuant to 27 CFR 19.740 – 19.743.

Production Gauge

[Batch Distillation]

- Production Account
 - Production Gauge
 - § 19.736 Daily Production Records
 - § 19.768 [Production] Gauge Record
- Storage Account
 - Receiving gauge
 - Spirits deposited to Storage [and mingled]
 - § 19.742 Tank record of wine or spirits of less than 190 degrees of proof

Heads / Heart / Tails

[Batch Distillation]

- Low boiling point compounds that come out of the still first contain acetone, methanol, various esters and aldehydes, and other volatiles:
 - Are considered poisonous and are generally discarded
- How do you determine when to cut?
 - Temperature?
 - Smell?

Chemical By-Products

[Batch Distillation]

- The alcohols begin to vaporize around specific temperatures; if by themselves they would be:
 - Acetone 56.5°C (134°F)
 - Methanol (wood alcohol) 64°C (147°F)
 - Ethyl acetate 77.1°C (171°F)
 - **Ethanol 78°C (172°F)**
 - 2-Propanol (rubbing alcohol) 82°C (180°F)
 - 1-Propanol 97°C (207°F)
 - Water 100°C (212°F)
 - Butanol 116°C (241°F)
 - Amyl alcohol 137.8°C (280°F)
 - Furfural 161°C (322°F)

Chemical By-Products

[Batch Distillation]

Spirits Content:

- All chemicals produced, including chemical by-products of the spirits production system, shall be substantially free of spirits before being removed from bonded premises.
 - Spirits content shall not exceed 10% by volume.
 - Proprietors shall test chemicals for spirits content.
 - Records of the tests will be maintained according to §19.736.
- Note: Destruction of chemical by-products should be in compliance with Federal and State environmental laws regulations.

27 CFR 19.326

Chemical By-Products

(Continued)

Quality Control Considerations

- Are finished spirits tested to determine presence of any unwanted compounds?
 - In-house analysis or are samples submitted to an outside laboratory?
 - Are any records kept of the results?

Records and Reports

Small Distillers and their Records

- Proprietors of small DSPs “wear many hats”
- They often do not have accounting staff
- Records are often hand-written
- Records are often done at end of a busy day
- Recordkeeping is the least enjoyable task
- Intention behind record keeping is different

Records

- What the DSP is interested in:
 - Profit and Loss Statement
 - Quality Control Considerations
 - Selling their Products
- What TTB is interested in:
 - Verification of Tax Returns and Reports
 - Verification of labels on bottled distilled spirits

Records (Continued)

- What TTB often encounters:
 - All records kept in a spiral notebook
 - Not all mandatory info
 - Do not support reports, returns, and label claims.
- What the regulations require:
 - Separate records by DSP account (i.e., Production, Storage, Processing)
 - Mandatory information
 - Audit trail from source records to tax returns.

Audit Trail

[Records]

- Provide TTB the ability to verify and trace the quantity and movement of materials, spirits, denatured spirits, wines, or alcoholic flavoring materials involved in each transaction or operation.
 - Daily records
 - Summary records/reports
 - DSP Monthly Reports
 - Excise Tax Returns
 - Labels on bottled spirits

Distilled Spirits Accounts

Production:	Production Records (27 CFR 19.736)
Storage:	Storage Records (27 CFR 19.740 – 19.743)
Processing:	Processing Records (27 CFR 19.746 – 19.753)

Records (Continued)

Where to begin?	Some suggestions...
Step 1	Throw away your spiral notebook. Actually, keep it, but use it for a different purpose
Step 2	Go to records section of 27 CFR part 19
Step 3	For each operation that you conduct, create a dedicated record that contains all of the mandatory information listed in the corresponding regulation
Step 4	Give each a heading and Part 19 reference

Records (Continued)

- Subpart W—Records and Reports:
 - §19.736 Daily production records
 - §19.740 - §19.743 Storage records/Tank records
 - § 19.748 Dump/batch records
 - § 19.749 Bottling and packaging record
 - § 19.750 Records of alcohol content and fill tests
 - § 19.761 Record of tax determination
 - § 19.762 Daily summary record of tax determinations
 - § 19.768 Gauge record

Monthly Reports / Excise Tax Return

- Records should flow into monthly reports and tax returns:
 - Production Report TTB F 5110.40
 - Storage Report TTB F 5110.11
 - Processing Report TTB F 5110.28
 - Federal Excise Tax Return TTB F 5000.24

Final Words

- State vs. Federal Law
- Location and Use of Premises
- Standards of Identity
- Gauging of Spirits
- Batch vs. Continuous Distillation
- Records and Reports

Contact Information

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Contact Information

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Washington, DC 20220

Fax: (202) 435-7643

E-mail: alfd@ttb.treas.gov

Contact Information

- National Revenue Center:

Phone: 1-877-882-3277 (Toll-Free)

Mail: 550 Main Street, Suite 8002
Cincinnati, Ohio 45202

Contact Information

- www.tt.gov
 - Click the “Contact Us” in the maroon banner at the top of the page.
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 - **Tax Audit Division :**
 - Use the [TTB District Field Offices map](#) to find the address of the TTB field office nearest you.
 - **Trade Investigations:**
 - Use the [TID Contact Information](#) page to find the phone numbers, addresses, and fax numbers of the Trade Investigations field offices.