TTB Wine Boot Camp Webinar Series

PERMITS

TTB Disclaimer

Notice:

- This information is being presented to help the public to understand and comply with the laws and regulations that the Alcohol and Tobacco Tax and Trade Bureau administers
- It is not intended to establish any new, or change any existing, definitions, interpretations, standards, or procedures regarding those laws and regulations
- In addition, this presentation may be made obsolete by changes in laws and regulations - please consult the regulations for the most current regulatory requirements
- Sample documents (such as records, returns, and labels) are for illustrative purposes only and contain fictitious data

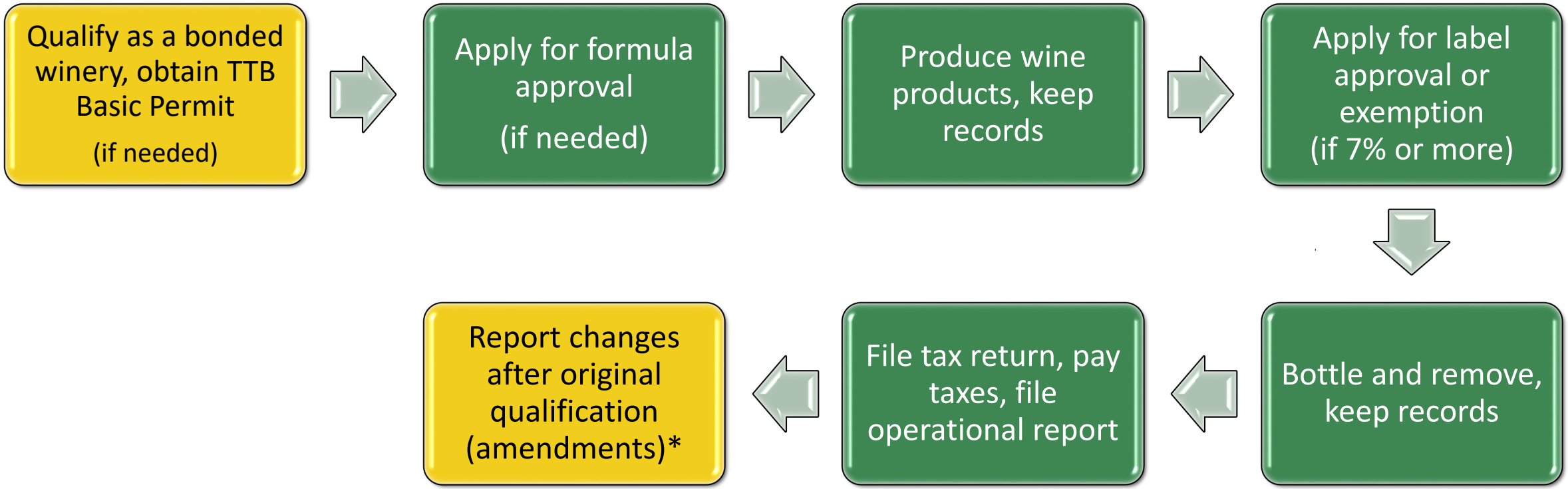
Agenda

In this overview, we will go over the following topics associated with permits:

- Types of wine permits
- Application requirements
- Application process
- Alternating premises and proprietors; and custom crush arrangements

Permit Basics

Typical TTB Touchpoints for Wine Industry Members



*Reporting changes may be necessary at any time after qualification

Federal Approval Requirement

All companies must file an application with TTB and receive permission before starting any of the following operations:

- Producing wine for commercial purposes (not for personal or family use),
- Storing, Blending or bottling untaxpaid wine, *or*
- Wholesaling or importing wine products.

Types of Wine Permits

Bonded Wine Premises: An approved Bonded Wine Premises is necessary for commercial production, blending, cellar treatment, storage, bottling, and/or packaging of wine.

There are two types of Bonded Wine Premises:

- **Bonded Winery (BWN):** Permit authorizes a facility to produce wine.
- **Bonded Wine Cellar (BWC):** Permit authorizes blending, cellar treatment, storage, bottling, and/or packaging of wine. (Note: A bonded wine cellar will also need to obtain a BWN if it will blend untaxpaid wine.)

Types of Wine Permits (cont'd)

Taxpaid Wine Bottling House (TPWBH): Permit authorizes a Taxpaid Wine Bottling House to bottle or package wine on which excise tax has already been paid.

Wholesaler's Basic Permit (W): Permit authorizes holder to engage in the business of purchasing wine to sell to wholesalers or retailers.

Importer's Basic Permit (I): Permit authorizes holder to engage in the business of importing wine into the U.S.

Regulatory Application Requirements

Internal Revenue Code (IRC)

- Wine producers* must register their winery premises and receive a **registry number.**
- Protects federal tax revenue by ensuring the security of the premises.
- TTB F 5120.25 – Application to Establish and Operate Wine Premises

*Applies to all wine producers, regardless of alcohol content.

Federal Alcohol Administration Act (FAA Act)

- Proprietors must apply for a basic permit to engage in the business of producing, importing, or wholesaling wine and receive a **permit number**.
- Ensures that only qualified businesses enter the industry.
- TTB F 5000.24 – Application for Basic Permit under the Federal Alcohol Administration Act

*Does not apply if only producing wine less than 7% alc. by vol.

Documents to Gather for Application

Organizational Information: Articles of incorporation or organization; LLC documents; or Operating or partnership agreements.

Deed and/or lease agreement: Must be in the Business or DBA name, signed by both tenant and landlord and show the full premises address.

Signing Authority: Organizational Documents; TTB F 5000.8, Power of Attorney; or TTB F 5100.1, Signing Authority for Corp. Officials.

Diagram of the Premises: The narrative of the premises should, at a minimum, identify bonded area, tax-paid area (e.g., tasting room), tax-paid storage area (if applicable), and entrances/exits.

Documents You May Need for Application

Wine Bond: TTB F 5120.36, Wine Bond. A winery must provide a bond, unless exempt from requirements, if all of the EIN's TTB operations will be liable for more than $50,000 in federal excise tax during the calendar year.

Power of Attorney: TTB Form 5000.8. If someone other than an employee, such as a consultant, will act on behalf of the business entity.

Change in Bond (Consent of Surety): TTB Form 5000.18 if conducting additional operations not covered under your bond, e.g., alternation of premises or adding a non-contiguous location.

Variance Request: Letterhead notice if requesting permission to use an alternate method or procedure in lieu of one outlined in the regulations.

Alternating Proprietorship: If two or more proprietors with different EINs will be operating at the same premises and sharing space and/or equipment, both host and tenant must provide an alternating proprietorship agreement/contract.

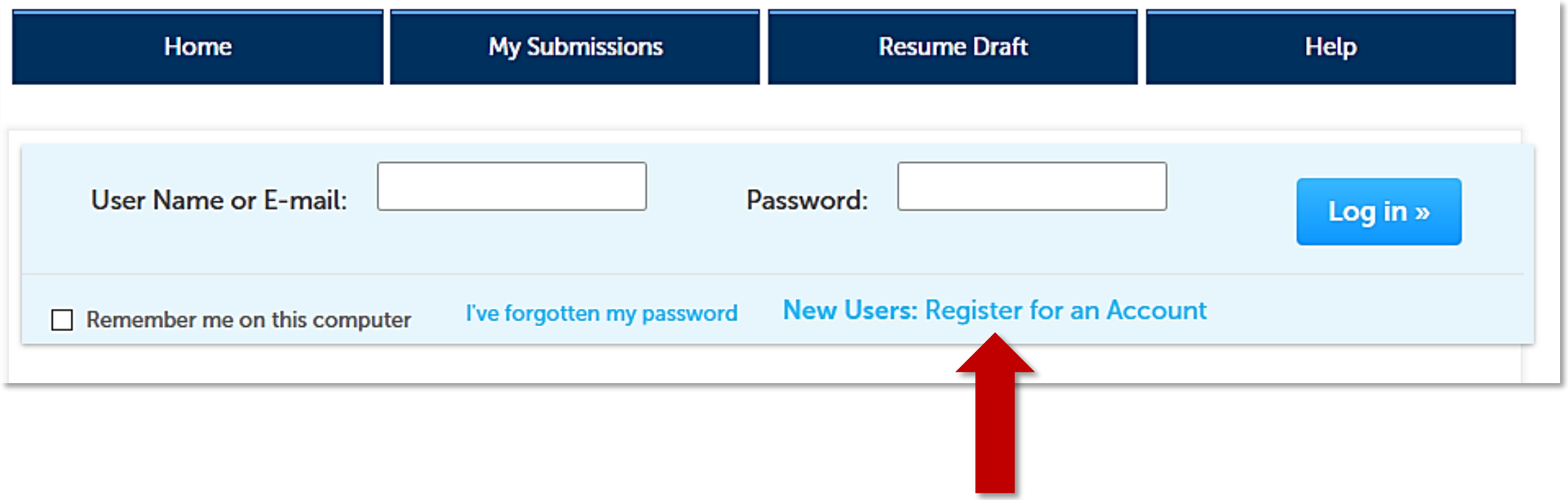
Source of funds documentation: May be requested by the TTB Specialist if needed.

Application Process

Application Process

- Make sure you have all appropriate documents.
- Register for an Account on Permits Online.
- Submit your Application in Permits Online.
  - Application for Original Entity
  - Application for Commodity Operations
  - Personnel Questionnaire Application
- TTB Processes Application - https://www.ttb.gov/ponl-help/what-happens-after-you-submit

Register for an Account in Permits Online



https://www.ttbonline.gov/permitsonline/Default.aspx

Each user must have an individual username and password. Sharing your Permits Online username or password is strictly prohibited and in violation of the Federal Information Security Management Act (FISMA) and can result in the cancellation of your Permits Online privileges.

Business Entity and Commodity Operations

Your information in Permits Online is organized in two different kinds of records:

- The **entity record** equates to a single company or business entity, represented by a unique Employer Identification Number (EIN).
- A **commodity operations record** is created for each TTB-regulated operation (type and location) the entity is approved to conduct.

A typical entity record will have at least one commodity operations record, but may have multiple commodity operations records associated with it.

Business Entity and Commodity Operations

- When applying to start your first TTB-regulated business, you will need to complete **one new entity application, one or more new commodity operations applications, and personnel questionnaire applications** for any owners, including persons holding 10% or more interest in a limited liability entity like a corporation or LLC, and any officers, directors, or others with authority to control regulated operations.
- When you file an amendment related to the business entity, you will file one application and the changes are associated with each operation you conduct.
  - Example: a new officer or new POA

Business Entity and Commodity Operations

Changes to Your **Entity** that You Must Report to TTB

Changes in:

- Legal business name
- Controlling ownership (27 CFR 24.120 – 24.128)
- General partner
- Any stockholder or members holding ownership of 10% or more
- Corporate officer, directors, or any similar positions
- Proprietorship, e.g. change from sole proprietor to LLC

Adding, Revoking, or Changing:

- Signing authority
- Power of attorney

Termination:

- If all TTB-regulated operations under your EIN are terminating (going completely out of business).
- Per 27 CFR 24.140, the proprietor shall submit the last operational report(s) and excise tax form(s) marked “Final.”

Changes to Your Commodity Operations That You Must Report to TTB*

Change in:

- Premises location
- Bond
- Construction or use of building
- Operations
- DBA/Operating name
- Mailing Address

Adding or removing:

- Trade names
- Noncontiguous premises
- Alternation of premises
- Alternation of proprietor
- Variance or alternate method

Termination:

- If terminating operations at one location, but keeping other operations/locations under the same EIN open

*requirements vary slightly by commodity operation

Application Processing

1. Application is submitted in Permits Online and automatically assigned to a Wine Specialist.
2. A Specialist will review the application and background check results.
3. Specialist will return items for correction that are missing or omitted or ask for additional information through the Permits Online system.

Permits Online: What Happens After You Submit?

Application Processing (cont'd)

Note: Proposed premises building must exist and be ready to operate.

4. The application may be referred to the Trade Investigations Division for an onsite investigation.
5. Recommendation and decision on final action to take (approval, denial, abandonment) is made.

   Permits Online will provide notification of approval, permit, approval letter and any associated documents will be available for downloading and printing within the system.

Top 5 Winery Application Errors

1. **Winery Information**

- **Description of alternating areas (Alternating Premises):** Describe any area of the winery that will be shared with another business or type of operation, including all areas, floors, rooms and equipment: Provide a written narrative describing what areas and equipment will be alternating. Be sure to include the type of separation between the wine area and the (beer/wine/DSP) area.
- **Describe each premises building:** Describe each wine premises building: provide the construction and use of building.
- **Describe taxpaid wine area:** Describe where and how any taxpaid wine will be stored and identified: If tax paid wine is to be stored on wine premises, it must be separated from untaxpaid wine. Describe how the wine be segregated? Will it be clearly marked or stored in a designated area? Will signs be used designating tax paid wine?

2. **Upload Required Documents**

- See slides 10-11 or refer to Permits Online Required Documents – What to Gather Before You Apply

Top 5 Winery Application Errors

- **Premises Address**
  - The address should match what is stated on the lease agreement or deed.
  - Unit type should be blank unless a suffix is included in the address (building, suite, apt, unit, etc.).
- **Request for Variance Table**
  - The contents of the letter should be word for word in the table.
- **Doing Business As/Operating name (DBA) Name**
  - The DBA name shouldn’t be the same as the business name (shouldn’t include Inc, LLC, LP, LTD., etc.)
  - The certification box must be checked. This box is to certify that that name has been registered at the state level.

Alternation of Premises, Alternation of Proprietorship, & Custom Crush Arrangements

Descriptions and Permit Requirements

- **Alternating Premises:** Premises is used by the same owner/same EIN to conduct another TTB-regulated business, such as a distilled spirits plant or brewery.
  - A permit or Brewer's Notice for each commodity operations you are adding (DSP or BN)
- **Alternating Proprietor:** Consists of two or more persons or entities taking turns using the same space and equipment to produce wine.
  - Each alternating proprietor needs to hold a Bonded Winery permit (BWN).
- **Custom Crush**: A "custom crush" arrangement involves an agreement or formal contract under which a customer pays a wine producer to produce wine to order, after which the customer markets the wine.
  - A custom crush producer needs to hold a BWN.
  - A custom crush client can hold either a BWN or a Wholesaler's Basic Permit.

Alternation of Premises

If you are an established wine premises and wish to add a distilled spirits plant or brewery, you must submit:

- A new application for the commodity operations that you are adding
- Updated diagram showing which areas will be alternating
- Change in Bond (Consent of Surety) TTB Form 5000.18

You may also submit:

- A statement on the application that an alternation of wine premises will occur
- A description of how taxpaid wine or spirits, or untaxpaid wine or spirits will be identified and segregated

27 CFR 24.135

Alternation of Proprietorship

Generally, the proprietor of a wine premises agrees to rent space and equipment to a new tenant.

The host and tenant of an alternating proprietorship are required to submit:

- An alternating proprietorship agreement (a contract between the host and tenant)
- Updated diagram showing which areas will be alternating and which will be the permanent non-alternating space of both the host and tenant

Industry Circular 2008-4 – Alternating Proprietors at Bonded Wine Premises

27 CFR 24.136

Custom Crush Arrangement

TTB considers custom crush arrangements to be ordinary commercial arrangements.

- Contract winery retains title to the wine at least until the wine is taxpaid or removed from the winery
- Contract winery is entirely responsible for producing the wine, keeping appropriate winery records, labeling the wine with its name and address, obtaining necessary Certificates of Label Approval (COLAs), and paying tax at the appropriate rate upon removal of the wine from the winery.

Alternating Proprietorship vs. Custom Crush: Qualification/Permit

ALTERNATING PROPRIETORSHIP	CUSTOM CRUSH
Each alternating proprietor must qualify independently as a bonded winery under part 24 and obtain a Federal Basic Permit under part 1 as a wine producer to conduct operations at a specific location.	Only the wine producer must register as a bonded winery under part 24 and obtain a Federal Basic Permit under part 1 as a wine producer.
➢ The tenant winery does not need to be qualified as a wholesaler, since the wine that the tenant produces is considered his or her own production and is not sold to the tenant by the host winery	➢ A customer who intends to market wine to other dealers must qualify as a wholesaler under part 1.

Alternating Proprietorship vs. Custom Crush: Qualification/Permit

ALTERNATING PROPRIETORSHIP	CUSTOM CRUSH
Each proprietor must comply with requirements in 27 CFR part 24, subpart O, by keeping records of its operations and by providing operational reports to TTB	Contract winery is responsible for keeping records of wine production and removal and for providing operational reports to TTB ➢ The wine purchaser has no responsibility for records or reports under part 24, although that person may be required to maintain records as a retail or wholesale dealer in wine under 27 CFR part 31

Alternating Proprietorship vs. Custom Crush: Tax Payment

The federal wine excise tax is paid at the appropriate rate by the proprietor that removes the wine from bond for consumption or sale.

- The rate of tax is determined by the tax class of the wine removed.
- The tax may be reduced if the taxpayer **produced** the wine and is eligible for the Craft Beverage Modernization Act (CBMA) tax credit.

Is it an Alternating Proprietorship or Custom Crush Arrangement?

Indicators that one party to an alternation is not, in fact, involved in production operations and may not qualify for a producer's permit include:

- A business plan that is primarily to market alcohol beverages with little or no involvement in the production of the alcohol beverage
- A contract for alternation that is based on quantity of alcohol beverages produced and not on rental of space and equipment
- An agreement that indicates an alternating proprietor will have minimal involvement in its own production operations, e.g., contract states that another company's employees will handle the production activities, records, reports, and tax filings

Is it an Alternating Proprietorship or Custom Crush Arrangement?

If it is evident from our reading of the agreement or contract submitted that an alternating proprietor applicant plans to have most or all of its wine operations conducted by another bonded winery, we may find that the **applicant has no intention of conducting winery operations and is therefore not qualified for a permit** under § 1.24(b).

If the agreement or contract indicates a custom crush arrangement, the applicant may instead qualify for a Wholesaler's Basic Permit.

Resources

Resources	
Apply for a Permit: Qualifying with TTB https://www.ttb.gov/business-tools/qualify-with-ttb	**Permits Online Customer Page** https://www.ttb.gov/ponl/customer-support
Permits Online Tutorial https://www.ttb.gov/ponl/ponl-launch	**State Alcohol Beverage Authorities** https://www.ttb.gov/wine/alcohol-beverage-control-boards
Alcohol FAQs https://www.ttb.gov/faqs/alcohol	**Maintaining Compliance in a TTB-Regulated Industry** https://www.ttb.gov/business-central/industry-members-responsibilities
Overview of the Application Process https://www.ttb.gov/ponl-help/permits-online-overview-of-the-application-process	**Laws, Regulations, and Public Guidance** https://www.ttb.gov/laws-regulations-and-public-guidance