

Hard Kombucha-An Overview of TTB Federal Regulatory Requirements

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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



- TTB- Overview and Mission
- II. Kombucha and TTB Regulatory Authority
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TTB- Overview and Mission

WHO IS TTB?

WHAT IS TTB'S MISSION?



- We are a bureau within the Department of the Treasury
- We currently have about 520 employees
- Our headquarters are in Washington, DC
- The National Revenue Center is in Cincinnati, Ohio
- We have field offices located across the country
- We have 4 laboratories, located in Maryland and California



COLLECT the taxes on alcohol, tobacco, firearms, and ammunition

PROTECT the consumer by ensuring the integrity of alcohol products

ENSURE only qualified businesses enter the alcohol and tobacco industries

PREVENT unfair and unlawful market activity for alcohol and tobacco products







Kombucha and TTB Regulatory Authority

WHAT IS KOMBUCHA?

WHEN DOES KOMBUCHA FALL UNDER TTB'S REGULATORY AUTHORITY?



Kombucha:

- -Generally refers to a fermented beverage produced from a mixture of steeped tea and sugar, combined with a culture of yeast strains and bacteria
- May contain fruit juice or other flavors added during production

Hard Kombucha:

 Refers to kombucha with an alcohol content of 0.5% or more alcohol by volume



When Does TTB Regulate Kombucha?

$$Sugar \xrightarrow{yeast} Ethyl Alcohol + Carbon Dioxide$$

Alcohol content may reach or exceed 0.5% by volume during fermentation.

TTB regulations APPLY to any kombucha that has ≥ 0.5% alcohol by volume

- Any time during production,
- At bottling, or
- Any point afterwards as a result of continued fermentation in the bottle



How is Hard Kombucha Classified Under TTB Regulations?

- Kombucha and hard kombucha are not defined classes
- Depends on the ingredients and method
- Most hard kombucha produced with an ABV ≥ 0.5% using sugar, tea, SCOBY, and water will fall under the IRC definition of a beer
- Hard kombuchas can be classified as wine or spirits respectively, if they are fermented from winemaking materials or are distilled



What Does 'Any Time During Production' Mean?

If Kombucha is $\geq 0.5\%$ alc by vol, regardless of the alcohol content of finished product, it must be produced on TTB-qualified premises.

Examples:

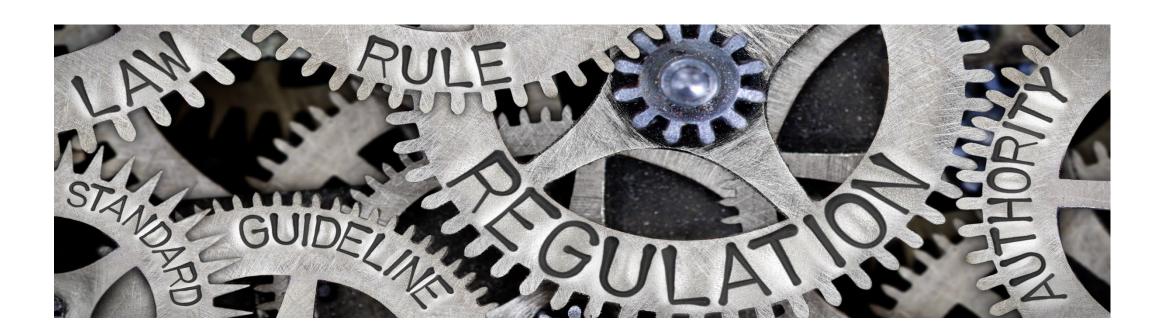
- Fermented to ≥ 0.5% alc/vol then dealcoholized by vacuum distillation
- Fermented to ≥ 0.5% alc/vol and finished with juices that bring alcohol below 0.5% alc/vol
- Blending of kombuchas that would bring alcohol below 0.5% alc/vol



What About Continued Fermentation that Occurs When the Product is in the Marketplace?

TTB regulations APPLY to any kombucha that has less than 0.5% alcohol by volume when bottled BUT the alcohol content increases to 0.5% or more alcohol by volume at any point afterwards as a result of continued fermentation in the bottle

Producers bear the responsibility for their product in the marketplace.



TTB Regulatory Requirements

LAWS & REGULATIONS

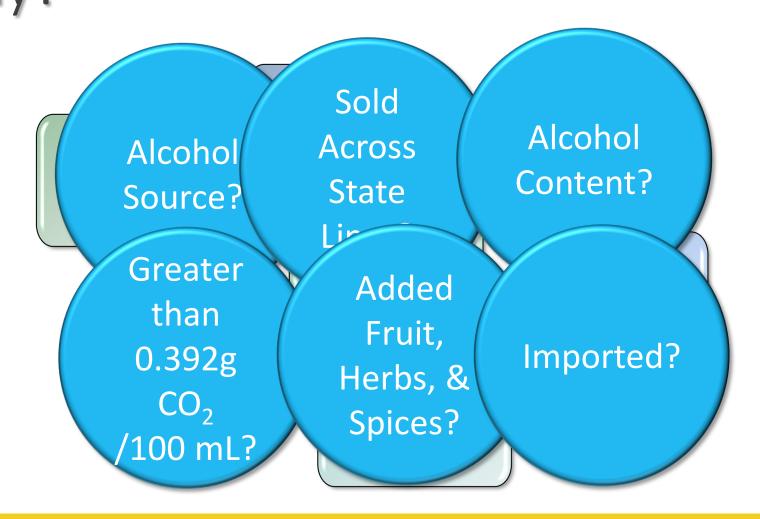


How Does TTB Regulate Hard Kombucha Products?





How Do You Know Which Requirements Apply?



TTB Laws Covering Alcohol Beverages 0.5% or More Alcohol by Volume

Not a complete list- Products containing less than 0.5% alc/vol may still be regulated by TTB

Internal Revenue Code (IRC)

- Applies to all domestic and imported alcohol beverages
- Permits, taxes, recordkeeping, reports, labeling

Alcohol Beverage Labeling Act (ABLA)

- Applies to all domestic and imported alcohol beverages
- Health warning statement



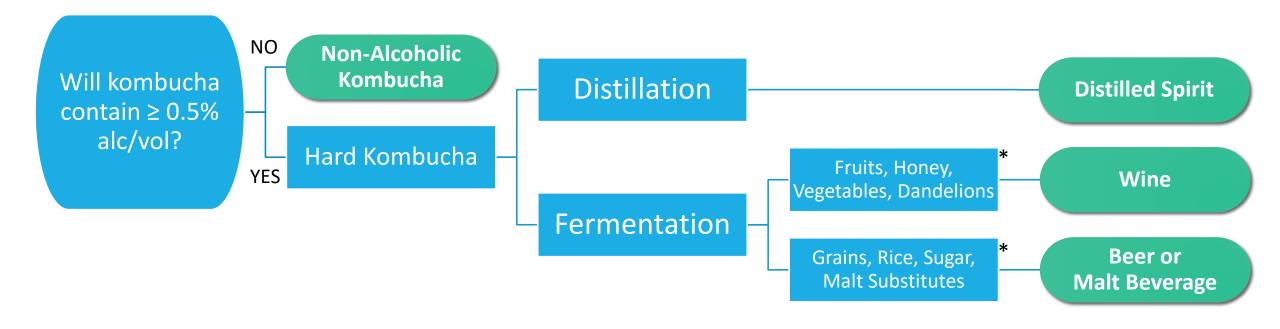
Federal Alcohol Administration Act (FAA Act)

- Applies to imported alcohol beverages
- Applies to domestic alcohol beverages, only if they are sold across state lines
- Permits, labeling, advertising, trade practices
- Does not apply to
 - Wine under 7% alc/vol
 - Beers without both malted barley and hops

These regulations are promulgated in Title 27 of the Code of Federal Regulations (CFR) Available online at www.ecfr.gov



Commodity Determination



* Not a complete list of possible fermentable ingredients



Where Can I Make Hard Kombucha?

Hard kombucha must be made on a TTB-qualified premises

Type of premises is determined by source of alcohol

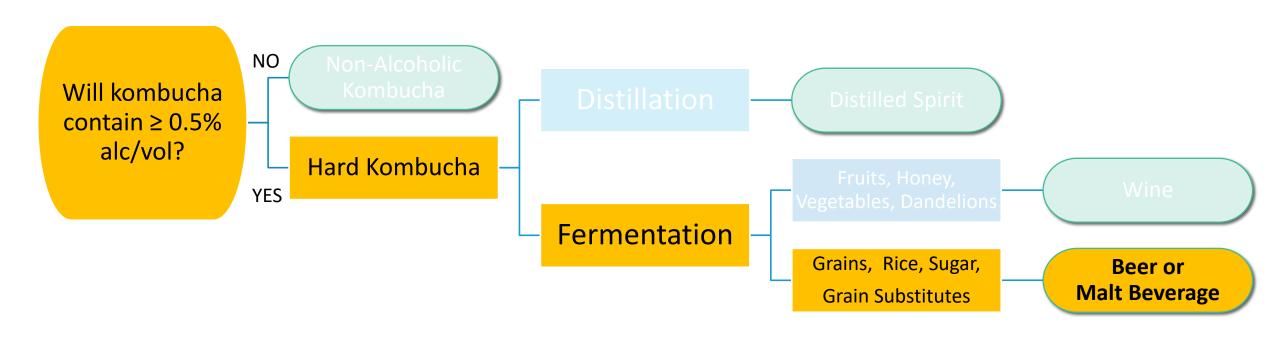
- Beer or Malt Beverage = Brewery
- Distilled Spirit = Distillery
- Wine = Winery

Registration and qualification for permits:

National Revenue Center (NRC)

877-882-3277

www.ttb.gov/nrc/permits



TTB Beer Regulations

WHAT IS A BEER?
WHAT IS A MALT BEVERAGE?
WHAT REGULATIONS APPLY?



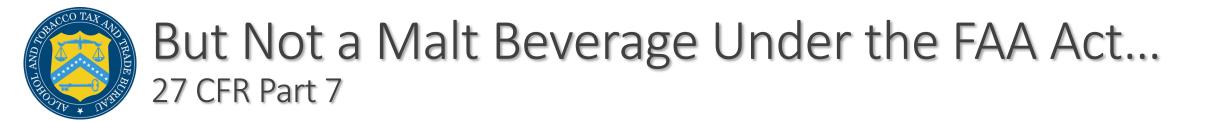
Traditional Hard Kombucha is a Beer Under the IRC... 27 CFR part 25.15

Sugar is the most common fermentable source in kombucha.

Beer:

- Fermented beverage containing 0.5% or more of alc/vol
- Brewed from malt or from substitutes for malt.
- Only rice, grain of any kind, bran, glucose, sugar, and molasses are substitutes for malt.
- Allows for the following materials as adjuncts in fermenting beer: honey, fruit, fruit juice, fruit concentrate, herbs, spices, and other food materials.

ALSO KNOWN AS IRC BEER



Malt Beverage:

A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of –

- Malted barley with hops, or their parts, or their products, and
- With or without other malted cereals, and
- With or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and
- With or without the addition of carbon dioxide, and
- With or without other wholesome products suitable for human food consumption



Hard kombucha is **not** regulated as a malt beverage under the FAA Act, unless it contains both:

MALTED BARLEY AND HOPS

Such hard kombucha is not subject to Part 7 (Labeling and Advertising of Malt Beverages) and other FAA Act provisions in title 27 of the CFR

See TTB Ruling 2008-3 for additional information



DOES NOT APPLY

FAA Act provisions such as:

- Labeling
- Advertising
- Trade Practices

APPLIES

IRC (Part 25) such as:

- Brewer's Notice
- Production Standards
- Formulas
- Basic Labeling/Markings
- Taxes
- Reports, Records, and Returns

ABLA (Part 16):

Health Warning Statement



Formula approval is required if any of the following ingredients or processes are used (not a complete list):

- Fruits, herbs, & spices (including tea)
- Flavors with alcohol
- Compounded flavors
- Colors
- Artificial sweeteners

TTB Ruling 2015-1 formula exemptions for certain ingredients do not apply to hard kombucha unless it meets the definition of a malt beverage.

The beverage is frozen and ice crystals are removed (example: ice beer)

See TTB G 2016-1a for a full list or Use the TTB Formula Tool



IRC Beer- TTB Labeling Requirements

Label requirements (27 CFR 25.142)

- Name or trade name of the brewer
- Net contents of the bottle
- Nature of the product such as beer, ale, porter, stout, etc.
- Place of production (city and, when necessary for identification, state)

ABLA (27 CFR part 16)

Health warning statement



Key FDA Labeling and Packaging Requirements:

- Nutrition Panel
- Ingredients Listing
- Allergen Statements

Key U.S. Customs and Border Protection Requirements (Imports):

Country of Origin



Making a Hard Kombucha With Malted Barley and Hops

Use of malted barley and hops will make kombucha a malt beverage.

- Malt beverages may contain any amount of alcohol
- May be subject to the IRC and ABLA provisions, and also the FAA Act



IRC (PART 25)

Applies To All Domestically Produced Beer

- Brewer's Notice
- Production Standards
- Formulas
- Basic Labeling/Markings
- Taxes
- Reports, Records, and Returns

ABLA (PART 16)

Applies To All Alcoholic Beverages That Contain ≥ 0.5% Alc/Vol

Health Warning Statement



FAA Act Requirements Apply To:

- Imports
- Domestic products in interstate commerce (to the extent that there is similar state law)

FAA Regulations:

- Basic Permit Requirements for Wholesalers and Importers (Part 1)
- Labeling (Part 7)
- Advertising (Part 7)
- Trade Practices (Parts 6, 8, 10, 11)
- Label Proceedings (Part 13)



Formula approval is required if any of the following ingredients or processes are used (not a complete list):

- Fruits, herbs, & spices
 - Some ingredients are exempt from formulas (see TTB Ruling 2015-1, Attachment 1)
- Flavors with alcohol
- Compounded flavors
- Colors
- Artificial sweeteners
- The beverage is frozen and ice crystals are removed (<u>ice beer</u>)



Mandatory Requirements

- Brand Name
- Class
- Name and Address (Bottler or Importer)
- Net Contents
- Alcohol Content (where applicable)
- Country of Origin (Import)

- Declarations:
 - Aspartame
 - Cochineal Extract or Carmine
 - FD&C Yellow No 5
 - Sulfites
- Health Warning Statement



Beer/Malt Beverage Regulatory Recap

- Use of malt, substitutes for malt (rice, sugar, and molasses, etc.) for alcohol fermentation ≥ 0.5% alc/vol requires a Brewer's Notice.
- File for Brewer's Notice
- If you file notice as a brewer, you must file records, reports, and returns even when no product is being produced.
- Submit formulas and labels, if necessary



Beer/Malt Beverage Regulatory Recap

		Internal Revenue Code 27 CFR part 25 (domestic) 27 CFR part 27 (imports)	Alcoholic Beverage Labeling Act 27 CFR part 16 Government Health Warning	Federal Alcohol Administration Act 27 CFR parts 1 and 7 (and others)	FDA Labeling and Packaging Regulations	CBP Regulations (imports)
Commodity	Subclass	ТТВ	ТТВ	ТТВ	FDA	СВР
Beer	IRC BEER (w/o malted barley or hops)	X	X		X	X
	MALT BEVERAGE (w/malted barley and hops)	X	X	X		X



Beer Formula Tool:

• <u>www.ttb.gov/formulation/which-alcohol-beverages-require-formula-approval</u>

TTB Ruling 2008-3, Classification of Brewed Products:

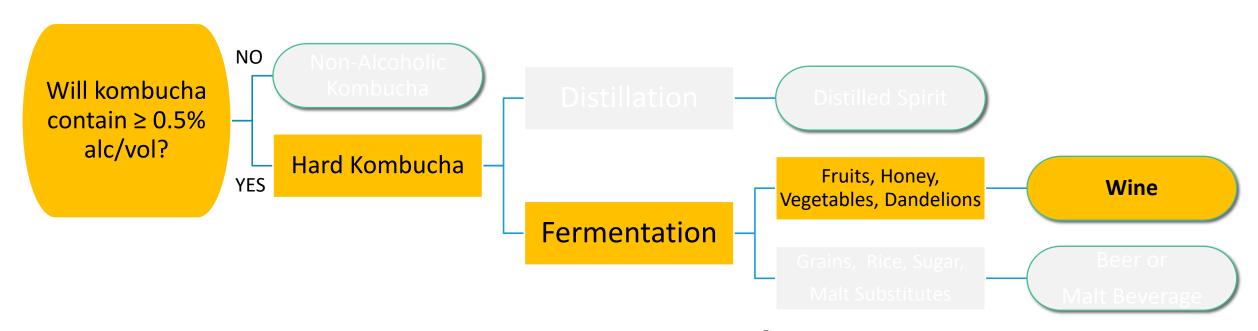
www.ttb.gov/images/pdfs/rulings/2008-3.pdf

TTB Ruling 2013-1, Malt Beverages Interstate Commerce:

www.ttb.gov/images/pdfs/rulings/2013-1.pdf

Malt Beverage Alcohol Manual (BAM):

www.ttb.gov/beer/beverage-alcohol-manual



TTB Wine Regulations

WHAT IS A WINE?

WHEN IS MY KOMBUCHA A WINE?

WINE REGULATIONS, FORMULAS, & LABELING



What is Wine According to TTB?

Wine is defined as being produced from:

- Grapes, Citrus, and other Fruit (apples, pears, berries, etc.)
- Agricultural Ingredients (vegetables, dandelion, etc.)

Containing not more than 24% alcohol by volume

Examples:

- Grape Wine,
- Fruit and Citrus Wine,
- Cider and Perry,
- Sparkling and Carbonated Wine,
- Mead,
- Dandelion Wine,
- Aperitifs and Vermouths,
- Imitation Wines, and
- Flavored Wines (Wine Specialties or Other Than Standard Wine)



When is My Hard Kombucha Regulated as a Wine?

Kombucha containing alcohol ≥ 0.5% by volume at any time during production and is either

- Fortified by adding wine products
 - Example: Kombucha + Blueberry Wine
- Produced by fermenting ingredients that would meet the wine classification by TTB.
 - Examples: Tea, Honey, SCOBY, & Water
 Sugar and Blueberries fermented together

TTB G 2016-2a for a full list or Use the TTB Formula Tool



Wine Production Regulations

The Internal Revenue Code (IRC) implementing regulations (27 CFR part 24) cover issues such as:

- Qualification/registration of bonded wine premises
- Production requirements
- Formulas (for some)
- Recordkeeping/reports
- Taxes
- Basic labeling/marking

The part 24 regulations apply to all domestic commercial wineries making product with ≥ 0.5% ABV



FAA Act Requirements for Wine

- Federal Alcohol Administration Act (FAA Act) defines wine as having from 7% to 24% alcohol by volume
- As a result, not all wine products are regulated under the FAA
 Act
- The implementing regulations (27 CFR) cover issues such as:
 - Labeling
 - Certificates of Label Approval (COLA)
 - Qualification (Basic Permit)
 - Advertising
 - Trade practices
 - Labeling proceedings

The FAA regulations only apply if ALC. BY VOL. is 7% or more, and product is sold interstate

See 27 CFR parts <u>1</u>, <u>4</u>, <u>6</u>, <u>8</u>, <u>10</u>, <u>11</u>, and <u>13</u>



Formulas Requirements are based on:

- Production methods
- Ingredients

Check TTB G 2016-2a for a full list or Use the TTB Formula Tool

Examples:

- Fruits, Herbs, & Spices
- Flavors with alcohol (Extracts & Essences)
- Compounded flavors
- Blending Wines
- Colors
- Artificial sweeteners



Labeling of Wine Based Products

FAA Act- Labeling And COLAS

PART 4

Applies To Wine:

- Defines wine as containing 7% to 24% alcohol by volume
- Must be sold in interstate commerce (otherwise a Certificate of Exemption must be filed)

Wines < 7%:

- labeling and COLA requirements found in part 4 DO NOT apply
- FDA food labeling and packaging requirements, including ingredient, nutrition, and allergen labeling requirements

IRC- Labeling And Markings

PART 24

Applies To All Domestic Wines

Primary TTB Rules Governing Wines With <7% Alcohol By Volume

Part 16- Health Warning Statement applies to all wines containing ≥0.5% alcohol by volume.



Recap- Hard Kombucha Made w/ Wine

- Fermentation of fruit, honey, vegetables, and other Ag sources regulated as a wine
- Must be qualified as a winery with TTB
- May require a formula
- Maintain Records
- File Reports
- File Returns for taxable removals
- Labels require a COLA or Certificate of Exemption

Wine Regulatory Recap

		Internal Revenue Code 27 CFR part 24 (domestic) 27 CFR part 27 (imports)	Alcoholic Beverage Labeling Act 27 CFR part 16 Government Health Warning	Federal Alcohol Administration Act 27 CFR parts 1 and 4 (and others)	FDA Labeling and Packaging Regulations	CBP Regulations (imports)
Commodity	Alcohol	ТТВ	ТТВ	ТТВ	FDA	СВР
Wine	0.5% - < 7%	X	X		X	X
	7% - 24%	X	X	X		X



Wine Beverage Alcohol Manual:

www.ttb.gov/wine/beverage-alcohol-manual

Wine Formula Tool:

www.ttb.gov/formulation/which-alcohol-beverages-require-formula-approval

TTB G 2016-2A, Wine Formula Requirement Table:

www.ttb.gov/public-guidance/ttb-g-2016-2a

Wine Labeling Tool:

www.ttb.gov/wine/labeling

Wine Rulings:

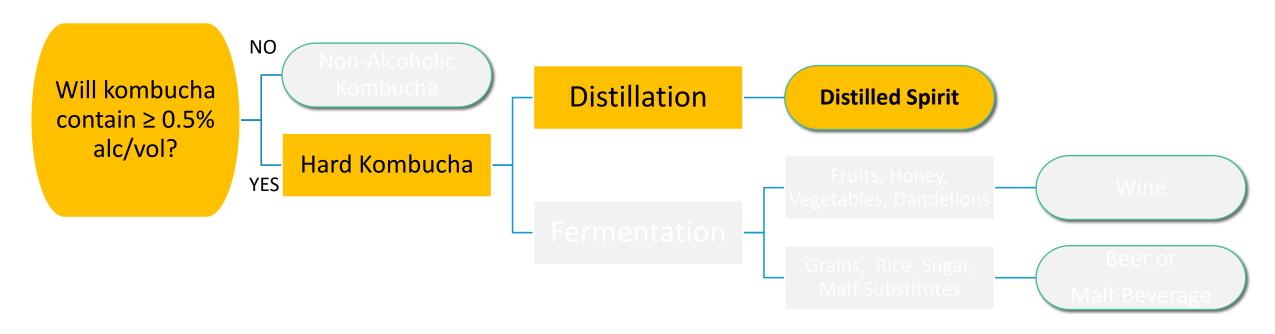
www.ttb.gov/wine/wine-rulings

Wine Industry Circulars:

www.ttb.gov/wine/industry-circulars

TTB FAQs:

www.ttb.gov/faqs



TTB Distilled Spirit Regulations

WHAT IS A DISTILLED SPIRIT?
WHEN IS KOMBUCHA A DISTILLED SPIRIT?
DISTILLED SPIRIT REGULATIONS, FORMULAS, & LABELING



Ethyl alcohol or spirits of wine, including all dilutions and mixtures thereof for nonindustrial use.

Involves the separation of alcohol from fermentable substances.

Examples:

• Whiskey, Vodka, Rum, Tequila, Gin, Brandy, Cocktails, Flavored Spirits

Does not include:

- Industrial alcohol or mixtures of wine and spirits containing 48 proof or less
- Products containing less than 0.5% alcohol by volume



When is My Hard Kombucha Regulated as a Distilled Spirit?

Kombucha containing alcohol ≥ 0.5% by volume at any time during production or bottling and is either:

- Fortified by adding distilled spirits
 - Example: Kombucha + Vodka
- Produced by extracting alcohol from a fermentable substance such as kombucha and adding it back to the finished product
 - Example: Tea, Honey, SCOBY, & Water that has the alcohol removed by spinning cone
 distillation and added to another kombucha to boost its alcohol content

TTB G 2016-2a for a full list or Use the TTB Formula Tool



TTB Regulations for Distilled Spirits

FAA Act

Applies to domestic and imported products

- Basic Permit Requirements (Part 1)
- Labeling (Part 5)
- Formulas (Part 5)
- Advertising (Part 5)
- Trade Practices (Part 6, 8, 10, 11)
- Label Proceedings (Part 13)

IRC (Part 19)

Applies to domestically produced spirits

- Qualifying for a Permit
- Production Standards
- Taxes
- Formulas, where applicable
- Bottling & Packaging
- Certificate of Exemption Requirements

ABLA (Part 16)- Health Warning Statement applies to all alcoholic beverages containing ≥0.5% alcohol by volume.



Formulas Requirements are based on:

- Production methods
- Ingredients

Check TTB G 2016-3 for a full list or Use the TTB Formula Tool

Examples:

- Fruits, Herbs, & Spices
- Flavors with alcohol (Extracts & Essences)
- Compounded flavors
- Colors
- Artificial Carbonation
- Artificial sweeteners
- Use of Intermediates



Certificates of Label Approval (COLA) required for:

- Domestic products entering interstate commerce
- Imported products

Certificates of Exemption may be requested for:

Domestic products that will not enter interstate commerce

COLAs and Certificate of Exemptions can be filed online using COLAs Online.

Register at www.ttbonline.gov!



Recap- Hard Kombucha Made w/ Spirits

- Kombucha fortified with spirits or produced using distillation are regulated as a distilled spirit
- Must be qualified as a distillery with TTB
- May require a formula
- File records
- File reports and returns
- Labels require a COLA or Certificate of Exemption

DS Regulatory Recap

		Internal Revenue Code 27 CFR part 19 (domestic) 27 CFR part 27 (imports)	Alcoholic Beverage Labeling Act 27 CFR part 16 Government Health Warning	Federal Alcohol Administration Act 27 CFR parts 1 and 5 (and others)	FDA Labeling and Packaging Regulations	CBP Regulations (imports)
Commodity	Alcohol	ттв	ттв	ттв	FDA	СВР
Distilled Spirit	≥ 0.5% abv	X	X	X		X



Distilled Spirits Beverage Alcohol Manual:

www.ttb.gov/distilled-spirits/beverage-alcohol-manual

Distilled Spirits Formula Tool:

www.ttb.gov/formulation/which-alcohol-beverages-require-formula-approval

TTB G 2016-3, Distilled Spirit Pre-COLA Product Evaluation:

www.ttb.gov/public-guidance/ttb-g-2016-3

Distilled Spirits Labeling Tool:

www.ttb.gov/ds-labeling-home/anatomy-of-a-distilled-spirits-label-tool

Distilled Spirits Rulings:

www.ttb.gov/distilled-spirits/rulings

Distilled Spirits Industry Circular:

www.ttb.gov/distilled-spirits/industry-circulars

TTB FAQs:

www.ttb.gov/faqs



TTB Regulatory Updates

CRAFT BEVERAGE MODERNIZATION ACT
STANDARDS OF FILL FOR WINE AND DISTILLED SPIRITS
PARTS 4 5 7 MODERNIZATION



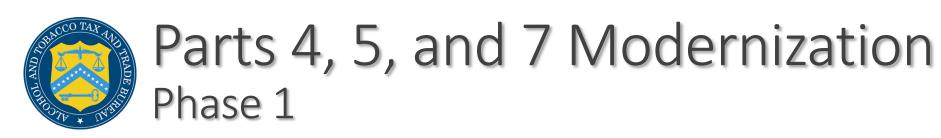
On December 27, 2020, CBMA made permanent numerous provisions including:

- Lower tax rates on beer and distilled spirits, and tax credits for wine
- Lower tax rates for certain meads and low alcohol wines
- Changes to the Single Taxpayer provisions



Effective: December 29, 2020

Wine	Distilled Spirits
355 mL	1.8 L
250 mL	900 mL
200 mL	720 mL
	700mL



Implemented on May 4, 2020, and includes:

- Establish a tolerance of 0.3% alc by vol above or below the alcohol content stated on the label for distilled spirits
- Establish new standards of identity for vodka and agave spirits
- Establish that alcohol by weight may appear on malt beverages labels as long as it appears together with, and as part of, a statement of alcohol by volume



Phase 2:

- Parts 5 and 7 modernization implemented on March 11, 2022, and includes:
 - Clarify information
 - Add definitions
 - Elimination of the brand label concept
 - Eliminates blanket prohibition on use of the U.S. flag
 - Add Penalties and Compromise of Liability section

Phase 3:

 Part 4 (wine) modernization will occur in the near future and will include reorganizing of all three commodities



TTB Regulatory Recap



AT OR ABOVE 0.5% ALCOHOL BY VOLUME AT ANY TIME



TTB Regulations DO APPLY

This type of kombucha must comply with all applicable TTB regulations (such as permits, production, taxes, distribution, and labeling)

NEVER AT OR ABOVE 0.5% ALCOHOL BY VOLUME AT ANY TIME



TTB Regulations DO NOT APPLY

This type of kombucha must comply with all applicable Food and Drug Administration (FDA) regulations



All kombucha must comply with any applicable state and local requirements



Want to produce hard kombucha?

- File for a permit or Brewer's Notice that reflects the primary source of alcohol
- File operational reports and tax returns
- Submit formulas and labels, if necessary
- Be cognizant of advertising and trade practice regulations, if applicable



Regulatory Statute Recap

Internal
Revenue Code
27 CFR 19, 24, or 25
27 CFR part 27
(imports)

Alcoholic
Beverage
Labeling Act
27 CFR part 16
Government
Health Warning

Administration
Act
27 CFR 4, 5, or 7
(and others)

FDA Labeling and Packaging Regulations

CBP Regulations (imports)

Commodity	Subclass	ТТВ	ТТВ	ТТВ	FDA	СВР
Wine	0.5% - < 7%	X	X		X	X
	7% - 24%	X	X	X		X
Beer	IRC BEER (w/o malted barley or hops)	X	X		X	Х
	Malt Beverage (w/ malted barley and hops)	X	X	X		X
DS	≥ 0.5%	X	X	X		X



Typical TTB Touchpoints for Industry Members

Qualify and Obtain TTB Basic Permit or Brewer's Notice (if needed)



Apply for formula approval (if needed)



Produce hard kombucha, keep records



Apply for label approval (if necessary)





Report changes after original qualification (amendments)



File tax return, pay taxes, file operational report



Bottle and remove, keep records



TTB Resources

TTB Kombucha Resource Page			
www.ttb.gov/kombucha			
Electronic Code of Federal Regulations	TTB Website		
www.ecfr.gov	www.ttb.gov		
TTB Alcohol Beverage Authorities	TTB Formula Tool		
www.ttb.gov/wine/alcohol-beverage-control-boards	www.ttb.gov/formulation/which-alcohol-beverages- require-formula-approval		
Maintaining Compliance in a TTB-Regulated Industry	TTB Tax Rates		
https://www.ttb.gov/business-central/industry- members-responsibilities	www.ttb.gov/tax-audit/tax-and-fee-rates		
Apply for a Permit: Qualifying with TTB	Overview of the Application Process		
https://www.ttb.gov/business-tools/qualify-with- ttb	https://www.ttb.gov/ponl-help/permits-online- overview-of-the-application-process		



Questions?

Permits, Taxes and Operations Reports, etc.:

National Revenue Center (NRC)

• 877-882-3277

National Revenue Center Contact Form

Labeling and Formulation:

Alcohol Labeling and Formulation Division (ALFD)

• 866-927-2533

ALFD Contact Form



Questions?

Advertising, Trade Practices, and Consumer Complaints:

Market Compliance Office (MCO)

• 202-453-2260

market.compliance@ttb.gov

tradepractices@ttb.gov

Regulations, Policies, and Procedures:

Regulations & Rulings Division (RRD)

• 202-453-2265

RRD Contact Form

Importing and Exporting:

International Affairs Division (IAD)

• 202-453-2260

IAD Contact Form