

§ 5171. Establishment

(a) Certain operations may be conducted only on bonded premises

Except as otherwise provided by law, operations as a distiller, warehouseman, or processor may be conducted only on the bonded premises of a distilled spirits plant by a person who is qualified under this subchapter.

(b) Establishment of distilled spirits plant

A distilled spirits plant may be established only by a person who intends to conduct at such plant operations as a distiller, as a warehouseman, or as both.

(c) Registration

(1) In general

Each person shall, before commencing operations at a distilled spirits plant (and at such other times as the Secretary may by regulations prescribe), make application to the Secretary for, and receive notice of, the registration of such plant.

(2) Application required where new operations are added

No operation in addition to those set forth in the application made pursuant to paragraph (1) may be conducted at a distilled spirits plant until the person has made application to the Secretary for, and received notice of, the registration of such additional operation.

(3) Secretary may establish minimum capacity and level of activity requirements

The Secretary may by regulations prescribe for each type of operation minimum capacity and level of activity requirements for qualifying premises as a distilled spirits plant.

(4) Applicant must comply with law and regulations

No plant (or additional operation) shall be registered under this section until the applicant has complied with the requirements of law and regulations in relation to the qualification of such plant (or additional operation).

(d) Permits

(1) Requirements

Each person required to file an application for registration under subsection (c) whose distilled spirits operations (or any part thereof) are not required to be covered by a basic permit under the Federal Alcohol Administration Act (27 U.S.C. secs. 203 and 204) shall, before commencing the operations (or part thereof) not so covered, apply for and obtain a permit under this subsection from the Secretary to engage in such operations (or part thereof). Subsections (b), (c), (d), (e), (f), (g), and (h) of section 5271 are hereby made applicable to persons filing applications and permits required by or issued under this subsection.

(2) Exceptions for agencies of a State or political subdivisions

Paragraph (1) shall not apply to any agency of a State or political subdivision thereof or to any officer or employee of any such agency,

and no such agency, officer, or employee shall be required to obtain a permit thereunder.

(e) Cross references

(1) For penalty for failure of a distiller or processor to file application for registration as required by this section, see section 5601(a)(2).

(2) For penalty for the filing of a false application by a distiller, warehouseman, or processor of distilled spirits, see section 5601(a)(3).

(Added Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1349; amended Pub. L. 94-455, title XIX, §§1905(a)(13), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1820, 1834; Pub. L. 96-39, title VIII, §805(a), July 26, 1979, 93 Stat. 274.)

REFERENCES IN TEXT

The Federal Alcohol Administration Act, referred to in subsec. (d)(1), is act Aug. 29, 1935, ch. 814, 49 Stat. 977, as amended, which is classified generally to subchapter I (§201 et seq.) of chapter 8 of Title 27, Intoxicating Liquors. The basic permit is covered by sections 203 and 204 of Title 27. For complete classification of this Act to the Code, see section 201 of Title 27 and Tables.

PRIOR PROVISIONS

A prior section 5171, act Aug. 16, 1954, ch. 736, 68A Stat. 627, related to "premises prohibited for distilling", prior to the general revision of this chapter by Pub. L. 85-859. See sections 5178(a)(1)(B), (b), (c)(2), and 5505(b) of this title.

Provisions similar to those comprising subssecs. (a), (b)(1) and (c) of this section were contained in prior sections of act Aug. 16, 1954, prior to the general revision of this chapter by Pub. L. 85-859, as follows:

Present subsecs.:	Prior sections
(a)	5172, 5175(a), 5177(a), 5178, 5231, 5243(a), 5271(a), 5301-5303, 5305, 5331(a)(1).
(b)(1)	5301-5303, 5304(a)(1).
(c)	5175(b), 5271(b).

The prior sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 627 to 631, 643, 645, 650, 654, 655.

AMENDMENTS

1979—Subsecs. (a), (b). Pub. L. 96-39 added subssecs. (a) and (b) and redesignated former subssecs. (a) and (b) as (c) and (d), respectively.

Subsec. (c). Pub. L. 96-39 redesignated former subsec. (a) as (c) and inserted provisions relating to an application requirement where new operations are added and permitting the Secretary to establish minimum capacity and level of activity requirements. Former subsec. (c) redesignated (e).

Subsec. (d). Pub. L. 96-39 redesignated former subsec. (b) as (d) and substituted reference to subsection (c) for reference to subsection (a) and struck out reference to section 5274.

Subsec. (e). Pub. L. 96-39 redesignated former subsec. (c) as (e) and substituted reference to processor for reference to rectifier and reference to warehouseman for reference to bonded warehouseman and struck out reference to bottler.

1976—Subsec. (b)(1). Pub. L. 94-455, §§1905(a)(13)(A), 1906(b)(13)(A), struck out "49 Stat. 978;" before "27 U.S.C. 203, 204" in parenthetical provisions after "Federal Alcohol Administration Act" and struck out "or his delegate" after "Secretary".

Subsec. (b)(3). Pub. L. 94-455, §1905(a)(13)(B), struck out par. (3) under which persons who were qualified on June 30, 1959, to perform operations for which a permit was required covering operations not required to be covered by a basic permit under the Federal Alcohol Administration Act had been allowed to continue operations pending a reasonable opportunity to make application for a permit.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-39 effective Jan. 1, 1980, see section 810 of Pub. L. 96-39, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(a)(13) of Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94-455, set out as a note under section 5005 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

TRANSITIONAL RULES RELATING TO ALL-IN-BOND METHOD

Pub. L. 96-39, title VIII, § 809(a), (b), July 26, 1979, 93 Stat. 292, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(a) NEW APPLICATION REQUIRED.—

“(1) IN GENERAL.—For purposes of section 5171 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to establishment of distilled spirits plants), each person who intends to continue any distilled spirits operation at a premises after December 31, 1979, shall be treated as intending to establish a distilled spirits plant on such premises on January 1, 1980.

“(2) CURRENT REGISTRATION TO REMAIN IN EFFECT.—Notwithstanding paragraph (1), the registration of any person under section 5171 of the Internal Revenue Code of 1986 which is in effect on December 31, 1979, shall remain in effect until final action on the application required by paragraph (1).

“(b) CONTINUING OPERATIONS AT EXISTING PREMISES.—With respect to any operation which was permitted to be conducted on May 1, 1979, at premises which were registered on such date under section 5171 of the Internal Revenue Code of 1986, the determination of whether such premises qualify for registration under such section as a distilled spirits plant shall be made without regard to whether or not—

“(1) the person engaged in operations at such premises is registered under such section with respect to such premises as a distiller or warehouseman, and

“(2) such premises meet the minimum capacity and level of activity requirements for that type of operation.”

§ 5172. Application

The application for registration required by section 5171(c) shall, in such manner and form as the Secretary may by regulations prescribe, identify the applicant and persons interested in the business (or businesses) covered by the application, show the nature, location and extent of the premises, show the specific type or types of operations to be conducted on such premises, and show any other information which the Secretary may by regulations require for the purpose of carrying out the provisions of this chapter.

(Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1349; amended Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96-39, title VIII, § 807(a)(13), July 26, 1979, 93 Stat. 282.)

PRIOR PROVISIONS

A prior section 5172, act Aug. 16, 1954, ch. 736, 68A Stat. 627, related to “conditions precedent to carrying on business of distilling”, prior to the general revision

of this chapter by Pub. L. 85-859 and is covered in part by this section. See also sections 5171(a), 5173(a), 5178(a)(1)(A), and 5601(a)(2), (4) of this title.

Provisions similar to those comprising this section were contained in prior sections 5175(a), 5178, 5231, 5243(a), 5271, 5301 to 5303, 5305, and 5331(a)(1), act Aug. 16, 1954, ch. 736, 68A Stat. 628, 631, 643, 645, 650, 654, 655, 657, 661, prior to the general revision of this chapter by Pub. L. 85-859.

AMENDMENTS

1979—Pub. L. 96-39 substituted “section 5171(c)” for “section 5171(a)”.

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-39 effective Jan. 1, 1980, see section 810 of Pub. L. 96-39, set out as a note under section 5001 of this title.

§ 5173. Bonds**(a) Operations at, and withdrawals from, distilled spirits plant must be covered by bond****(1) Operations**

Except as provided under section 5551(d), no person intending to establish a distilled spirits plant may commence operations at such plant unless such person has furnished bond covering operations at such plant.

(2) Withdrawals

Except as provided under section 5551(d), no distilled spirits (other than distilled spirits withdrawn under section 5214 or 7510) may be withdrawn from bonded premises except on payment of tax unless the proprietor of the bonded premises has furnished bond covering such withdrawal.

(b) Operations bonds

The bond required by paragraph (1) of subsection (a) shall meet the requirements of paragraph (1), (2), or (3) of this subsection:

(1) One plant bond

The bond covers operations at a single distilled spirits plant.

(2) Adjacent wine cellar bond

The bond covers operations at a distilled spirits plant and at an adjacent bonded wine cellar.

(3) Area bond

The bond covers operations at 2 or more distilled spirits plants (and adjacent bonded wine cellars) which—

(A) are located in the same geographical area (as designated in regulations prescribed by the Secretary), and

(B) are operated by the same person (or, in the case of a corporation, by such corporation and its controlled subsidiaries).

(c) Withdrawal bonds

The bond required by paragraph (2) of subsection (a) shall cover withdrawals from 1 or more bonded premises the operations at which could be covered by the same operations bond under subsection (b).

(d) Unit bonds

Under regulations prescribed by the Secretary, the requirements of paragraphs (1) and (2) of