

# BURR ALERT

## Alternate Opportunities for Distilled Spirit Permittees During the COVID-19 Pandemic

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The COVID-19 pandemic has caused a shortage of numerous goods and a decline in the provision of numerous services. Across the country, distilleries have closed their tasting rooms, and breweries have transitioned toward to-go six-pack sales. Due to the rapidly changing regulations regarding food and beverage providers' ability to offer on-site services, distilleries and breweries have responded to the shortage of hand sanitizer in particular. Distilled spirit permittees ("DSPs"), including distilleries and breweries with distilled spirit permits, have transitioned to manufacturing hand sanitizer.<sup>1</sup>

To permit this production of hand sanitizer, the Alcohol and Tobacco Tax and Trade Bureau ("TTB") lessened restrictions of internal revenue law on DSPs.<sup>2</sup> The alerts released by the TTB explain that DSPs may produce ethanol-based hand sanitizers pursuant to exemptions provided in light of the COVID-19 pandemic.<sup>3</sup> Under the rules promulgated by the TTB, "[a]ny existing DSP . . . can immediately commence production of hand sanitizer or distilled spirits (ethanol) for use in hand sanitizer . . . without having to obtain authorization first."<sup>4</sup>

DSPs hoping to fill the hand sanitizer void during the COVID-19 pandemic should keep the following in mind:

- Existing DSPs do not have to obtain additional permits or bonds to engage in the manufacture of hand sanitizer or supply ethanol for the manufacture of hand sanitizer. However, the TTB does require DSPs to maintain records of the distillery's operations, including the production of hand sanitizer or supply ethanol.<sup>5</sup>
- Hand sanitizer may be created with denatured and undenatured ethanol. In the TTB's original alert, it allowed DSPs to produce hand sanitizer as long as the formula remained consistent with World Health Organization ("WHO") guidelines.<sup>6</sup> However, the [FDA released guidance](#) on March 23, 2020, to "specif[y] the use of denaturants when compounding ethanol-based hand sanitizers."<sup>7</sup> The TTB has "supersede[d] its prior guidance with regard to the authorized formula" to permit the manufacture of hand sanitizer products by DSPs using the formulas provided by the

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<sup>1</sup> Jacob Dean, *A Master List of All the Booze Companies Making Hand Sanitizer*, TAKEOUT (Mar. 23, 2020, 11:37 AM), <https://thetakeout.com/buy-it-for-life-which-kitchen-utensils-and-tools-last-1842419834>; see also Michael Dugan, *South Mississippi Brewery Now Making Hand Sanitizer*, WLOX (Mar. 17, 2020, 8:09 AM), <https://www.wlox.com/2020/03/17/south-mississippi-brewery-now-making-hand-sanitizer-rain-water/>.

<sup>2</sup> *Production of Hand Sanitizer to Address the COVID-19 Pandemic*, TTB PUBLIC GUIDANCE (March 26, 2020), <https://www.ttb.gov/public-guidance/ttb-pg-2020-1a>; see also *Special Edition – COVID-19 Production of Hand Sanitizer by Distilled Spirits Permittees*, TTB NEWSLETTER: WEEKLY NEWS (2020), <https://www.ttb.gov/images/newsletters/archives/2020/ttb-newsletter03172020sp.html>.

<sup>3</sup> *Production of Hand Sanitizer*, *supra* note 2.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*; see also *Temporary Policy for Preparation of Certain Alcohol-Based Hand Sanitizer Products During the Public Health Emergency (COVID-19) Guidance for Industry*, FDA (March 2020), <https://www.fda.gov/media/136289/download>.

FDA guidance, and DSPs do not have to first obtain formula approval from the TTB if the formula follows the FDA guidance.<sup>8</sup>

- The CARES Act passed by Congress and signed into law permits DSPs to avoid the federal excise tax through the year 2020, regardless of whether the DSP creates the hand sanitizer with either undenatured or denatured alcohol.<sup>9</sup>
- Additionally, the TTB's public guidance provides, "[a]lcohol, whether or not denatured, may be delivered tax-free to state and local governments for non-beverage purposes. The same is true for hospitals, blood banks, sanitariums, certain pathological laboratories, non-profit clinics, and qualifying educational institutions, if not for resale or use in the manufacture of any product for sale."<sup>10</sup>

If you are interested in learning more about manufacturing hand sanitizer and related products during the COVID-19 pandemic, or if you have questions about compliance with the TTB's relaxed guidelines for DSPs, please do not hesitate to contact Burr's Food and Beverage team.

**To discuss further, please contact:**

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<sup>8</sup> *Production of Hand Sanitizer, supra* note 2.

<sup>9</sup> CARES Act, H.R. 748, 116th Cong. § 2308 (enacted); *see also* Garrett Watson et al., *Congress Approves Economic Relief Plan for Individuals and Businesses*, TAX FOUND. (Mar. 27, 2020, 4:46 PM), <https://taxfoundation.org/cares-act-senate-coronavirus-bill-economic-relief-plan/>.

<sup>10</sup> *Production of Hand Sanitizer, supra* note 2.