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Opening a Distillery: The Federal Application Process

One effect of the COVID-19 lockdown was a shift in consumer appetites. The more time consumers spent at home, the more deliveries they received from their local liquor store. Naturally, the distilling industry followed with a 10.8% increase in the number of distilleries requesting operational permits in the U.S.[1]

Joining the distilling business can be a lucrative endeavor; however, several procedural and licensing requirements must be done well before you roll out your first barrel. After expanding nearly 50% in the last decade, the market shows it can be well worth the effort.

This article is the first out of a series that offers insight for those willing to expand into the distillery market. Specifically, the series will focus on the ins and outs of a distillery startup and how to maintain compliance thereafter.

Jump ahead to part 2 of our Distillery Start-Up and Compliance series.

General Overview

Before dealing with licensure requirements, a business must determine the most suitable legal entity. The choice of entity depends on several considerations, including who will own the business, how the business expects to distribute profits, or, more importantly, the degree to which personal assets are at risk from liabilities arising from the business. The recommended entity formation for distilleries, and generally most business ventures, are limited liabilities companies (LLCs).

Once the legal entity is formed, the business will need to determine what business type it intends to be engaged. The Alcohol and Tobacco Tax and Trade Bureau (TTB) lists several of these business activities to select when applying, including a distilled spirits plant described as "Distilled Spirits Plant – Beverage: A distilled spirits plant (DSP) may be established to produce, bottle, rectify, process or store beverage spirits."

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Procuring a production location in compliance with federal regulation and purchasing the necessary equipment is a critical part of the DSP application process. Federal regulations require distilleries to identify and disclose all major plant equipment during the application process. In accordance with TTB recommendations, businesses should have construction completed and the necessary equipment in place or on order before submitting an applicable TTB permit application.

Federal Application

Opening a distillery requires federal licensure prior to any state licensure. The TTB enforces the federal statutes applied to manufacturers of alcoholic beverages to ensure there is regulated compliance with responsible brewing which includes the production and importation of alcohol.

The TTB basic permit authorizes businesses to produce wine, beer, or spirits for commercial purposes. As noted above, businesses must first apply for the basic permit, which can take up to 75 days to be approved.[2] There is no fee at the federal level to apply for or maintain approval to operate TTB-regulated alcohol. The basic permit application can be submitted online or as a paper application using TTB F 5100.24. Online is recommended, as the applicant can check the status of the application at any time.

Documents Required for Application

The TTB offers an online permit tutorial which provides a step-by-step guide to the application process.[3] The tutorial also lists the documents required prior to starting the application, which include: (1) a distilled spirits bond form (TTB F 5110.56), (2) the charter document filed with the Secretary of State signifying the creation of the entity[4] (a copy of either the Articles of Incorporation and/or Certificate of Incorporation for a corporation, a copy of either the Articles of Organization and/or Certificate of Organization for an LLC, or a copy of the Partnership Agreement for a partnership), (3) the lease agreement or proof of property ownership where operations will be conducted, (4) a signing authority authorization on behalf of the business (TTB Form 5100.1, Signing Authority for

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Corporate and LLC Officials or a TTB Form 5000.8, Power of Attorney) [5], and a diagram of the DSP (premises).[6] If applying online, the forms can be submitted through TBB's permit online with the same login information used for the basic permit application. Details regarding each document can be found here.

Alternatively, optional documents a business may need to submit depending on the circumstances include: (1) a DSP Bond for Beverage DSPs Note which is required for industrial DSPs and for DSPs approved for both beverage and industrial distilled spirit operations (TTB Form 5110.56), (2) a power of attorney form if someone other than an employee will act on behalf of the business entity (TTB Form 5000.8), (3) a change in bond/consent of surety form if there will be additional operations that are not covered under the bond or when a proprietor desires to alternate part of the premises to conduct another TTB-regulated business (TTB Form 5000.18), (4) a variance request if the business is proposing an alternate method or procedure in lieu of the one outlined in the regulations, and (5) an alternating proprietorship agreement and a variance request if two or more proprietors with different EINS will be operating the same premises. Details regarding each document can be found here.

Preparing for Questions

In addition to documentation, the application will ask questions about the operations to be conducted, a description of the bonded premises, equipment, tract of land, persons associated with the business, and personnel questionnaires about certain individuals associated with the business.[7]

When asked about the operations to be conducted, a business should indicate which type(s) of DSP operation it will conduct. A business may select more than one authorized operation, options include distiller, warehouseman, or processor. If applying as a distiller, a business must give a description of the production procedures. The statement must begin with the treating, mashing, or fermenting of the raw materials and continue through each step of the distilling, purifying and refining process, until production is complete (i.e., through the production gauge).[8]

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The description of the bonded premises should include the business operations, the size of the plant, construction, use of each building, and location of all doors. If the business intends to have general premises, which is an area that has offices, a lunchroom, restrooms, and places for storage of non-alcohol products like bottles, all areas of the plant not covered under the bond need to be included.[9]

All major equipment should be listed with details regarding serial numbers, capacity, type(s) of still(s) (if applicable), and the intended use for the equipment. Additionally, the written description for each tract of land comprising the plant premises should include directions and distances in feet and inches with sufficient particularity to enable ready examination of the boundary of the plant premises. An example is a legal plat, and the description should include the parcel or lot number, if any.[10]

Lastly, the business will have to identify each partner, officer, director, trustee, manager, member, managing member, and sole proprietor, in addition to any stock/interest holder with a stake of 10% or more of the business and any trust or company holding ownership in the company. These individuals will each have to submit their Personnel Questionnaires via Permits Online, which requires disclosing the place of birth and details regarding the individual's arrest, criminal, and business history. If the individual prefers to submit separately, Form TTB F 5000.9 needs to be submitted before the business begins the application process so the tracking number can be assigned to the questionnaire.[11]

Approval

Once the business has gathered all the information, it may proceed to register for an account to start the permit process and access the TBB's permits online tutorial for extra guidance. After submission of the application, tracking numbers will be assigned for each part of the package. Applications are worked on in the order they are received, and a thorough review will take place of each aspect of the application. Upon approval, the TTB will provide an approval letter, permit, registration, notice, bond, power of attorney,

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and other approval documents as applicable.[12]

Conclusion

The TTB application can be meticulous; however, when broken down, it is essentially a step-by-step process that requires forming an entity for the business, determining what type of distillery business to operate, acquiring the proper finance, facility, equipment, and documentation, and, finally, registering for an online portal with the TTB to await approval. While this is a great start, it's not quite time to roll out the barrel yet, as the next step is to acquire formula approval and a certificate of label approval (COLA). The second article of this series will assist your business in navigating this next step in the process to get your distillery up and running.

For more information regarding distillery formation, or other tax and regulatory issues for the industry, you can reach out directly to any of the authors, Daniel Mudd , Elizabeth Mosley and Ha Nguyen, or anyone in our firm's Consumable Goods Service Team.

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[1] Distilleries in the US – Number of Businesses | IBISWorld
[2] TTBGov – Statistics – Original Applications to Operate
[3] TTBGov – Permits Online – Customer Support
[4] 27 C.F.R. § 1.25.
[5] 27 C.F.R. § 1.30.
[6] 27 C.F.R. § 19.71 – 19.72.
[7] TTBGov – PONL Tutorial Part 1 DSP Page 4
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] TTBGov – PONL Tutorial Part 3 Page 5

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