

## Vermont Brewers Association Distribution Guide

### Licensing: Distributing Out-of-State

- ☐ The first step to beer distribution for any state is to get licensed.
- ☐ You will need to show you have a TTB-issued Brewer's Notice and a production license from your home state in order to get the beer distribution license.
- ☐ For every state that you want to distribute in, you'll need to get another separate license.
  - ☐ Every state calls their supplier license something different, so you research the state's laws and regulations.
  - ☐ Requires providing a state with a lot of personal and corporate information.
- This requirement to sell through the three-tier system even applies to incidental sales or attending events. For example, if you want to sell your beer at a festival in a different state, you may have to get a license, register your brands, and get them to the festival through an in-state beer distributor.
- Almost every state has a specific license that they require out-of-state beer suppliers to have before the supplier can distribute their beer in that state.
- **Registered Agent:** generally you will also need to set up with a registered agent in the state you want to distribute in.
  - Registered agent services: a registered agent location within the state to receive legal and critical business communications and a dedicated team to receive and route all service of process legal notifications. ([Wolters Kluwer](#))

### Product Registrations:

#### Getting COLAs from the TTB:

*COLA (Certificate of Label Approval)*

- ☐ Product registrations begin at the federal level with obtaining a COLA (Certificate of Label Approval) from the Trade and Tax Bureau (TTB).
  - *COLAs are not required for the sale of beer that is sold solely within the borders of the state where it was produced.*
  - Once you start selling across state borders, it becomes an interstate sale which kicks in federal labeling rules.

#### Applying for a COLA:

- Online process which the TTB will review within a week or two.
- TTB agents will review your labels for all required and prohibited information and approve them, or send them back for correction if they see anything out of place—which does happen about half the time.
- Having to resubmit a COLA application, often for something minor like improperly stating the volume size, can create a lengthy and hard-to-track process—editing and resending labels multiple times. To minimize these delays, research label requirements ahead of time.

- Some states are easy, requiring getting a copy of your COLAs. Other states are very complex and will do their own multi-week review of your labels.
- Often states also require the submission of supporting documents, like distributor territory assignments, authorization notices, and laboratory analyses.

### **Distribution & Franchise Laws:**

- It's important to set a clear contractual agreement with your new distributor.
- Many states set out restrictions on where and how your distributor arrangements may operate. These can limit you to work with a single distributor in the entire state or one distributor in a given territory or just one distributor per brand.
- These agreements will need to be documented and likely shared with the state.

### **Franchise Laws:**

These laws restrict your ability to terminate or renegotiate your existing distributor agreements.

- They can require you to provide clear, documented proof of good cause when you want to adjust or cancel an agreement, and can even limit what is defined as "good cause."
- They can require you to give your distributor months to correct any problems, and even then not allow you to cancel.
- Advise with legal counsel to look over any agreements before signing.

### **Marketing:**

- Some manufacturers will add in marketing incentives to their contract.
  - Example - for X amount of CEs sold = X amount for brand marketing dollars.
  - Creates incentive for distributors account reps to sell your products.
- Don't forget your distributors have marketing budgets for your brand, you can use this budget for events, marketing campaigns, splitting sponsorships, signage etc.

### **Taxes & Reporting:**

#### **Excise Tax:**

- Interstate beer distributions are also taxed for each state you sell into. These are generally paid by your distributor.
  - Wisconsin and Ohio are the only states where out-of-state suppliers will need to remit to the state tax money based on volume of product sold there.
  - You do not need to pay excise tax to your home state on beer that you distribute out of state.
  - Exports and Interstate sales should be deducted from your total local production so you only pay home state excise taxes on your beer that is actually consumed in your home state.

#### **Shipping Reports:**

- Almost every state that you ship into will require you to provide follow up reports indicating what you sold into the state and to whom.
- This is how the state verifies tax collections from distributors.

**Compliance:**

- Always make sure you are compliant with each state's laws and regulations with distribution and selling alcohol.
- Fines are a relatively common penalty that states and the TTB are imposing on brewers who violate the rules.
  - Make sure your products are registered with the TTB before selling into a new state.
  - In extreme cases a loss of license can be a potential consequence, you will forfeit all permissions associated with that license.
- Not prioritizing compliance: For example, delayed licensing or product registrations due to an incorrect filing can mean having to hold off on future sales, hindering your growth. It can be quite costly to have your production team, sales department, and everyone else held up because you need another few weeks to get a COLA.