

WEST VIRGINIA MALT BEVERAGE LABEL APPROVAL POLICY

In order to effectively enforce the provisions of Chapter 11, Article 16 of the West Virginia State Code, specifically the regulation of the three tier system, certain procedures must be adopted by the West Virginia Alcohol Beverage Control Administration.

CONCEPT

West Virginia operates in a three tier distribution system for the beer industry. The laws, rules and regulations of the State of West Virginia provide for protection for each tier of the distribution system: brewer, distributor and retailer. Fairness and equality are the overriding principles of the laws and regulations of the State of West Virginia.

Brewers are free to select distributors and must assign exclusive territories. After the brewer makes the distributor designations, then the brewer must treat each distributor equally. West Virginia Code §11-16-21(a) referencing nonintoxicating beer states in part “...having entered into an equitable franchise agreement with such distributor... (such agreement) shall be identical as to terms and conditions with all other franchise agreements between such brewer and its distributors in this state...”

Therefore, if a brewer offers a new brand to one distributor through a franchise amendment, then the brewer must offer the same brand to all distributors within that franchised network. Further, if a brewery or brand is purchased by another brewer, the distributor(s) that hold the distribution rights to the selling brewer’s products or in the case of a brand being sold, those distributor(s) will continue to distribute under the existing franchise agreements entered into by the selling brewer.

Code of West Virginia §11-16-21(a)(2) states “Whenever the manufacturing, bottling or other production rights for the sale of nonintoxicating beer at wholesale of any brewer is acquired by another brewer, the franchised distributor of the selling brewer shall be entitled to continue distributing the selling brewer's beer products as authorized in the distributor's existing franchise agreement and the acquiring brewer shall market all the selling brewer's beer products through said franchised distributor as though the acquiring brewer had made the franchise agreement and the acquiring brewer may terminate said franchise agreement only in accordance with subdivision (2), subsection (b) of this section: *Provided*, That the acquiring brewer may distribute any of its other beer products through its duly authorized franchises in accordance with all other provisions of this section.”

The approval of new labels by the Commissioner is a mechanism by which the agency can enforce the law with respect to the assignment of brands.

POLICY

It is the policy of the West Virginia Alcohol Beverage Control Administration that before a label is approved for a new product, ***the following items must be submitted for review*** by the brewer to the Commissioner, in order that the Commissioner may determine if the brewer is in compliance with the provisions of 11-16-21 of the Code of West Virginia:

- Color labels in duplicate (***affixed or printed on 8½ by 11 sheet***). Please state if labels reference cans or bottles.
- Copy of Federal Label Approval referencing the proposed label (all sizes) if being transported across state line from place of manufacture.
- In the case of those products that don’t require Federal Label Approval but fall under the Federal definition of beer, please supply a copy of the formulation approval. Do not submit the recipe or formula, only the approval which defines the product as an IRC Beer or does so within the statement of class and type. The name of the product must be listed on the document.
- Lab Analysis of the contents of the proposed product declaring the percentage of alcohol by volume (*may not exceed fifteen percent (15%) by volume*).
- Copies of all distributor agreements or amendments for the proposed product(s), executed by the brewer and offered to each of the brewer’s distributors within that franchise network. Each product must be listed individually. Blanket statement of “family of brands” or similar declaration will not be accepted.
- 12-Digit UPC Codes for each label and **retail package configuration**. (*example - 12-Digit UPC Code from 12-pack*)
- FOB prices + WV State Excise Tax for each label and their retail packages configuration (*example - 2/12/12 bottles, 4/6/12 cans, 1/6 bbl keg...*). Note: WV State Excise Tax (\$5.50 per barrel).