



KATHY HOCHUL
Governor

LILY M. FAN
Commissioner

VINCENT G. BRADLEY
Chairman

GREELEY FORD
Commissioner

ADVISORY #2022-16

Subject: Supplier/Wholesaler Marketing Permit

This advisory provides guidance regarding the Marketing Permit, issued under Section 99-b(1)(k) of the Alcoholic Beverage Control Law ("ABCL") which allows for certain marketing activities by suppliers and wholesalers and serves as an alternative to the various permits and statutory privileges available to licensed manufacturers and wholesalers. Please note that this Advisory replaces Advisory #2015-17, which is hereby rescinded by the Members of the Authority.

For purposes of this advisory, the term "supplier" means:

- a mead producer licensed under ABCL §30;
- a farm meadery licensed under ABCL §31;
- a brewery or micro-brewery licensed under ABCL §51;
- a farm brewery licensed under ABCL §51-a;
- a cider producer licensed under ABCL §58;
- a farm cidery licensed under ABCL §58-c;
- a distillery licensed under ABCL §61(1);
- a micro-distillery licensed under ABCL §61(1-a);
- a rectifier licensed under ABCL §61(2);
- a micro-rectifier licensed under ABCL §61(2-b);
- a fruit brandy producer licensed under ABCL §61(2-a);
- a farm distiller licensed under ABCL §61(2-c);
- an importer licensed under ABCL §61-b;
- a winery licensed under ABCL §76 or § 76-c;
- a farm winery or micro-winery licensed by the Authority under ABCL §76-a or § 76-d;
- an entity that holds a valid license issued by another state to produce alcoholic beverages;
- a foreign manufacturer producing alcoholic beverages in accordance with the laws of its country, provided however: that such entity meets the citizenship requirements to obtain a license or permit under the ABCL; and such entity designates a wholesaler to accept any communication (including notices of pleadings) from the Authority;
- an entity having a basic permit as required by §1.20 of title 27 of the code of federal regulations to import alcoholic beverages;

- a beer wholesaler licensed by the Authority under ABCL §53 that is the brand owner of the beer for which the marketing permit is used; or
- an organization or association of alcoholic beverage manufacturers incorporated within this state.

For purposes of this advisory, the term “wholesaler” means:

- a beer wholesaler licensed under ABCL §53;
- a cider wholesaler licensed under ABCL §58 or §58-a;
- a wine wholesaler licensed under ABCL §78; or
- a liquor wholesaler licensed under ABCL §62.

For purposes of this advisory, the terms “charitable organization,” “not-for-profit organization” and “non-profit organization” shall have the same meaning- any bona fide religious or charitable organization or bona fide educational, fraternal or service organization or bona fide organization of veterans or volunteer firefighters, provided that donations to such organization are deductible for Federal income tax purposes.

1. A Marketing Permit shall allow:

- a) a supplier or wholesaler to conduct tastings and provide samples of the permit holders’ products to consumers;
- b) a supplier, other than a manufacturers’ organization or association, to accept orders from licensed retailers on behalf of a wholesaler who is authorized to sell such product at wholesale; and
- c) a supplier, other than a foreign manufacturer or a manufacturers’ organization or association, to sell their products by the bottle to consumers during tastings conducted pursuant to the permit.

2. A Marketing Permit may be used at the following events/locations:

- a) by a wholesaler: at its licensed premises;
- b) by a supplier or a wholesaler other than a beer wholesaler:
 - (i) at an establishment licensed under the ABCL to sell at retail the alcoholic beverage that will be tasted;
 - (ii) the State Fair, recognized county fairs and farmers markets operated on a not-for-profit basis;
 - (iii) outdoor or indoor gatherings, functions, occasions or events sponsored by a bona fide charitable organization; and
 - (iv) other indoor or outdoor events subject to the following conditions: the permit may be used at the same location no more than 8 times in a calendar year; the

permit may not be used more than 2 consecutive days at the same location; and the permit may not be used on more than 2 consecutive weekends (Saturday & Sunday) at the same location.

3. Applications may be filed for a three-year permit or for an individual function permit.
 - a) The fee for a three-year permit shall be \$375 plus a \$20 filing fee.
 - b) The fee for an individual function shall be \$20 plus a \$5 filing fee.
4. An application for an individual function shall be filed at least 15 days before the event. An entity applying for a permit for an individual event must identify the location of the event in the application.
5. The holder of a combined craft manufacturing license is not required to obtain a separate permit for each of its manufacturing licenses. It may obtain one permit which can be used for all alcoholic beverages produced under each manufacturing license.
6. A Marketing Permit shall be subject to the following conditions:
 - a) the site of the tasting shall be subject to inspection during the tasting by the Authority;
 - b) no fee shall be charged by the supplier or wholesaler to a consumer attending or participating in such event;
 - c) each sample shall be limited:
 - (i) in the case of beer, wine products, mead and cider, to 3 ounces or less;
 - (ii) in the case of wine, to 2 ounces;
 - (iii) in the case of liquor, to one- quarter ounce, provided that no more than one-quarter ounce of liquor may be mixed with a non-alcoholic beverage;
 - d) no tasting or sale by the bottle shall be held during the hours prohibited by the provisions of ABCL §106(5);
 - e) the permit holder shall comply with all federal and state tax requirements;
 - f) the permit holder shall provide all alcoholic beverages used for the samples or sales by the bottle, provided however that:
 - (i) in the case of a supplier, the alcoholic beverages may come from the inventory of a wholesaler at the supplier's expense;
 - (ii) in the case of a manufacturers' organization or association, the alcoholic beverages must be donated by a supplier or wholesaler;

- (iii) in the case of a brewer, the alcoholic beverages used for tastings at a licensed retail premises may be purchased from such retailer.
 - g) the permit holder shall remove all remaining product at the conclusion of the event;
 - h) liquor and wine used for tastings do not have to be price posted items;
 - i) liquor and wine used for sales by the bottle must be price posted;
 - j) all alcoholic beverages used at such events shall be in the original containers and must comply with any one of the following:
 - (i) the ABCL and the Authority's regulations pertaining to brand label registration;
 - (ii) have received a Certificate of Label Approval (COLA) from the Tax and Trade Bureau (TTB); or
 - (iii) have an exemption from COLA registration issued by TTB;
 - k) the permit holder shall keep and maintain adequate books and records, including a log of all events conducted pursuant to the permit, and make such books and records available for inspection by the Authority; and
 - l) the event shall be conducted by the permit holder or an authorized agent of the permit holder. Provided, however, that with respect to beer tastings, a beer wholesaler shall not serve as the authorized agent for another permit holder, nor shall a licensed beer wholesaler be involved in any manner with a beer tasting conducted by another permit holder. Any liability stemming from a right of action resulting from an event conducted under the permit, and in accordance with the provisions of General Obligations Law §11-100 and §11-101, shall accrue to the permit holder.
7. An organization that does not hold a license to traffic in alcoholic beverages may sponsor an event at which a supplier or wholesaler is using its marketing permit to conducting tastings or sell by the bottle. However, if that organization charges a fee to those attending the event, the organization must obtain a temporary beer and wine permit (for wine, beer and cider), retain a retail licensee with a caterer's permit (for liquor, wine, beer and cider) or, in the case of a not-for-profit organization, obtain a craft beverage tasting event permit (for liquor, wine, beer and cider. Charging a fee to persons to sample alcoholic beverages or attend the event is considered a "sale" and requires the appropriate license or permit.
8. The permit shall authorize the transportation of alcoholic beverages to/from the site where the permit is being used. A copy of the permit shall be kept in the cab of the vehicle being used to transport the alcoholic beverages.
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This matter was heard and determined by the Members of the Authority at a Full Board meeting held on August 31, 2022 before Chairman Vincent Bradley, Commissioner Lily Fan, and Commissioner Greeley Ford. The above written advisory was approved by the Members of the Authority on August 31, 2022.

Dated: 09/26/22

A handwritten signature in black ink, appearing to read "Donald Roper", written in a cursive style.

Donald Roper
Secretary to the Authority