

CONTRACT BREWING IN WYOMING-GENERAL INFORMATION

Wyoming Liquor Division

August, 2019

The information contained in this article is general, is not all inclusive and is subject to change without notice and shall not be considered legal advice. Any person considering a contract brewing arrangement is advised to be familiar with all applicable Federal, State and Local laws and to seek independent legal counsel before participating in a contract brewing arrangement.

Contract Brewing in General

Contract brewing is a normal business practice recognized at the Federal government level by the Alcohol and Tobacco Tax and Trade Bureau (TTB). Contract brewing is not prohibited in Wyoming provided breweries and microbreweries comply with all applicable Federal, State and Local laws, rules, regulations and policies.

Contract brewing in Wyoming means a contractual arrangement between a client brewery or microbrewery (client) and another brewery or microbrewery (contract brewer) contracted to produce malt beverage products, including beer.

Both the client and the contract brewer must be appropriately licensed and operational in their respective jurisdictions.

Contract brewing arrangements are designed to achieve one or more objectives which may include:

- Utilizing extra production capacity at the contract brewer facility
- Overcoming limited production capacity at the client facility
- Formula experimentation
- Collaboration between multiple brewers
- Equipment and facility cost savings for the client

The contract brewer is responsible for all aspects of the contracted beer production and packaging including: obtaining the appropriate TTB COLA's for the beer, reporting and remittance of all applicable Federal and State taxes, ensuring the produced beer is appropriately distributed from the production facility through a licensed Malt Beverage Wholesale distributor (Wholesaler). The contract brewer also retains all production credit towards its annual, local microbrewery permit renewal requirements in Wyoming.

Beer brand ownership will depend upon the nature of the contract between the client and the contract brewer; however the TTB COLA application requires the name and location of the producer "AS SHOWN ON PLANT REGISTRY."

Once the beer has been produced, it must then be distributed through a Wholesaler to get back to the client pursuant to Wyoming state laws. The client will only be able to sell this beer for on-premise consumption at the client's facility per Wyoming state law. The Local Licensing Authority that issued the microbrewery license to the client microbrewery may also prohibit the sale of beer not produced by the client at its own facility. In effect, the brand does not belong to the client at this time because the client did not produce the beer at its own facility per applicable Wyoming state laws.

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An exception may apply pursuant to applicable Federal law if the client and the contract brewer have the exact same common ownership. If the ownership is exactly the same between the parties, then the beer may be transferred “in-bond” between the facilities and the applicable Federal taxes may be paid by the client in this scenario. Common ownership in this sense does not require each party to have licensing held by the same legal entity per Federal law, only the underlying ownership must be the same.

Tenant Brewing and Alternating Proprietorship

A variation to the general contract brewing arrangement is the possibility of Tenant Brewing or an Alternating Proprietorship.

The TTB recognizes that “An “alternating proprietorship” is a term used to describe an arrangement in which two or more people take turns using the physical premises of a brewery.” And that “Generally, the proprietor of an existing brewery, the “host brewery,” agrees to rent space and equipment to a new “tenant brewer.”

These types of arrangements may be similar to a contract brewing arrangement, but specific different TTB rules and regulations apply to these arrangements and these arrangements may be in conflict with applicable Wyoming state and Local laws.

The variables related to tenant brewing and alternating proprietorships are too numerous to be discussed in this article. Please contact our office for additional information.

CONTRACT BREWING CRITERIA OUTLINE

Outlined below are the major, basic criteria for a contract brewing arrangement in Wyoming with the primary, applicable Federal or Wyoming state laws referenced. This outline is not presented as a listing of all applicable criteria or laws applicable to contract brewing arrangements.

Definitions for purposes of this outline:

Beer: Beer means and is synonymous with malt beverage (W.S. 1-1-101(a)(x))

Brand: The name of an individual malt beverage product (W.S.12-9-102(a)(i))

Client: The microbrewery contracting with the contract brewer to produce the beer

Contract Brewer: The brewery or microbrewery that produces the beer

Wholesaler: The licensed entity that distributes malt beverage products (W.S. 12-2-201, 12-2-201(b))

Territory: The entire state of Wyoming, and or specific towns, cities, or counties within Wyoming. A territory can be as large as the entire state or as small as a single town or a combination of various geographical locations in Wyoming.

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1) Federal Licensing (TTB Brewers Notice) Required

- a) Issued by the TTB per Code of Federal Regulations Title 27 Part 25
- b) The contract brewer and the client must each be licensed per applicable Federal, state and local laws

2) Local Microbrewery Permit Required

- a) Issued by Local Licensing Authority (W.S. 12-4-412(a)(i))
- b) A Microbrewery is a commercial enterprise at a single location producing no less than fifty (50) barrels and no more than fifty thousand (50,000) barrels of malt beverage per license term year (W.S. 12-1-101(a)(xix))
- c) The contract brewer and client must each be operational and licensed per applicable Federal, state and local laws

3) State Brewery (Manufacturer) License Required

- a) A Brewery is a commercial enterprise at a single location producing more than fifty thousand (50,000) barrels of malt beverage per license term year (W.S. 12-1-101(a)(xix))
- b) NOTE: At the time of the writing of this article, no brewery licenses had been issued in the State of Wyoming. Please contact the Wyoming Liquor Division for more information.

4) Contract between Contract Brewer and Client

- a) The contact brewer is entirely responsible for producing the beer, obtaining licenses and COLAs and paying federal taxes upon removal of beer from brewery, reporting, record keeping, labeling and packaging (TTB Gov Industry Circular 2005-2)
- b) Transfer of product between breweries of the same ownership may be applicable (Code of Federal Regulations Title 27 Part 25, Subpart L, Removals Without Payment of Tax, Transfer To Another Brewery Of Same Ownership §25.181)
- c) Brand ownership is determined between the parties

5) Beer production at Contracted Facility

- a) Contract brewer must report production and pay any applicable federal and state taxes
- b) The contract brewer is responsible for submitting production reports and applicable taxes to the Wyoming Liquor Division (Liquor Division Rules, Section 9. Malt Beverages, subsection (c.))
- c) Client ***will not get any production credit*** towards minimum production requirements for permit renewal purposes (W.S. 12-1-101(a)(xviii), (W.S. 12-1-101(a)(xix))
- d) The contract brewer shall label and package the produced beer

CONTRACT BREWING IN WYOMING-GENERAL INFORMATION

Wyoming Liquor Division

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6) Product Distribution through a licensed Malt Beverage Wholesale Distributor

- a) Contract brewer must either license as a Wholesaler or license to sell to a Wholesaler (W.S. 12-2-201(a), W.S. 12-2-201(g))
- b) Territorial Assignment will need to be submitted in order to sell the manufactured product back to the client. The contract brewer is the supplier of the brand for Territorial Assignment purposes. (W.S. 12-2-201(b), W.S. 12-9-104(a)(xv))

7) Product sold at retail by client and or other retailers

- a) If product is to be sold by the client microbrewery, Wyoming state laws apply for on premise sales only of beer not produced by the client microbrewery at its own manufacturing location. The local licensing authority may also fully prohibit the sale of beer not produced by the client microbrewery. (W.S. 12-4-412(b),(iv))
- b) If product is to be sold by other license or permit holders, the product must be obtained from licensed Malt Beverage Wholesale Distributors (W.S. 12-2-201(b))

Please contact the Wyoming Liquor Division for further assistance

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(From the "Contact Us" link on the home page)

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