



### Gluten-Free Beer

All manufactures must register their brands with Pennsylvania regardless of whether it is sold in draft, bottles, or growlers. Section 445 of the Liquor Code and section 9.108 of the Board's Regulations require that all beer be registered with the Board prior to it being offered, sold or delivered to any buyer within Pennsylvania.

Pursuant to § 9.108(b)(1) Pennsylvania brand registration requires a TTB label approval containing copy of the label. TTB label approvals regarding "gluten-free" claims are being made pursuant to TTB Ruling 2012-2 *Interim Policy on Gluten Content Statements in the Labeling and Advertising of Wines, Distilled Spirits, and Malt Beverages*. The TTB ruling provides:

If the product is made with any amount of wheat, barley, or rye the TTB will not approve labels with the term "gluten-free".

If the product is not made with any amount of wheat, barley, or rye the term "gluten-free" can be used. However, the TTB will not issue a label approval. The TTB will however issue a cover letter stating that the product is not a malt or brewed beverage but that it will be taxed as such. The letter has been accepted by the PLCB in lieu of a label approval. "New Planet" is a gluten free beer registered in Pennsylvania. New Planet does not have a COLA label approval. New Planet's Pennsylvania brand registration was granted pursuant to a TTB letter not a TTB COLA approval. Formulas for the product and samples must be provided to the TTB for testing in order for the letter to be issued.

If the product is made with any amount of wheat, barley, or rye the TTB will approval labels with the term "[Processed or Treated or Crafted] to remove gluten" pursuant to the conditions of the Interim Policy including:

- One of the following qualifying statements must also appear legibly and conspicuously on the label or in the advertisement as part of the above statement:
  - "Product fermented from grains containing gluten and [processed or treated or crafted] to remove gluten. The gluten content of this product cannot be verified, and this product may contain gluten."

OR

- "This product was distilled from grains containing gluten, which removed some or all of the gluten. The gluten content of this product cannot be verified, and this product may contain gluten."
- TTB will not approve labels containing the above claims unless the label application contains a detailed description of the method used to remove gluten from the product and R5 Mendez Competitive ELISA assay results for the finished product showing a response of less than 20 ppm gluten (and the name and manufacturer of the assay). Industry members should also be prepared to substantiate advertising claims with the same information, upon request.

If a manufacture is producing a beer which is gluten free it must register its gluten free beer brand with Pennsylvania. A standard TTB COLA application needs to be submitted which includes the beer's formula. A sample will also be required for testing by the TTB. The TTB will not issue a COLA approval but will issue a determination letter. That letter will be submitted with the Pennsylvania brand registration application and such letters have been acceptable by the PLCB for past registrations. For more information about gluten free beer, or any other liquor or business matters, please contact Ted Zeller at [tzeller@nmmlaw.com](mailto:tzeller@nmmlaw.com) or Brian Slough at [bslough@nmmlaw.com](mailto:bslough@nmmlaw.com).