

## Wineries on the Go: Retail Sales Away from Your Winery Premises



By Sara Schorske  
and Alex Heckathorn

IN THE big picture of alcohol beverage regulation, wineries enjoy a special status. Although they fall squarely in the category of manufacturers, many states grant wine producers automatic or easy-to-obtain wholesale and retail privileges that would turn any other licensee green with envy. The ability to sell direct to consumers is an especially coveted privilege, and tasting room sales are only a small part of the growing universe of retail sales opportunities for wineries.

One of the newer trends is to allow wineries to make retail sales at locations other than their winery premises, such as at festivals, farmers' markets, and street fairs. While charity-sponsored tastings and other fund-raising events have been a common way for vintners to offer their wines for tastings in different venues, the wineries have generally been required to donate the wine to the charity, which then makes the sales and pockets the proceeds. However, the new breed of roaming retail privileges are different in that they allow the winery, without a charity sponsor, to offer tastes, to sell wine by the glass and/or by the bottle directly to

consumers at locations other than the winery.

The regulators to whom we spoke about these new winery privileges were very positive about their experience with these types of events. What few regulatory concerns they had have been solved, and every one of them noted with pride that the benefits to the local wine industry clearly outweighed any problems. Surprisingly, two states with the most liberal roving retail privileges for wineries are Virginia and Oregon, both of them control states.

In this installment of Compliance Watch, we are going to take you on a tour of three states that have granted the privilege of retail sales away from the winery premises, and discuss the various compliance issues raised by these privileges. California wineries may now sell to consumers at farmers' markets using the new Farmers' Market Sales Permit. Vintners in Oregon and Virginia have been using their extra-premises privileges for years to leave their production premises and meet the consumer on the consumer's own turf.

Wineries in other states should sit up and take notice. The trail has been blazed! Show this article to your regulators and legislators! Hopefully, the information it contains will make it easier for other states to support their local wine industry in this way.

### The California Certified Farmers' Market Sales Permit

Starting last year, California wineries were given the privilege of selling their wine in bottles to consumers at certified

farmers' markets. There are over 350 communities with certified farmers' markets in California. Not just a sales opportunity, the markets are designed to bring the agricultural community together with the urban community and thereby support agriculture through community awareness.

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*Compliance Watch is written by Sara Schorske, founding member of CSA—Compliance Service of America, LLC (www.csa-compliance.com) and Alex Heckathorn. CSA specializes in licensing and compliance for the wine and beer industries. To reach the authors—E-mail: csa@csa-compliance.com; Tel.: (800) 400-1353.*

farmers to sell directly to the public, the privileges of this permit are granted only for sales of wines produced and bottled by the winery, from grapes grown by the winery. Only sales in the bottle for off-premises consumption are allowed, tasting or sales of wine by the glass are not permitted.

To sell wine at farmers' markets, the winery needs to obtain a Farmers' Market Sales Permit (Type 79) permit for each farmers' market where it wishes to sell. Each permit is valid for only one day a week and only at the specific farmers' market designated; however, a winery can hold multiple permits to sell at multiple certified farmers' markets, as many permits as it likes. The only limit is on total sales: A winery may only sell an aggregate of 5000 gallons per year pursuant to all of its farmers' market permits. ABC monitors compliance with the sales limit by requiring wineries to report annual wine sales at these markets on their annual report of production.

The Type 79 Permit is an ancillary permit to the winery's California winegrower's license and is simple to obtain from the California ABC. Upon filing a single page form (ABC-239)

and paying the \$44 fee, the permit is normally issued over the counter.

A certified farmers' market is a location approved by the local County Agriculture Commissioner. You can find a list of all the certified farmers' markets in California at the web site of the California Federation of Certified Farmers' Markets at <http://www.farmersmarket.ucdavis.edu/doc/about.html>. Both this site and the web site for the Family Winemakers of California, which sponsored the legislation for these permits, have listings of the markets that allow wine sales.

### The Virginia Remote Location Privilege

While we tend to think of California as leading the way with liberal winery privileges, Virginia beats California hands down when it comes to roving retail privileges. Virginia automatically gives each of its "farm wineries" the advantage of having two remote locations where the winery can conduct ALL of its retail privileges. To qualify as a "farm winery" the winery must grow 51% of the fruit used to make its wine on land owned or leased by the winery.

While this privilege can be used to

establish a permanent tasting room off the winery premises (such as allowed by California for retail sales at one off-site "duplicate" location), the Virginia remote location privilege may also be moved around to temporary locations, such as wine festivals, street fairs, or farmers markets. These transitory locations can be changed from day to day, and with two remote "licenses," a winery can serve at two events at different locations on the same day. This could explain why Virginia has over 300 wine festivals each year!

Using its remote location privilege, a Virginia farm winery may offer tastes, sell wine by the glass for on-premise consumption, sell wine in bottles for off-premise consumption, and take orders for shipments to consumers anywhere in the state. A Virginia regulator said it was the equivalent of a tasting room to go. There are no limits on the quantities that can be sold, nor are there any special reporting requirements.

In order to exercise this privilege, a farm winery simply sends a request to the Virginia ABC requesting permission to use its remote location privileges at a specific location on a specific date. While often referred to as the remote license, no license or permit is actually issued, permission is simply granted to exercise the privilege at the specific remote location requested. If the event is an established festival or event with security and an alcohol control plan, all the winery must do is give notice to the ABC. For other less established events, the ABC will request information on the event to determine whether there are adequate controls to prevent minors and intoxicated persons from consuming alcohol. The ABC may limit the privileges that may be exercised, such as limiting the winery to off-premise sales of sealed bottles. From our discussions with Virginia regulators, it was clear that the ABC's approach to these issues is pragmatic and straightforward.

The Virginia ABC is proud that the remote location privilege has been an excellent tool in marketing and promoting the Virginia wine industry. At the annual Vintage Virginia Wine Festival at the Great Meadows in The Plains over forty wineries used their remote location privilege to participate.

### The Oregon Special Event Winery and Grower's License

In Oregon, holders of either a win-

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ery or a grower license have the right to obtain a separate "special event" license that permits the sale of wine at retail directly to consumers for consumption on or off the premises. Like Virginia's remote location privilege, this license allows wineries to offer tastes and to sell for on- and off-premises consumption at festivals, farmers' markets and community events. The regulations require that food service be available, but this requirement can be fulfilled by third party food vendors who are participating at the event. This license is easy to obtain, especially for established events, and costs only \$10.

An application for a special event license is made to the Oregon Liquor Control Commission in writing on a form supplied by the OLCC. The application process requires a sign off by the local police or sheriff's department and permission from the property owner. Routine applications may be submitted as few as five days before the event, but non-routine events should be submitted at least twenty-five days before the event for a review. The OLCC may also limit the privileges to be exercised by the winery or grower at the event, such as permitting only off-premises sales in bottles.

### The Issue of Responsible Service

The service of alcoholic beverages is a serious responsibility anywhere it occurs, and special events and festivals pose greater potential challenges than service on your winery premises. While security is often provided by the event organizer, wineries serving at these events still bear the ultimate responsibility for safe service. Therefore, winery personnel should practice safe sales to avoid violations and costly fines.

Winery staff, used to serving in tasting rooms, must heighten their awareness of their responsibilities when serving alcohol in a crowded, public setting. Obviously, avoiding sales to minors is one of the primary responsibilities, but also making sure that adults consume responsibly is another. For example, visibly intoxicated persons should not be permitted to continue consuming. At large events it is especially hard to control these things once the patron has left your service area, but limiting the number of drinks any person can purchase is a good place to start.

To the regulators and local police,

responsible service and alcohol control plans are the most important issues at these types of events. At large wine festivals with tasting or sales of wine by the glass, both the OLCC and the Virginia ABC require that the wineries collectively have a control plan for alcohol service at these events. In Virginia the industry has responded appropriately by developing its own self-policing policies for wine festivals, including requiring ID checks at the entrances and issuing armbands to attendees.

Oregon has adopted a formal set of rules and policies to ensure responsible service at all types of special events. If pouring for consumption at the event, all the servers are required to have a service permit, and the winery must designate a person who is responsible for ensuring compliance with liquor laws at the event. The OLCC requires an adequate control plan to ensure minors and visibly intoxicated persons are not permitted to consume alcohol. Occasionally it will have the event create confined service

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areas where patrons remain while consuming the tastes or wine by the glass. For larger events, alcohol monitors, who either hold service permits or are law enforcement officers, rove the event to ensure that alcohol is not being passed to minors and that visibly intoxicated persons are not continuing to consume alcohol.

### ATF Special Occupational Tax Is Due for Remote Sales

Although ATF does not regulate retail sales, it does collect special occupational tax (SOT) from retailers. Wineries are allowed to conduct retail operations at one location without having to pay additional special tax as a retailer, but conducting sales off your winery premises may make you liable for extra taxes. The retail exemption for wineries applies only to one location designated by the winery (generally the production premises, if retail sales are also made there) and does not extend to additional sales locations such as festivals or farmers' markets. If a winery sells or even takes orders at special events or festivals, it will need a separate special tax stamp as a

retailer to cover these additional retail activities.


Normally a special tax stamp covers a specific location, which initially seemed to pose a problem for the winery traveling from festival to festival. However, ATF deftly saw that its provisions for "caterers," who serve at numerous locations, could fit the wandering winery equally well. This special tax class designated for "retail dealers, liquor-at-large," is not limited to a specific location, and is the type of special tax stamp your winery should have if it is making sales at festivals and other events away from your designated retail premises. It costs only \$250 per year, and covers all temporary retail locations, no matter how many you have, as long as the winery is selling at no more than one event or festival on a given day. The winery is required to maintain a log of the dates, times, and locations where sales were made under this tax stamp.

If sales are made simultaneously at two or more locations, an additional retailer-at-large tax stamp would be necessary for each additional location used concurrently. For example, if a winery was selling at two different

farmers' markets held at the same time, it would need two special tax stamps as a retailer at large. If a winery was selling at four farmers' markets, but all of them were on different days of the week, then it would need only one special tax stamp.

### Tell a Legislator!

Wine festivals and special events are growing in popularity. No wonder! The public loves to come and meet the wineries at these events. Even today, when internet sales and telephone orders are all the rage, there is still a special place for the face-to-face meeting of vintner and wine lover over a glass of wine.

The states that have provided for these special opportunities for public and winery to meet have reaped the benefits in promoting their local wine industries. And the regulatory precedents are encouraging: Any potential problems have been smoothly handled by industry cooperation and common sense regulations. We suggest you tell your legislator that it is time to let you go meet the public—primed with a full complement of roving retail sales privileges. 

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