

**STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO**

In re:

PETITION FOR DECLARATORY  
STATEMENT BEFORE THE  
DEPARTMENT OF BUSINESS AND  
PROFESSIONAL REGULATION,  
DIVISION OF ALCOHOLIC BEVERAGES  
AND TOBACCO,

Michael J. Skweir,  
Petitioner

**DECLARATORY STATEMENT**

This Declaratory Statement is rendered by the Director of the Division of Alcoholic Beverages and Tobacco, (Division) pursuant to Sections 120.565 and 561.15, Florida Statutes.

**ISSUES**

1. Whether Brew-On-Premises and Home Winemaker's Center, a for-profit business that teaches individuals how to make their own beer and wine for personal consumption, is required to obtain a manufacturer's license, under the laws relating to Alcoholic Beverages and Tobacco, Chapters 561, 562, 563, 564, 565, 567, and 568, Florida Statutes.

**FACTS**

On April 24, 2002, the Division received a Petition for Declaratory Statement filed by Michael J. Skweir (Petitioner).

According to this correspondence, Petitioner proposes to establish a for-profit business that provides facilities, equipment, raw materials and instruction to members of the public who desire to legally produce beer and wine in limited quantities for personal consumption.

The Petitioner submitted a request for a declaratory statement pursuant to Section 120.565 (1), Florida Statutes, to clarify whether Brew-On-Premises and Home Winemaker's Center is required to obtain a manufacturer's license under the laws relating to Alcoholic Beverages and Tobacco.

### ANALYSIS

Prior to the filing of the instant Petition, and in the interest of exercising an abundance of caution, the Division informally stated to the Petitioner that Brew-On-Premises and Home Winemaker's Center may be required to obtain a manufacturer's license under the laws relating to Alcoholic Beverages and Tobacco. After further review of the applicable law(s), discussed below, together with the written statement of the Petitioner regarding the nature of the business, the Division has determined Petitioner will not be engaged in activities that entail the actual commercial manufacture and sale of alcoholic beverages for public consumption. Therefore, Petitioner is not a "manufacturer" as defined in the Florida Beverage Laws, and licensing by the Division is not required.

Section 561.01 (7), Florida Statutes, defines "manufacturer" as "all persons who make alcoholic beverages *except* those who make beer or wine for personal or family consumption pursuant to Section 562.165, Florida Statutes." (emphasis added)

Rule 61A-1.006 (5), Florida Administrative Code, defines "manufacturer" as "any person, business enterprise, political subdivision of a government, receiver, trustee, or liquidating agent who makes alcoholic beverages in this country or any place outside the boundaries of the United States of America for distribution to any vendor licensed by the state."

Title 27, Sections 25.205 and 25.206, Code of Federal Regulations, provide that "any adult may produce beer, without payment of tax, for personal or family use and not for sale", and that such beer may be "removed from the premises where made for personal or family use including use at organized affairs, exhibitions or competitions such as homemaker's contests, tastings or judging."

The federal regulations are clear on their face, that Brew-On-Premises and Home Winemaker's Center may produce beer on the premises and allow such beer to be removed without payment of tax. Florida law provides a similar allowance in Section 561.165, Florida Statutes, which states in pertinent part: "a person who is not prohibited by Section 562.111, Florida Statutes, from possessing alcoholic beverages may produce beer for personal or family use, and not for sale, in the amounts provided in this section without payment of taxes or fees or without a license."

Section 561.01 (7), Florida Statutes, differs from Rule 61A-1.006, Florida Administrative Code, in that Rule 61A-1.006 (5), Florida Administrative Code, includes in the definition of "manufacturer" that the beer produced is for "distribution to any vendor licensed by the state." Petitioner's proposed plan for the Brew-On-Premises and Home Winemaker's Center would not conflict with this provision of the Florida Administrative Code, nor would it be in violation of any applicable federal regulations.

Therefore, the Division concludes that the Petitioner's proposed Brew-On-Premises and Home Winemaker's Center is not required to obtain a manufacturer's license under the laws relating to Alcoholic Beverages and Tobacco.

### **CONCLUSION**

Petitioner's question as set forth above is answered in the NEGATIVE. The Petitioner is not subject to licensure by the Division as a manufacturer of alcoholic beverages.

**DONE AND ORDERED** this 14th day of June 2002.

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RICHARD E. TURNER, Director  
Division of Alcoholic Beverages & Tobacco  
1940 North Monroe Street  
Tallahassee, Florida 32399-1020  
(850) 488-3227

### **RIGHT TO APPEAL**

This Declaratory Statement constitutes final agency action and may be appealed pursuant to s. 120.68, Florida Statutes, and rule 9.110, Florida Rules of Appellate Procedure, by filing a Notice of Appeal conforming to the requirements of Rule 9.110(d), Florida Rules of Appellate Procedure, both with the appropriate District Court of Appeal and with this agency at the Office of the Agency Clerk, 1940 North Monroe Street, Tallahassee, FL 32399-1020, within 30 days of rendition of this Order, accompanied by the appropriate filing fees.