



Notice of Rule Change – Explanatory Statement Liquor Vendors

This explanatory statement concerns the **Washington State Liquor Control Board's adoption of changes to rules regarding Liquor Vendors.**

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. This statement must be provided to anyone who gave comment about the proposed rule making.

Once persons who gave comment during this rule making have had a chance to receive this document, the Liquor Control Board will file the amended rules with the Office of the Code Reviser. These rule changes will become effective 31 days after filing (approximately October 3, 2009).

The Liquor Control Board appreciates your involvement in this rule making process. If you have any questions, please contact Karen McCall, Rules Coordinator, at (360) 664-1631 or e-mail at rules@liq.wa.gov.

What are the agency's reasons for revising these rules?

These rules are being revised as part of the Rules review process.

What changes are being made?

The Board adopted these rule changes September 2, 2009. The rules will be filed on September 2, 2009 and will be effective on October 3, 2009.

WAC 314-37 – Liquor Vendors.

Changes the title to "Contract Liquor Stores".

Amendatory Section WAC 314-37-010 – Liquor sales in Indian country.

Changes "liquor vendor" to "contract liquor store".

Amendatory Section WAC 314-37-020 – Manufacturer’s onsite vending appointment—Qualifications.

Changes “vendor” to “contract liquor store”.

Amendatory Section WAC 314-37-030 – Bank credit cards and debit cards.

Changes “liquor vendor” to “contract liquor store”. Changes “SPS” procedures to “PCI” procedures in relation to credit/debit card sales transactions.

Summary of all public comments received on this rule proposal.

No public comment was received.

Testimony at Public Hearing – August 12, 2009 Olympia, WA

None

WAC Changes

Chapter 314-37 WAC

NONSTATE LIQUOR ((VENDORS)) STORES

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-37-010 Liquor sales in Indian country--Appointment of tribal liquor ((venders)) stores--Qualifications. (1) The Washington state liquor control board deems it necessary and advisable to adopt this rule for the following reasons:

(a) The decision of the United States Supreme Court in the case of *Rice v. Rehner* (filed July 1, 1983) has established that the state of Washington has licensing jurisdiction over tribal liquor sales in Indian country and that those sales, when made in conformity with federal law, are subject to both tribal and state liquor regulatory requirements.

(b) It is contrary to state law (see chapter 66.44 RCW) for purchasers of Indian liquor to remove that liquor from the reservation and into the state of Washington in those instances where the tribal liquor sellers are not authorized by the board to sell liquor.

(2) Accordingly, pursuant to RCW 66.08.050(2), the Washington state liquor control board will appoint qualifying Indian tribes, which have entered into negotiated business agreements with the board, as tribal liquor (~~((venders))~~) stores which will authorize those (~~((vender))~~) tribes to sell liquor by the bottle to such persons, firms or corporations as may be sold liquor from a state liquor store. All such appointments will be subject to the following conditions:

(a) The tribe must enter into a business agreement with the Washington state liquor control board for the purchase and sale of liquor which will insure that the state's control over liquor traffic will be maintained while taking into consideration the unique nature of a tribal liquor (~~((vender))~~) store operation.

(b) The tribe must purchase all of its spirituous liquor for resale in Indian country from the board at a negotiated

price: Provided, That a quota of spirituous liquor will be sold by the board each year to the ((~~vender~~)) tribe without the payment of state taxes, which quota shall be negotiated between the board and the qualified tribes and approved by the department of revenue.

(c) The tribe must have in force a tribal ordinance governing liquor sales, which ordinance must have been certified by the Secretary of the Interior and published in the Federal Register as required by 18 U.S.C. § 1161.

(d) The tribe must make all liquor sales in Indian country in conformity with both state and federal law.

(3) Should a tribe which has been appointed as a tribal liquor ((~~vender~~)) store pursuant to this section fail to comply with all the above enumerated conditions, which shall be construed as continuing requirements to maintain the status of tribal liquor ((~~vender~~)) store, the appointment of that tribe as a tribal liquor ((~~vender~~)) store may be revoked by the board.

(4) A tribe, whether or not it has status as ((~~an Indian~~)) a tribal liquor ((~~vender~~)) store, which desires to sell beer and wine purchased from a licensed distributor must obtain state licenses for the sale of beer and wine and must abide by all state laws and rules applicable to sale of beer and wine by state licensees. Tribes selling beer and wine shall collect and remit to the state department of revenue the retail sales tax imposed by RCW 82.08.020 on retail sales of beer and wine to nontribal members.

(5) "Indian country" as used herein shall have the meaning ascribed to it in Title 18 U.S.C. § 1151 as qualified by Title 18 U.S.C. § 1154 as of July 1, 1983.

[Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060 and 82.08.150. 98-18-097, § 314-37-010, filed 9/2/98, effective 10/3/98. Statutory Authority: RCW 66.08.030 and 66.08.050(2). 83-24-021 (Order 131, Resolution No. 140), § 314-37-010, filed 11/30/83; 83-04-017 (Order 118, Resolution No. 127), § 314-37-010, filed 1/26/83.]

AMENDATORY SECTION (Amending Order 180, Resolution No. 189, filed 3/13/86)

WAC 314-37-020 Manufacturer's on-site (~~vending~~) liquor store appointment--Qualifications. (1) Pursuant to RCW 66.08.050, the board, in its discretion, may appoint a domestic winery which also manufactures liquor products other than wine pursuant to a license under Title 66 RCW, as a (~~vender~~) manufacturer liquor store for the purpose of sale of liquor products of its own manufacture on the licensed premises only.

(2) Such appointment may not be made to domestic wineries located inside incorporated cities or towns in which there is a state liquor store.

(3) Such appointment shall only be made after a contract has been entered into between the board and the domestic winery. Such contract shall contain the following:

(a) A designation of the location on the licensed premises from which the sales will be made;

(b) A designation of the nonwine products manufactured by the winery which will be sold under the appointment;

(c) That the manufacturer/(~~vender~~) liquor store shall not be considered an employee of the state for any purpose;

(d) That the manufacturer/(~~vender~~) liquor store shall agree to hold the state harmless from any and all claims

resulting from operation of the manufacturer's on-site
(~~vend~~ership) liquor store; and

(e) Such other aspects of the appointment relationship as
the parties may agree to.

(4) All sales made under a manufacturer's on-site
(~~vending~~) liquor store appointment shall be made at the prices
established by the board for sales of the same product through
state liquor stores and agencies.

(5) All sales made under a manufacturer's on-site
(~~vending~~) liquor store appointment shall be subject to all
applicable state taxes.

[Statutory Authority: RCW 66.08.050(2). 86-07-023 (Order 180,
Resolution No. 189), § 314-37-020, filed 3/13/86.]

AMENDATORY SECTION (Amending WSR 99-04-114, filed 2/3/99, effective 3/6/99)

WAC 314-37-030 Bank credit cards and debit cards.

(1) **May contract liquor (~~vendors~~) stores accept bank credit cards and debit cards?** Yes. Per RCW 66.16.041, contract liquor (~~vendors~~) stores may accept bank credit cards and debit cards for liquor purchases from nonlicensees. Any equipment provided by the board to (~~an agency~~) a contract liquor (~~vender~~) store may be used only for the sale of liquor obtained from the board.

(2) **What are the procedures for accepting bank credit cards and debit cards for liquor purchases?** The procedures for accepting bank credit cards and debit cards for liquor purchases are as follows:

(a) **Sales transactions.**

(i) All credit/debit card sales transactions will be made in accordance with liquor control board and (~~SPS~~) payment card industry (PCI) procedures.

(ii) Cash back is not allowed.

(iii) Batch closing must be done nightly in order to ensure transactions are processed in a timely manner.

(b) **Recording transactions.** Contract liquor (~~vendors~~) stores will record transactions on forms provided by the liquor control board.

(c) **Reporting.** Contract liquor (~~vendors~~) stores will report all credit/debit card sales to the administrative services division of the liquor control board.

(d) **Retention of records.**

(i) All credit/debit card receipts and balancing reports will be kept for the current fiscal year, in addition to the prior two complete fiscal years.

(ii) Contract liquor (~~vendors~~) stores are responsible for the security of all credit/debit card records.

[Statutory Authority: RCW 66.08.030 and 66.16.041. 99-04-114, § 314-37-030, filed 2/3/99, effective 3/6/99.]