Washington State Liquor Control Board
Notice of Rule Change – Explanatory Statement
Direct Shipment of Wine to Washington Consumers and Self-distribution by U.S. Wineries and Breweries to Licensed Liquor Retailers

This explanatory statement concerns the **Washington State Liquor Control Board's adoption of changes to rules regarding direct shipment of wine to Washington consumers and self-distribution by U.S. wineries and breweries to licensed liquor retailers.**

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 (January 29, 2007).

The Liquor Control Board appreciates your involvement in this rule making process. If you have any questions, please contact Pam Madson, Rules Coordinator, at (360) 664-1648 or e-mail at rules@liq.wa.gov.

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

Two bills were enacted in 2006 that changed Washington's beer and wine shipment laws. **ESB 6537** allows Washington wineries and wineries licensed in other states to ship an unlimited quantity of their wine to a Washington resident as long as the shipping winery holds a domestic winery license, a Washington wine shipper permit, or a certificate of approval (COA) with the appropriate endorsement. **2SSB 6823** expands the self-distribution privilege of in-state wineries and breweries to out-of-state manufacturers of beer and wine. An out-of-state winery or brewery holding a Washington COA license with a direct shipping to retailer endorsement can self-distribute product of its own production to a Washington retailer who holds an endorsement to receive such shipments.

WHAT CHANGES ARE BEING PROPOSED FOR DIRECT SHIPMENT OF WINE TO CONSUMERS?

New Permit and Endorsement Established – United States wineries outside of Washington must obtain either a wine shipper permit or a COA with a direct shipping to consumer endorsement to allow them to ship wine directly to Washington consumers. (Proposed WAC 314-24-231)

Taxes and Reporting Requirements – Out-of-state winery sales to customers in Washington are now taxable events for purposes of the wine liter tax and state and local sales taxes. Wineries holding a domestic winery license, a wine shipper permit, or a COA with a direct shipping to consumer endorsement must report to the Board each month whether sales are made or not. (WAC 314-19-015)

- Wine shipper permit holders and COA holders with the appropriate endorsement must report the quantity of wine sold to Washington consumers monthly. A report is required even if no wine is sold during the month.

Label Approval - US wineries shipping wine directly to Washington consumers under a direct shipper's permit only are not required to obtain a certificate of label approval before shipping wine. Wine labels must still comply with Washington standards and may not be misleading or appeal to persons under the age of 21. (WAC 314-24-040)

Maintaining Records - Out-of-state wineries must maintain business records of their transactions selling directly to Washington consumers. (WAC 314-24-150; 314-20-050)

Surety Bond Requirements - Penalties that may be imposed for non-payment of taxes include requiring the taxpayer to obtain a surety bond. Reference is added to include wine shippers. Use of a surety bond is discretionary by the Board. The surety bond will only be required for a licensed location that is the subject of an administrative violation notice. (WAC 314-19-020)

WHAT CHANGES ARE BEING PROPOSED FOR THE SELF-DISTRIBUTION OF WINE AND BEER DIRECTLY TO LICENSED WASHINGTON RETAILERS?

Current rules allowing in-state breweries, microbreweries, and wineries to self-distribute their own product to licensed Washington retailers are modified to allow self-distribution by out-of-state breweries and wineries.

Taxes and Reporting - Because out-of-state wineries and breweries who choose to self-distribute their product directly to retailers are acting as distributors, they must now pay taxes on these transactions. This category of out-of-state beer and wine producers must file tax reports and pay taxes that are due. **Penalties** for non-reporting and non-payment of taxes will now apply to COA holders with the direct shipment to retailer endorsement. Typically, a COA holder is not the taxpayer for purposes of beer and

wine taxes because their sales in Washington go through a Washington distributor. (WACs 314-19-015; 314-19-020)

Maintaining Records - Out-of-state breweries and wineries must maintain business records of their transactions selling directly to Washington retailers. (WAC 314-24-150; 314-20-050)

Price Posting – A COA holder selling beer or wine of its own production directly to a Washington retailer is acting as a distributor for these transactions. These COA licensees hold an endorsement to sell directly Washington retailers and must post prices as a distributor and follow the rules of a distributor. (WACs 314-20-100; 314-24-190)

Retailer Reporting - Retailers who receive shipments of beer and wine directly from breweries and wineries must indicate their participation by a no-fee endorsement on their retail license. They must also report the quantity of product received and which producers sent the product. This serves as a cross check against COA holders who must report product shipped directly to retailers.

Surety Bond Requirements - Penalties that may be imposed for non-payment of taxes includes requiring the taxpayer to obtain a surety bond. Reference is added to include COA holders having direct shipment endorsements. Use of a surety bond is discretionary by the Board. The surety bond will only be required for a licensed location that is the subject of a violation.

PUBLIC DISCLOSURE EXCEPTION
Clarifying the information that the Liquor Control Board may not disclose: Information supplied by breweries, microbreweries, and wineries that identifies the identity of retailers to whom breweries and wineries self-distribute their products and the amount of beer and wine distributed to each retailer; and information supplied by licensed retailers that identifies the breweries, microbreweries, and wineries that self-distribute their products to the retailer and the amount delivered directly to each retailer. (WAC 314-60-105)

CLARIFY FROM WHOM LICENSED RETAILERS MAY PURCHASE BEER AND WINE
Special Occasion licensees are retail licensees and may purchase beer and wine from a COA holder with a direct shipping to Washington retailer endorsement. Special occasion licensees will report the amount of product purchased from out-of-state breweries and wineries for each event. (WAC 314-05-030)

Retail licensees may now purchase from COA holders with a direct shipping to Washington retailer's endorsement. (WACs 314-13-010; 314-16-160)

Summary of all public comments received on this rule proposal, by subject matter.

1. Retailer's reporting requirement for beer and wine received directly from in-state and out-of-state breweries and wineries.

Comment: Requiring retailers to report monthly on the quantity of beer and wine received directly from suppliers and reporting the names of suppliers providing the product is a new reporting burden. This monthly report is required whether any shipments are received or not. This requirement could be less burdensome if the frequency of reporting was reduced to quarterly or less. Problem licensees could be required to report more frequently. Reminders sent to licensees may also help where less frequent reporting is implemented. The Administrative Proceedures Act encourages agencies to use the most streamlined, cost-effective way of implementing agency rules.

Response: Monthly reporting is an important tool for the Liquor Control Board to cross-check beer and wine shipped particularly from out-of-state breweries and wineries. This cross-check is important to verify tax payment amounts due from out-of-state producers. Until the state and the industry have more experience with self-distribution by out-of-state producers, erring on the side of more information is prudent. Experience with other licensees reporting on a less frequent basis suggests that regular and frequent reporting increases compliance and timely tax payments. Monthly reporting for state tax purposes other than liquor taxes is common for most businesses. The Board will be evaluating ways to reduce the burden on licensees as we gain more experience with this form of distribution. The Board is also developing on-line reporting capability that will help reduce the reporting burden.

2. Do suppliers know all the rules that apply to them when "acting as a distributor of their own product"?

Comment: There is a concern that out-of-state suppliers may not clearly understand what rules they must follow when acting as a distributor of their own product. Using the web site as a "how to" guide may help. Because the rule changes don't address all rules that apply to self-distribution by breweries and wineries, it is difficult for a new brewery or winery outside the state to locate all relevant rules.

Response: The Board acknowledges that there will be a period of education for all licensees operating under new rules. It will use the internet website as much as possible to inform licensees.

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Public Comment Participant List

Name and Affiliation

<u>Written comments</u>

Michael Transue, Washington Restaurant Association, Ruston, WA
Jean Leonard, Washington Wine Institute, Olympia, Washington
Maureen Swaney, Winery Compliance Northwest, Kennewick, Washington

Robb Bell, Cathedral Ridge Winery, Hood River Oregon (telephone comment)

<u>Testimony at Public Hearing – September 12, 2006, Olympia, WA</u>

Jan Gee, Washington Food Industry, Olympia, Washington
Phil Wayt, Washington Beer and Wine Wholesalers, Olympia, Washington