

**AGENDA
BOARD MEETING
WA STATE LIQUOR CONTROL BOARD
Wednesday, December 16, 2009
Headquarter Building
3000 Pacific Ave, Olympia WA 98504**

10:00 a.m.

Roll Call

- 1. Tribal Workgroup Recommendations.....Pat Kohler
Alan Rathbun
John Redal**
- 2. Board Approval on Dinner Theater Interim
Policy.....Sharon Hendricks**
- 3. Board Approval on Final Rulemaking (CR 103) to implement 2009
legislation relating to manufacturers, distributors, importers, and
retailers.....Karen McCall**
- 4. Board Approval on Final Rulemaking (CR 103) to implement 2009
legislation relating to retail liquor license.....Karen McCall**
- 5. Board Approval on Final Rulemaking (CR 103) to implement 2009
legislation regarding cigarette and tobacco license
administration.....Karen McCall**
- 6. Introduce Issue Paper and Interim Board Policy – Outside One-Time
Events at Private Clubs.....Karen McCall**
- 7. Potential new Listings and Rejections.....Debi Besser**
- 8. Potential OTO Wine Listings / Proof Changes.....Steve Burnell**
- 9. New Business.....Board Members**
- 10. Old Business.....Board Members**

Recess/Adjourn

**OFFICE OF THE
WASHINGTON STATE LIQUOR CONTROL BOARD
Board Meeting Minutes – December 16, 2009**

Board Chair Sharon Foster called the regular meeting of the Washington State Liquor Control Board to order at 10:05 a.m., on Wednesday, December 16, 2009 in the Boardroom, 3000 Pacific Avenue SE, Olympia, Washington. Board Member Ruthann Kurose was present.

Tribal Workgroup Briefing – Rick Garza, Alan Rathbun, Pat McLaughlin

LCB should create a Government-to-Government Consultation Policy - This document serves as the framework describing how the LCB and Tribes will communicate with each other to collaborate on liquor-related issues in accordance with the Centennial Accord and the New Millennium Agreement. An LCB Government-to-Government Consultation Board Policy has been designed.

The LCB should develop an alternative liquor licensing model to address the unique needs of the Tribes - The current master business licensing process is cumbersome for tribes and does not address federal law exemptions from most state licensing and registration requirements. A Licensing Memorandum of Agreement (MOA) Template has been drafted.

The LCB should create a liquor store notification process - The current liquor store siting process did not include a step to notify Tribes of potential new stores and thus allow them time to respond with any interest, or concerns, for a tribal store. Part of the challenge has been the difficulty for the LCB to know where all the tribal land is located. A formal store siting policy has been drafted outlining how store locations are selected based on market areas. The LCB is working with Tribes and the Governor's Office of Indian Affairs to identify tribal trust land and reservation land, current and any changes, to help with store siting issues.

The LCB has access to state maps which indicate Tribal reservation boundaries but the maps do not include other trust lands. The individual Tribes and Bureau of Indian Affairs have the knowledge of trust land owned and can help verify locations to assist the LCB with store siting and other similar communication. The LCB will work to find current maps noting Indian trust land to help with notification of pending stores and maintain a record of Tribal Areas of Interest (identified by zip code) where tribes have potential interest in future liquor store operations.

The Government to Government Consultation Policy was presented to the Board for approval. Ruthann Kurose motioned for approval, Sharon Foster seconded the motion and the Policy #11-2009 was unanimously approved.

Restrictions on Spirits/Beer/Wine and Beer/Wine Restaurant Licensees for Dinner Theater (Cinema) venues Board Interim Policy #10-2009 – Sharon Hendricks

This policy will clarify licensure of dinner theater venues where entertainment is in the form of presentation of large screen cinema, where meals and alcoholic beverages are served. Currently, there is not a license for this form of applicant.

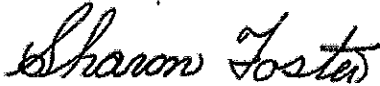
The Licensing Division receives applications from dinner theater venues. The license applicants have stated that restrictions preventing minors accessing the rooms where alcohol is served is not necessary and is harmful to their business. The LCB's position is that the restrictions are directly related to its public safety mission of preventing minor access and potential over service of customers.

**Introduction of Issue Paper and Interim Board Policy – Outside One-Time events at Private Clubs
– Karen McCall**

Karen introduced the proposed Interim policy regarding Outside One-Time events at Private Clubs which will provide the requirements for an outside one-time event conducted by a private club for club members. LCB's enforcement policy does not allow outside one-time events unless there is an interior access from the inside of the building to the outside area where the event is being held. The current policy requires the licensee to have interior access from the outside area to the liquor licensed premises. It also requires the area being enclosed with at least a forty-two inch high barrier.

Karen explained that the following items would be the required for a one-time event at a private club. The outside one-time event request must be submitted to the enforcement office in writing by the licensee at least 5 business days before the event. In addition a site plan of the outside area with clearly defined restricted areas must be submitted. The request must contain the date, time, and type of event, and contact information. Approval is required prior to the event taking place. The outside area must be adjacent and/or part of the actual licensed premises and be enclosed with a barrier a minimum of forty-two inches high. The outside service area cannot be across public right of ways and the liquor licensee must have leasehold rights to the outside area. Employees must be stationed inside the outside service area at all times and customers with alcohol cannot leave the outside serviced area. The licensee must meet the lighting standards per WAC 314-11-055 and drinks must be prepared, served, and consumed inside the outside service area those under 21 years of age are not allowed in the outside service area.

The Board Meeting was adjourned at 11:40 AM.



Sharon Foster
Board Chair



Ruthann Kurose
Board Member



Washington State Liquor Control Board

Government-to-Government Consultation Board Policy #11-2009

PURPOSE

The Centennial Accord and New Millennium Agreement establish a framework to support the development of strong government-to-government relationships between state agencies and federally recognized Indian Tribes. A key element of both the Centennial Accord and the New Millennium Agreement is the parties' commitment to develop clear policies to ensure cooperation and communication on issues of mutual concern and interest. The optimal goal of government-to-government consultation is to create a framework under which individual Tribes and Tribal entities and the Liquor Control Board (LCB) can actively engage in identifying, consulting, and addressing issues of mutual concern.

The LCB is committed to work cooperatively with Tribes and Tribal entities on licensing, enforcement, and taxation issues in a manner that respects the sovereignty of each party. Further, the LCB will make every effort to allow any Tribe interested in owning and operating a tribal liquor store to do so, and where appropriate to public safety, the LCB will make every effort to allow an interested Tribe to operate multiple stores. For any Tribe not owning or operating its own store, the LCB will make every effort to provide an alternative agreement to allow the Tribe to supply its own tribal licensees and capture its tribal member tax exemption. The LCB will make every effort to negotiate in good faith a Tribal Vendor Agreement and/or Tribal Alcohol Agreement with an interested Tribe, and to consult and resolve in good faith taxation issues within the Board's jurisdiction.

This policy is meant to encourage early and/or informal information sharing and other communications on topics that facilitate intergovernmental relationships. Ideally, regular ongoing communications will simply evolve into more formal consultation as necessary, shifting back to a less formal style once consultation on a particular action or topic is complete.

BACKGROUND

The Liquor Control Board (LCB) is an executive agency under the Governor which was formed in 1933 by the Steele Act to regulate the importation, manufacture, distribution, and sale of alcohol. The 21st Amendment to the U.S. Constitution, which repealed Prohibition, gave states the right to regulate alcohol as they saw fit. Many states, including Washington, adopted control systems creating a state monopoly on the sale of some, or all, alcoholic beverages in an attempt to ensure higher levels of public safety and controlled distribution. The LCB uses the following control state principles when making decisions about licensing and allocating liquor stores:

- Limited number of stores
- Limited store hours
- Higher prices produce lower consumption
- Enforcement and licensing are coordinated
- No employee incentive to sell
- Advertising is prohibited
- More revenue returned to state

TRIBAL ALCOHOL AGREEMENTS

A Tribal Alcohol Agreement (TAA) is the mechanism utilized for retail sale of spirituous liquor on tribal lands by the Tribe to a tribal licensee and to provide a Tribe without a liquor store to capture the tribal member tax exemption. A TAA is a negotiated agreement between a Tribe with the LCB that is particular to conditions and circumstances of the Tribe, its members, lands, and community.

The LCB will negotiate in a good faith towards a TAA when a Tribe contacts the LCB's Business Enterprise Division.

LICENSING OF TRIBAL ON/OFF-PREMISES SALES IN INDIAN COUNTRY

The LCB will negotiate with interested Tribes for a memorandum of agreement that will be utilized for regulating the sale and service of alcohol in Indian Country.

DISPUTE RESOLUTION PROCESS

The LCB and its staff shall immediately bring Tribal disputes to the attention of the Administrative Director. Specific issues are routinely routed to the Tribal Liaison for mediation, coordination, and facilitation as necessary. The LCB is committed to resolving disputes in a manner that is respectful of the sovereign authority of Tribes.

APPROVAL



Sharon Foster, LCB Chairman of Board



Pat Kohler, LCB Administrative Director



Ruthann Kurose, LCB Board Member



Washington State Liquor Control Board

Tribal Workgroup Recommendations – November 2009

The Liquor Control Board (LCB) and representatives for 14 federally recognized Tribes have met from April – November 2009 to discuss tribal issues related to liquor licensing and store allocation. Their efforts resulted in the following recommendations.

1. LCB should create a Government-to-Government Consultation Policy

This document will serve as the framework describing how the LCB and Tribes will communicate with each other to collaborate on liquor-related issues in accordance with the Centennial Accord and the New Millennium Agreement.

OUTCOME: LCB Government-to-Government Consultation Board Policy

2. LCB should develop an alternative liquor licensing model to address the unique needs of the Tribes

The current master business licensing process is cumbersome for tribes and does not address federal law exemptions from most state licensing and registration requirements.

NOTE: An issue discussed that should be addressed as a long term solution is to revise the Master Business License process and on-line form.

OUTCOME: Licensing Memorandum of Agreement Template

3. The LCB should create a liquor store notification process

The current liquor store siting process did not include a step to notify Tribes of potential new stores and thus allow them time to respond with any interest, or concerns, for a tribal store. Part of the challenge has been the difficulty for the LCB to know where all the tribal land is located.

OUTCOMES: A formal store siting policy has been drafted outlining how store locations are selected based on market areas. A process has been incorporated into the policy which includes sending a notification letter to Tribes in affected areas.

4. LCB should work with Tribes and the Governor's Office of Indian Affairs to identify tribal trust land and reservation land, current and any changes, to help with store siting issues.

The LCB has access to state maps which indicate Tribal reservation boundaries but the maps do not include other trust lands. The individual Tribes and Bureau of Indian Affairs have the knowledge of trust land owned and can help verify locations to assist the LCB with store siting and other similar communication.

License Issuance or Renewal: The process by which the LCB issues, renews, or denies a liquor license. The process includes "notice to local authorities including tribal governments," prompting them to comment on, or object to, the issuance or renewal of a liquor license.

Indian Country: As defined by federal law, Indian Country includes all land within the limits of any Indian reservation or trust lands under the jurisdiction of the U.S. government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation. In addition, Indian Country also includes all dependent Indian communities as well as all Indian allotments to which Indian titles have not been extinguished and lands held in trust for the benefit of a Tribe by the United States.

Tribal Alcohol Agreement: A signed government-to-government agreement entered into by a Tribe and the LCB that provides tax exemptions based on tribal membership for the purchase and sale of spirituous liquor in accordance with tribal, state and federal laws.

Tribal Vendor Agreement: A signed government-to-government agreement entered into by a Tribe and the LCB to provide for off-premise retail purchase and sale of spirituous liquor on tribal lands in accordance with tribal, state, and federal laws.

Sovereignty: The historical and legal status, dominion, rule or power of a sovereign. Tribes have the power to make and enforce laws for their Tribe and within their jurisdiction and to establish courts and other forums for resolution of disputes.

CONSULTATION

The LCB is committed to consulting with Tribes on licensing, enforcement, and taxation policy issues within the jurisdiction of the Board that affect our respective governments. The agency's goal is to provide early notification regarding issues pertaining to licensing or store siting and an open invitation for consultation on all decisions that may affect tribal rights and interests. Consultation with Tribal governments will occur independent of any public participation process but representatives of Tribal governments and tribal members have equal access to the agency's public participation process.

The LCB will work with Tribes to establish regular meetings held preferably on a quarterly basis to discuss issues and concerns about the alcohol regulation and policy within Washington. The agenda for the meeting will be set by agreement between the LCB and interested Tribes. LCB staff will facilitate the setting of agendas.

TRIBAL VENDOR AGREEMENTS

A Tribal Vendor Agreement (TVA) is the mechanism utilized for the retail sale of spirituous liquor on Tribal lands for off-premises consumption. A TVA is a negotiated agreement between a Tribe with the LCB staff that is particular to conditions and circumstances of the Tribe, its members, lands, and community.

The LCB will negotiate in good faith towards a TVA when a Tribe contacts the LCB's Business Enterprise Division. The scope of a TVA may include all topics relevant to the purchasing and retail sales of spirituous liquor for off-premises consumption. The TVA may also include tax sharing provisions as agreed by the parties.



AGENCY POLICY #680 Siting Liquor Stores

<p>Policy #: 680</p> <p>Category: Retail Services</p> <p>Purpose: Sets forth expectations and the process which determines the locations for liquor stores.</p> <p>Applies to: Business Enterprise Director's Office</p>	<p>Effective Date: 12/16/09</p> <p>See Also: Retail Division Policy #1001 – Store Leasing and Development</p> <p>Retail Division Procedure #1001A – Leasing Renewal</p> <p>Retail Division Procedure #1001B – Opening New Retail Store & Relocating Existing State Stores</p>
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POLICY STATEMENT

Washington State Liquor Control Board (WSLCB) strives to responsibly serve demand by maintaining reasonable customer travel efforts and ensuring liquor stores are operating at desired capacity levels.

When establishing a liquor store location, the WSLCB exercises exceptional use of the State's resources including money, personnel, and inventory. This is not to say that financial return is a justification by itself for making a store siting decision.

This document defines policy and describes roles associated with locating both existing and new liquor stores.

1. The Business Enterprise oversees retail operations for the sale of liquor as a primary component of a controlled distribution strategy.

The WSLCB's role as a retailer is focused on public safety in the prevention of both youth access to alcohol and over-service. Through limited locations, limited hours, and responsible merchandising, a wide variety of alcohol is made available only to people of legal drinking age.

2. The State's adult population of 21 years and older is provided with reasonable access to liquor stores.

Several factors of influence are considered when determining the need for a liquor store in a particular area including:

- Demographics of the surrounding market area.
- Anticipated impacts on surrounding liquor stores.
- Capacity of existing liquor stores in the market area.
- Customer travel effort within the market area.
- Available resources to serve the market area.

Director of Retail

- Seek external comments and/or recommendations from local and tribal governments as well as Contract Managers Advisory Committee (CMAC) relative to the market area affected by the store location/type decision to be made.
- Review expressed concerns or interests and facilitate appropriate action and escalate to the Director of Business Enterprise as necessary.

District Managers

- Monitor capacity of liquor stores within assigned district.
- Make recommendations to the Director of Retail regarding prospective new store types and locations.

Leasing Manager

- Monitor demographics of statewide market areas to identify and recommend store locations and types to the Director of Retail.
- Maintain Tribal Areas of Interest list (by zip code).
- Identify affected local and tribal governments as well as contract liquor stores in the affected market area for the store location/type decision to be made.

DEFINITIONS

Alcohol Impact Area: A geographic region that has been identified by local governing bodies along with the WSLCB where specific alcohol products are banned from sale in an effort to reduce alcohol abuse.

Contract Liquor Store: A WSLCB recognized location operated by a private citizen who is authorized by contract to sell liquor by the bottle.

Tribal Areas of Interest: A record maintained by the LCB to keep track of tribal areas, by zip code, that have been identified by Tribes as areas of interest for potential liquor store operations.

Military Liquor Store: A WSLCB recognized location operated by the military that is authorized by contract to sell liquor by the bottle.

State Liquor Store: A WSLCB recognized location staffed with state employees who are authorized to sell liquor by the bottle.

Tribal Liquor Store: A WSLCB recognized location operated by a federally recognized Tribe who is authorized by contract to sell liquor by the bottle.



STORE LOCATION NOTIFICATION GUIDELINES

Washington State Liquor Control Board (WSLCB) strives to responsibly serve demand and promote public safety while maintaining reasonable customer travel efforts and ensuring liquor stores are operating at desired capacity levels.

The WSLCB values the communities in which we do business and the partners and stakeholders with whom we conduct business. This document outlines the guidelines for notifying local and tribal governments prior to the Board making liquor store location and type decisions.

1. Define the market area that the store location is intended to serve.

When a need has been identified for the creation of a new liquor store or the relocation of an existing one, the intended market area will be defined. For the purposes of these guidelines, the market area is defined as the geographic area to be served by the store location. This may be expressed in terms of a radius area, community name, or other relevant means to identify the target customer base.

2. Identify governments and existing stores within the market area.

Once a market area has been defined, a careful review is conducted to identify any governments or existing stores within that same area. Sources of information for this review include the Tribal Areas of Interest list (identified by zip code) provided by those tribes who have expressed an interest in those locations, tribal reservation maps from the Office of Indian Affairs, the current Retail Store directory, and applicable listings for government offices.

3. Provide written notification to governments and existing liquor stores within the market area.

Before a liquor store location or type has been determined, the Retail Director provides written notification to local governments, tribal governments, and contract liquor stores in the area surrounding the prospective location of a new liquor store. These entities are given twenty (20) calendar days to express their concerns or interest in writing.

4. Work in good faith to adequately address any concerns or interest raised.

The Retail Division gives due consideration to any concerns or interest brought forward from local governments, tribal governments, and contract liquor stores in the area surrounding the prospective location of a new liquor store. Information received during the response period is evaluated to determine the appropriate determination of store location and type.



Washington State Liquor Control Board

January 4, 2010

Name of Tribal Chair
Name of Tribe
Address
City, State, Zip

Dear Name of Tribal Chair:

In April 2009, the Washington State Liquor Control Board (LCB) extended invitations to tribal leaders to participate in two work groups, in which 14 tribes participated, that were aimed at understanding and addressing concerns and issues regarding the LCB's licensing and business enterprise policies.

One of the workgroups focused on the policies and procedures surrounding the selection of contract, state and tribal liquor store locations. Workgroup members included a cross section of tribal stakeholders and agency staff. We've developed a new process which includes a step to notify Tribes of potential new stores and allow time to respond with any interest or concerns in that location. Part of our challenge has been the difficulty for the LCB to know where all tribal land is located. We have worked with the Office of Indian Affairs to acquire current maps which identify reservation and trust lands. A recommendation of the work group meeting was to also have the LCB request from all tribes on a voluntary basis any areas of interest identified by zip code where tribes have a potential interest or concern in future liquor store location. The LCB will compile responses from all tribes and refer to this record in providing notification of future liquor store locations.

We have also attached for your information copies of the agency's government to government consultation policy, the LCB store siting policy and notification guidelines. These policies and guidelines are an outcome of the tribal workgroup efforts.

If you are interested in providing us with areas of interest by zip code so we can include you in future notification, please e-mail your information to our Leasing Manager, Suzanne Lewis at sm@liq.wa.gov by **February 8, 2010**. If you have any questions regarding this matter please contact Pat McLaughlin, Director of Business Enterprise, at your convenience. He can be reached at 360-664-1689 or by e-mail at pdm@liq.wa.gov.

Sincerely,

Sharon Foster
Chairman

cc: Craig Bill, Governor's Office of Indian Affairs
Ruthann Kurose, Board Member
Pat Kohler, Administrative Director
Rick Garza, Deputy Administrative Director
Pat McLaughlin, Director of Business Enterprise
Suzanne Lewis, Leasing Manager

Attachments: Government to Government Consultation Policy
Store Siting Policy and Notification Process



**Washington State
Liquor Control Board**

STORE LEASING, P O BOX 43082, OLYMPIA, WA 98504-3082

(date) 2010

Mayor/Tribal Chair/CMAC

RE: New Liquor Store No. _____, _____

Dear _____ :

The Washington State Liquor Control Board is considering siting a new liquor store in the _____ area of (city). Once approved, this new store will open in approximately (month) 2010.

This notification is provided as a courtesy to you. If you wish to comment on the proposed location, please notify us within 20 days from the date of this letter, along with a written statement of your concerns or interest.

Any comments should be sent to the attention of Suzanne Lewis, Store Leasing Manager, at the above address. She can also be contacted by fax (360-704-5045) or by e-mail (sm@liq.wa.gov). Thank you.

Yours truly,

John Redal
Director of Retail
360-664-1712

Copies:

MEMORANDUM OF AGREEMENT
Between
_____ TRIBE
And
THE WASHINGTON STATE LIQUOR CONTROL BOARD
CONCERNING AUTHORIZATION OF LIQUOR SALES

I. Parties

The Parties to this Memorandum of Agreement ("MOA") are _____ Tribe (the "Tribe"), and the Washington State Liquor Control Board (the "Board") (collectively "the Parties").

The _____ Tribe is a federally recognized Indian Tribe possessed of the full sovereign powers of a government. The Tribe and its wholly-owned enterprises operate on the Tribe's reservation or trust lands (hereafter "Indian country").

The Washington State Liquor Control Board is an executive department of Washington State government operating under the authority of the Governor, with statutory authority with respect to liquor licensure and operations under Title 66 RCW.

II. Purpose

The introduction, possession and sale of liquor on Indian Reservations have, since treaty time, been clearly recognized as matters of special concern to Indian tribes and to the United States federal government. The control of liquor on reservations remains exclusively subject to their legislative enactments. ~~(Each Tribe would provide statement here on its regulation of alcohol.)~~ Federal law currently prohibits the introduction of liquor into Indian country, leaving tribes the decision regarding when and to what extent liquor transactions shall be permitted. The Tribal Council has determined that present day circumstances make a complete ban of liquor within Indian country ineffective and unrealistic. At the same time, the need still exists for strict Tribal regulation and control over liquor distribution.

The Parties share a strong interest in ensuring that liquor sales in Indian country are well-regulated to protect public safety and community interests.

The Parties have entered into this MOA in order to strengthen their ability to meet these mutual interests.

The Parties acknowledge that pursuant to federal law, 18 U.S.C. 1161, the federal prohibition on sale of liquor in Indian country shall not apply to any act or transaction within any area of Indian country provided such act or transaction is in conformity both with the laws of the State in which such act or transaction occurs and with an ordinance duly adopted by the tribe having jurisdiction over such area of Indian country, certified by the Secretary of the Interior, and published in the Federal Register.

The Parties further acknowledge that the Tribe has adopted a liquor ordinance which was certified by the Secretary of Interior and published in the Federal Register on _____.

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i. The Tribe and its wholly-owned enterprises may amend or expand the locations where liquor is sold and/or served as listed in section III(2)(A) in accordance with the terms set forth in this MOA. This information will include:

- a. the identity of the entity which is operating the facility;
- b. location of the premises;
- c. certification that the premises is located in Indian Country;
- d. certification to the Board by the Tribe that the Tribe has adequately addressed the issues necessary to prevent the misuse of alcohol and prevent minor access to alcohol at the locations pursuant to section III(3) below; and
- d. an update to the Tribe's Operating plan referenced in Section 3.B. below.

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C. Without resolving jurisdictional questions that may arise, the Board and the Tribe agree that it is in the best interests of both Parties that notice be provided to neighboring jurisdictions prior to the opening of a new location where liquor sales will be made. When the Tribe or its wholly-owned enterprise proposes to open an additional location and/or add additional privileges related to the sale of liquor in Indian country, the Board will provide written notice to the city, or if outside city limits, the county in which the sales will occur. The Board and the Tribe agree that the primary purpose of the notice is to facilitate an exchange of information that may be helpful to all parties concerned in addressing unanticipated impacts with the understanding that such notice related to Indian lands is primarily a matter of intergovernmental courtesy. Similarly, when any other licensee or applicant proposes to open a new location or obtain a new license within five (5) miles of Indian country, the Board agrees to provide written notice to the Tribe. The Board and the Tribe will agree to the geographic limits of this notification area as part of this MOA.

3. Tribal Authorization

A. Conditions. Without determining the scope of the legal authority of either to regulate the sale of liquor by the Tribe in Indian country, the Parties agree that it is in the mutual interest of the Tribe and the Board that the Tribe and its wholly-owned enterprises be authorized to sell liquor under the terms of this MOA. Therefore, when the following conditions are met, the Board agrees that for the purposes of Title 66 RCW, and related provisions of state law, the Tribe and its wholly-owned enterprises will be treated as holding the necessary authority to make liquor sales.

B. Application for and granting of Authority. The Board will grant authorization to the Tribe or its wholly owned Tribal enterprise to sell and/or serve liquor in Indian country provided it has submitted an approved application for such authority which shall include an Operating Plan containing the following elements:

- Location, nature, and times of liquor sales;
- Training of staff involved in liquor sales. It is required that persons responsible for serving alcohol for on-premise consumption possess a Mandatory Alcohol Server Training (MAST) permit;
- Consideration of proximity of alcohol sales to a public school, church, playground or public building
- Confirmation that the land on which alcohol sales is to occur is either reservation or trust land held by the Tribe.

4. Enforcement. The Parties shall handle enforcement issues in the following manner:
- a. Enforcement activities. ~~[Enforcement protocols to be negotiated by each Tribe with the Board].~~
 - b. Separate Locations. ~~[Statement about violations in one "location" not counting against the Tribal Authority in general.]~~
 - c. Information sharing.
 - d. Training and Technical Assistance. The Board shall provide training and technical assistance, at the Tribe's request, for the prevention of violations of alcohol laws.

5. Conditions and Limitations. The Board and the Tribe agree to the following conditions and limitations:

The Tribe agrees sales of liquor by the Tribe and its wholly-owned enterprises will conform to Title 66 RCW to the extent required by 18 U.S.C. §1161. The Parties agree that RCW 66.24.010(2) which provides for criminal background checks of applicants is inapplicable to the Tribe and its wholly-owned enterprises. ~~(Any other exemptions from statute must be negotiated individually between the Tribe and the Board)~~

6. Dispute Resolution. ~~[to be negotiated by each Tribe and the Board].~~

The Tribe and the Board wish to prevent disagreements and violations of this MOA whenever possible, and to quickly and effectively resolve disagreements and apparent violations when they arise. The Tribe and the Board acknowledge that under Sec. III (4) [Enforcement Protocol] "premises checks" and "compliance checks" will be conducted by the Board in cooperation with Tribal law enforcement authorities. Individual employee violations identified during such checks will be prosecuted in conformance with Sec. III (4) [nontribal employees will be prosecuted under state jurisdiction; tribal employees' violations will be referred to the tribal prosecutor]. ~~[This dispute is not intended to resolve an administrative violation notice (AVN) or licensing enforcement action based on the operation of the Tribe's authorized liquor sales and/or service locations. Any enforcement action by the Board must be accomplished in accordance with RCW 34.05. All other disputes and disagreements shall be resolved using the process identified below.]~~

1. Either party may invoke the dispute resolution process by notifying the other, in writing, of its intent to do so. The notice shall set out the issues in dispute and the notifying party's position on each issue.
2. The first stage of the process shall include a face-to-face meeting between representatives of the two governments to attempt to resolve the dispute by negotiation. The meeting shall be convened within thirty (30) days of the date of the written notice described in subsection 1 above. The representatives of each government shall come to the meeting with the authority to settle the dispute.
3. The second stage of the process will be that if the parties are unable to resolve the dispute within sixty (60) days of the notice sent under subsection 1 above, the parties shall engage the services a mutually agreed upon qualified mediator to assist them in attempting to negotiate the dispute. Costs for the mediator shall be borne equally by the parties. The parties shall pursue the mediation process in good faith until the dispute is resolved or until the mediator

Comment [P2]: It is understood that the Tribes do not support this provision related to enforcement of violations at an authorized location in Indian Country. The Board believes this provision needs to be addressed in negotiating the final MOA. Alternatively, we could continue work on this provision with a subgroup of Tribal representatives and Board staff.

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- 11. Amendment. No amendment or alteration of this MOA shall arise by implication or course of conduct. This MOA may be altered only by a subsequent written document, signed by the Parties, expressly stating the Parties' intention to amend their agreement.
- 12. Updated Information. The Tribe and its wholly-owned enterprises shall notify the Board in writing of any substantial change to their Operating Plan or liquor facilities. Examples of a substantial change shall include the addition of a new location for sale or service of alcohol and/or the addition of privileges at an existing location. Said notification shall be provided at least 30 ~~90~~ days prior to the effective date of said change.

This Agreement is hereby made this ____ day of _____, 20__.

 [Name, Title]
 Washington State Liquor Control Board

 [Name, Title]
 [Tribe]

Comment [P4]: Board staff does not believe that 30 days notice of a substantial change in the operating plan is sufficient for adequate review and intergovernmental notice if required.

Comment [P5]: This signature block will include all Board members together with the LCB Administrative Director

DRAFT



Washington State
Liquor Control Board

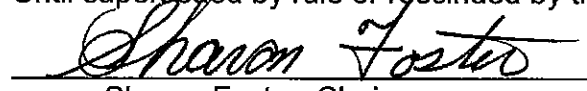
Liquor Control Board Interim Policy #10 - 2009

Subject: Restrictions on Spirits/Beer/Wine and Beer/Wine Restaurant Licenses for Dinner Theater (Cinema) venues.

Effective date:

Ending Date: Until superseded by rule or rescinded by the Board

Approved:

 12/16/09
Sharon Foster, Chair


Ruthann Kurose, Board Member

Purpose:

Interim Policy #10 – 2009 is intended to clearly state the Board's policy concerning licensure of dinner theater venues. Rule making will be commenced immediately to place this policy into administrative rule.

Background:

The Licensing Division continues to experience applications for licensure from this type of venue. Applicants have stated that the restriction to preventing minor access in the rooms where alcohol is served is unnecessary and economically harmful to their business model.

Currently licensed with the Board are numerous venues commonly referred to as "dinner theaters". These venues provide entertainment to their customers in the presentation of large screen cinema. Because there is no current license for dinner theater venues, rather than deny them a liquor license these venues have been accommodated to fit into the restaurant or tavern license categories. This accommodation has been accomplished through imposing two conditions upon the license:

- 1) The lighting must meet WAC 314-11-055: on all portions of the premises where alcohol is served or consumed, licensees must maintain sufficient lighting so that identification may be checked and patrons may be observed for the enforcement of liquor laws and rules.
- 2) No minors are to be allowed in the individual theater rooms that allow alcohol service.

Licensing staff views these business models as primarily theaters, with customers going to the business because they want to see a movie and having a meal is secondary.



Alcohol Service in Cinema Venues with Minors Present

Date: August 26, 2009

Presented by: Sharon A. Hendricks, Manager Licensing Division

Problem or Opportunity

Briefly describe the business problem to be solved or opportunity to be gained. Please include a description of what will happen if we take no action to address this problem or opportunity.

Currently cinema venues are required to restrict minors in a theater area where alcohol is served. Cinema venues have asked that the Board consider removing this restriction

If no action is taken regarding this issue the possibility exists that at least one cinema venue business owner will move towards legal action. Licensing's experience with other cinema venues is that they all dislike the minor restriction and not taking action at this time only delays a decision on this issue.

Background

Briefly describe what led to this problem or opportunity. What has been LCB's action to date? Are there relevant RCWs, WACs, or policies that apply?

We currently have several cinema restaurant venues licensed. These licensees commonly refer to themselves as "dinner theaters." They liken themselves to a restaurant based on the fact that they offer food service during the showing of a movie. However, Licensing views these business models as primarily theaters, with customers going to the business because they want to see a movie and having a meal is secondary. Licensing does not equate a "dinner theater" as being a restaurant, where the primary focus is the sale of food. Although subtle, the difference between a dinner theater and a restaurant is comparable to the difference between a nightclub and a restaurant.

Note that all of these venues have been informed of the option to make one or more of their theater rooms alcohol free, thus the restriction of no minors would not apply to those theater rooms. All or most of these venues have three or more individual theater rooms.

Licensing has always imposed two requirements on these licensees:

- 1) The lighting must meet WAC 314-11-055: on all portions of the premises where alcohol is served or consumed, licensees must maintain sufficient lighting so that identification may be checked and patrons may be observed for the enforcement of liquor laws and rules.
- 2) No minors are to be allowed in the individual theater rooms that allow alcohol service.

The reasons for these two requirements are related to public safety, i.e. preventing minor access and over service.

The following rules support Licensing's approach to these types of venues.

- 1) WAC 314-02-030 (2) states that spirits/beer/wine restaurants that have less than fifteen percent of their total customer service area dedicated to dining must exclude minors from the entire premises.
- 2) WAC 341-02-010 (4) defines dedicated dining area – In order for an area to qualify as a dedicated dining area, it must be a distinct portion of a restaurant that is used primarily for the sale, service and consumption of food, and have accommodations for eating, e.g. tables, chairs, booths, etc.

Licensing does not view the theaters as "dedicated dining areas" within the meaning of WAC 314-02-010 (4) because the theater area is not used primarily for food service. It is used primarily for the viewing of a movie and food service is secondary to that.

Does not apply.

Stakeholder Impacts

Describe the political, fiscal, and resource impacts this idea will have on internal and external stakeholders.

Identify **internal** stakeholders and get their feedback about how they might be affected.

Stakeholder	Impacts (Political, Resource, Other)

Identify **external** stakeholders get their feedback about how they might be affected.

Stakeholder	Fiscal and Resource Impacts

Acceptance

Approval by Key Stakeholders for the final Issue Paper.

We have reviewed this document and approve resources for project definition:

Approved by	Signature	Date
Name Title		
Name Title		

Note: Approval of this Issue Paper is not authorization to start a project; it is authorization to define the project in more detail.



**Washington State
Liquor Control Board**

Date: December 16, 2009

To: Sharon Foster, Board Chairman
Ruthann Kurose, Board Member

From: Karen McCall, Agency Rules Coordinator

Copy: Pat Kohler, Administrative Director
Rick Garza, Deputy Administrator
Alan Rathbun, Director, Licensing and Regulation
Pat Parmer, Chief, Enforcement and Education

Subject: Approval of final rulemaking (CR 103)

At the Board meeting on December 16, 2009, the Rules Coordinator requests that the Liquor Control Board approve final rule making to adopt new rules and modify rules to implement the **2009 legislation relating to manufacturers, distributors, importers, and retailers.**

The Board was briefed on the rule making background, public comment, and agency response. An issue paper on this rule change and new rule language are attached.

If approved, the Rules Coordinator will send an explanation of the rule making to all persons who submitted comments in writing or in person at the public hearing on December 9, 2009, held in the Board's meeting room in Olympia, Washington. After sending this explanation, the Rules Coordinator will file the rules with the Office of the Code Reviser. The effective date of the rules will be 31 days after filing.

<input checked="" type="checkbox"/> Approve	<input type="checkbox"/> Disapprove	<u>Sharon Foster</u> Sharon Foster, Chairman	<u>12/16/09</u> /Date
<input checked="" type="checkbox"/> Approve	<input type="checkbox"/> Disapprove	<u>Ruthann Kurose</u> Ruthann Kurose, Board Member	<u>12/16/09</u> Date

Attachment: Issue Paper
Proposed Rule Language

Washington State Liquor Control Board

Issue Paper

Rule Making to Implement Legislation for Manufacturers, Distributors, Importers, and Retailers

Date: December 16, 2009

Presented by: Karen McCall, Agency Rules Coordinator

Description of the Issue

The purpose of this issue paper is to recommend that the Washington State Liquor Control Board (WSLCB) proceed with final rule making and adopt the rules implementing **2009 legislation relating to manufacturers, distributors, importers, and retailers.**

Why is rule making necessary?

The following bills were passed during the 2009 legislative sessions that require changes in existing administrative rules (WAC) or the development of new rules:

- **EHB 2040** – changes in beer and wine regulation including financial ownership or interest, money's worth – advertising, price post and hold, and minimum markup
- **SSB 5834** – addresses authorized representatives, creates a winery warehouse, provides new exceptions to tied house

Rules are also required to implement the following Interim Board Policy:

- **Liquor Control Board Interim Policy #03-2009** – Washington Domestic Winery Returning Exported Product back to Producing Winery

Public Comment

No public comment was received at the public hearing held December 9, 2009. Three comments were received via email. The comments are attached to this document.

What changes are being proposed?

Amendatory Section WAC 314-11-015 – What are my responsibilities as a liquor licensee? Corrected WAC references for the penalties for violations.

Amendatory Section WAC 314-11-095 – What records am I required to keep regarding my licensed premises? Changed the requirement to keep records from two years to three years to be consistent with federal laws. To keep all rules regarding general records in one chapter, the language from 314-12-135 (business entertainment records) was added to this rule.

Amendatory Section – WAC 314-19-015 – What are the monthly reporting and tax payment requirements? Added language to implement interim board policy #01-2009 (Washington domestic wineries returning exported product back to the producing winery).

Amendatory Section – WAC 314-19-035 – Reduced tax rate for beer. Added language to implement a change in the tax rate for strong beer (effective in 2003). Strong beer is any malt beverage that contains more than 8% alcohol by weight.

Amendatory Section – WAC 314-20-001 – Definitions. Revised the definition of "authorized representative".

Amendatory Section – WAC 314-20-050 – Beer distributors—Importers—Brewers—Records--Preservation. Revised language to required three years records be kept to be consistent with the federal laws.

Amendatory Section – WAC 314-20-100 – Beer suppliers and distributors. The title of this section was previously "price postings". Revised language to remove price posting requirements and added a requirement that a "price list" be available at the suppliers and distributors liquor licensed location. Defines "price list". Added language requiring all prices be available to all retail licensees and all retail licensees must be given reasonable notice of all prices and changes in price. Plain talked.

Amendatory Section – WAC 314-24-001 – Definitions. Revised the definition of "authorized representative".

Amendatory section – WAC 314-24-070 – Domestic wineries—Purchase and use of bulk wines, brandy or wine spirits—Import permit required—Records—Wine returned to Washington. Added subsection (3) to implement interim board policy #03-2009 (Washington domestic winery returning exported product back to producing winery).

New Section – WAC 314-24-207 – Winery warehouse license. Added a new section to implement the winery warehouse license requirements.

Amendatory section – WAC 314-24-150 – Wine records—Preservation. Revised language to required three years records be kept to be consistent with the federal laws.

Amendatory section – WAC 314-24-190 – Wine suppliers and distributors. The title of this section was previously "price postings". Revised language to remove price posting requirements and added a requirement that a



Washington State Liquor Control Board

The following comments were submitted regarding the proposed rules to implement 2009 legislation relating to manufacturers, distributors, importers, retailers:

Michael Transue – Washington Restaurant Association

Comments:

WAC 314-52-080 – “I have a couple of ideas to shorten the first two sentences if you’d like. The proposed rules look good to me.”

LCB Response: We are satisfied with the first two sentences of 314-52-080.

Jesse D. Lyon – Law Office of Davis Wright Tremain LLP

Comments:

WAC 314-12-027 – “The proposed rules would incorrectly limit financial interests to stock ownership.” The examples given only address stock transactions. The proposed rule impermissibly re-defines a term that the legislature has already given an ambiguous statutory definition. Financial interest is broadly defined and is not limited to stock transactions.”

LCB Response: The law states an “industry member may wholly own or hold a financial interest in a separate legal entity licensed as a retailer, but may not have such a license issued in its name”. To wholly own a license is clearly stated in RCW so no specific rules or examples were given for this ownership. The rules and examples were written to clarify what constitutes “financial interest” and when a separate legal entity would be required (if more than 10 percent stock ownership).

WAC 314-12-140 – “As proposed, this rule would incorrectly prohibit lending transactions as “money’s worth”.”

LCB Response: Lending transactions are “money’s worth” and are not allowed. EHB 2040 did not change the prohibition against “money or money’s worth”. This rule was revised for clarification only.

Family Wineries of Washington State (FWWS)

WAC 314-12-027 – Financial interest and ownership. “The proposed rules should describe “safe harbors” wherein a winery or other tier interest would be able to act and contract without fear that the transaction would later be deemed improper. Suggest changes that provide specific language recognizing the obvious ordinary economic transactions surrounding business investments, such as:

- the advancement of money or money’s worth including but not limited to cash, or equity interests in real estate, equipment, inventory or facilities;
- provide specific exemptions from the blanket prohibition on advancing money or ordinary business disbursements and distributions;

WAC 314-24-070 – Purchase of bulk wine and spirits. “This rule fails to take into account advances in wine technology resulting in current practices such as restriction of alcohol and other wine faults by specialized filtration or distillation technologies often unavailable in Washington State.”

Response: The revision to this rule is to implement Interim Board Policy #03-2009. The interim policy specifically addresses non-sparkling wine being exported from the state and returned for sale. There is nothing in law that allows wine to leave the state for specialized filtration or distillation. This would require a law change.

AMENDATORY SECTION (Amending WSR 04-15-162, filed 7/21/04, effective 8/21/04)

WAC 314-11-015 What are my responsibilities as a liquor licensee? (1)(a) Liquor licensees are responsible for the operation of their licensed premises in compliance with the liquor laws and rules of the board (Title 66 RCW and Title 314 WAC). Any violations committed or permitted by employees will be treated by the board as violations committed or permitted by the licensee.

(b) The penalties for violations of liquor laws or rules are in: WAC ((314-12-300)) 314-29-015 through ((314-12-340)) 314-29-035, as now or hereafter amended, for licensees; and WAC 314-17-105 and 314-17-110, as now or hereafter amended, for employees who hold mandatory alcohol server training permits. These rules also outline aggravating and mitigating circumstances that may affect what penalty is applied if a licensee or employee violates a liquor law or rule.

(2) Licensees and their employees also have the responsibility to conduct the licensed premises in compliance with the following laws, as they now exist or may later be amended:

- Titles 9 and 9A RCW, the criminal code laws;
- Title 69 RCW, which outlines the laws regarding controlled substances; and
- Titles 70.155, 82.24 RCW, and RCW 26.28.080 which outline laws regarding tobacco.

(3) Licensees have the responsibility to control their conduct and the conduct of employees and patrons on the premises at all times. Except as otherwise provided by law, licensees or employees may not:

(a) Be disorderly or apparently intoxicated on the licensed premises;

(b) Permit any disorderly person to remain on the licensed premises;

(c) Engage in or allow behavior that provokes conduct which presents a threat to public safety;

(d) Consume liquor of any kind while working on the licensed premises; except that:

(i) Licensed beer manufacturers and their employees may sample beer of their own manufacture for manufacturing, evaluating or pricing product in areas where the public is not served, so long as the licensee or employee does not become apparently intoxicated;

(ii) Licensed wine manufacturers and their employees may:

(A) Sample wine for manufacturing, evaluating, or pricing product, so long as the licensee or employee does not become apparently intoxicated; and the licensee or employee who is sampling for these purposes is not also engaged in serving alcohol to the public; and

retailer at fair market value;

(f) Records of all industry member financial ownership or interests in a retailer and of all retailer financial ownership interests in an industry member; and

(g) Business entertainment records of industry members or their employees who provide either food, beverages, transportation, tickets or admission fees for or at athletic events or for other forms of entertainment to retail licensees and/or their employees.

(2) See (~~the following~~) additional rules for (~~record keeping~~) recordkeeping requirements specific to breweries and wineries: WAC 314-20-015(2), 314-20-050, 314-24-100, and 314-24-150 (as now or hereafter amended).

NEW SECTION

WAC 314-11-097 Credit on nonliquor food items--Conditions--Recordkeeping. (1) Notwithstanding the provisions of WAC 314-12-140, persons licensed under RCW 66.24.200 as wine distributors and persons licensed under RCW 66.24.250 as beer distributors may sell at wholesale nonliquor food products on thirty days' credit terms to retailers. Complete and separate accounting records shall be maintained for a period of three years on all sales of nonliquor food products to ensure that such persons are in compliance with RCW 66.28.010.

(2) Nonliquor food products include all food products for human consumption as defined in RCW 82.08.0293 as it exists on July 1, 1987, except that for the purposes of this section bottled water and carbonated beverages, whether liquid or frozen, shall be considered food products.

(3) For the purpose of this section, the period of credit is calculated as the time elapsing between the date of delivery of the product and the date of full legal discharge of the retailer, through the payment of cash or its equivalent, from all indebtedness arising from the transaction.

(4) If the board finds in any instance that any licensee has violated this section by extending or receiving credit in excess of the thirty days as provided for by this section, then all licensees involved shall be held equally responsible for such violation.

NEW SECTION

WAC 314-12-027 Financial interest and ownership. Pursuant to the exceptions in chapter 66.28 RCW:

(1) An industry member or affiliate may have a financial interest in another industry member or a retailer, and a retailer or affiliate may have financial interest in an industry member unless such interest has resulted or is more likely than not to result in:

(a) Undue influence over the retailer or the industry member;
or

(b) An adverse impact on public health and safety.

(2) The structure of any such financial interest must be consistent with the following:

(a) An industry member in whose name a license or COA has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed pursuant to RCW 66.24.320 through 66.24.570, but the industry member must form a separate legal entity to apply for the retail liquor license.

Example: ABC Inc. is the liquor licensee for ABC Winery. ABC Inc. has two officers and stockholders; John Doe, President and 50% stockholder, and Mary Smith, Secretary and 50% stockholder. ABC Inc. wants to purchase stock in a retail restaurant. ABC Inc. is not required to form a separate legal entity if the amount of stock purchased is 10% or less. If the amount of stock purchased is more than 10%, ABC Inc. must form a separate legal entity to purchase the stock. John Doe and/or Mary Smith as a sole proprietor, could purchase any amount of stock in a retail restaurant;

(b) A retailer in whose name a license has been issued pursuant to this title may wholly own or hold a financial interest in manufacturer, importer, or distributor licensed under RCW 66.24.170, 66.24.206, 66.24.240, 66.24.244, 66.24.270(2), 66.24.200, or 66.24.250, but the retailer must form a separate legal entity to apply for the nonretail liquor license.

Example: Joe and Jane Smith own a grocery store and hold a grocery store liquor license under a sole proprietor legal entity. They want to purchase stock in a local winery. Joe and Jane Smith are not required to form a separate legal entity if the amount of stock purchased is 10% or less. If the amount of stock purchased is more than 10%, Joe and Jane Smith must form a separate legal entity (such as a corporation or limited liability company) to purchase the stock in the winery;

(c) A supplier in whose name a license or certificate of approval has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed as a distributor or importer under this title, but such supplier may not have a license as a distributor or importer issued in its own name.

~~delivery of liquor to any retail licensee. Provided, That))~~
industry member or retailer shall enter into any agreement which causes undue influence over another retailer or industry member.
This regulation shall not be construed as prohibiting the placing and accepting of orders for the purchase and delivery of liquor which are made in accordance with the usual and common business practice and which are otherwise in compliance with the regulations.

~~((3))~~ (2) No ((manufacturer, distributor, or importer, or his employee,)) industry member shall ((directly or indirectly solicit, give or offer to, or receive from any retail licensee, any employee thereof, or an applicant for a license, any)) advance and no retailer, any employee thereof, or applicant for a retail liquor license shall receive money or money's worth under any written or unwritten agreement or any other business practice or arrangement such as:

(a) Gifts((7));

(b) Discounts((7));

(c) Loans of money((7));

(d) Premiums((7));

(e) Rebates((7));

(f) Free liquor of any kind((7)); or

(g) Treats or services of any nature whatsoever((7); nor shall any retail licensee, employee thereof, or an applicant for a license, directly or indirectly, solicit, receive from, or give or offer to any manufacturer, distributor or importer, or his employee, any gifts, discounts, loans of money, premiums, rebates, free liquor of any kind, treats or services of any nature whatsoever,)) except such services as are authorized in this regulation.

~~((4))~~ (3) Pursuant to RCW 66.28.010 ((a manufacturer, distributor, importer,)) an industry member or ((his)) licensed agent may perform the following services for a retailer:

(a) Build, rotate, and restock displays, utilizing filled cases, filled bottles or filled cans of ((his)) its own brands only, from stock or inventory owned by the retailer.

(b) Rotate, rearrange or replenish bottles or cans of ((his)) its own brands on shelves or in the refrigerators but is prohibited from rearranging or moving displays of ((his)) its products in such a manner as to cover up, hide or reduce the space of display of the products of any other ((manufacturer, distributor or importer; Provided, however, manufacturers, distributors, importers)) industry member.

(c) Industry members or any employees thereof may move or handle in any manner any products of any other manufacturer, importer or distributor on the premises of any retail licensee when ((reasonable)) a two-day notice is given to other interested ((manufacturers, distributors)) industry members or their agents and such activity occurs during normal business hours or upon hours that are mutually agreed.

~~((b))~~ (d) Provide price cards and may also price goods of ((his)) its own brands in accordance with the usual and common

~~((Such invoice shall list))~~ (d) The date of such sale and affirm that full cash payment for such articles was received from the retailer as provided in subsection ~~((+5+))~~ (4) of this section.

~~((+9+))~~ (8) If the board finds in any instance that any licensee has violated this regulation, then all licenses involved shall be held equally responsible for such violation.

Note: WAC 314-12-140 is not intended to be a relaxation in any respect of section 90 of the Liquor Act (RCW 66.28.010). As a word of caution to persons desiring to avail themselves of the opportunity to sell to retail licensees fixtures, equipment and supplies subject to the conditions and restrictions provided in section 90 of the act and the foregoing regulation, notice is hereby given that, if at any time such privilege is abused or experience proves that as a matter of policy it should be further curtailed or eliminated completely, the board will be free to impose added restrictions or to limit all manufacturers and distributors solely to the sale of liquor when dealing with retail licensees. WAC 314-12-140 shall not be considered as granting any vested right to any person, and persons who engage in the business of selling to retail licensees property or merchandise of any nature voluntarily assume the risk of being divested of that privilege and they will undertake such business subject to this understanding. The board also cautions that certain trade practices are prohibited by rulings issued under the Federal Alcohol Administration Act by the United States Bureau of Alcohol, Tobacco and Firearms, and WAC 314-12-140 is not intended to conflict with such rulings or other requirements of federal law or regulations.

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

WAC 314-12-141 Courses of instruction. ~~((Breweries, wineries and distributors))~~ Industry members conducting courses of instruction as authorized by RCW 66.28.150 may provide alcohol at no charge to licensees of the board, their employees, and invited guests who have a legitimate business interest in the manufacturing, importing, distributing and retailing of liquor.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-12-135	Business entertainment--Records.
WAC 314-12-145	Credit on nonliquor food items--
	Conditions--Recordkeeping.

AMENDATORY SECTION (Amending WSR 07-02-076, filed 12/29/06, effective 1/29/07)

WAC 314-19-015 What are the monthly reporting and tax payment requirements? (1) The required monthly beer and/or wine tax reports must be:

(a) On a form furnished by the board or in a format approved by the board;

(b) Filed every month, including months with no activity or taxes due;

(c) Submitted, with the tax due, to the board on or before the twentieth day of each month, for the previous month (for example, a report listing transactions for the month of January is due by February 20). When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day; and

(d) Filed separately for each type of liquor license or permit held.

Type of Licensee	Tax Payment Requirements
(2) Washington beer and/or wine distributor	<p>(a) Distributors must pay taxes on all beer and/or wine received during the preceding calendar month, including samples received at no charge (see WAC 314-64-080 and 314-64-090 for more information). The total tax due (per barrel for beer and per liter for wine) is to be paid by the first distributor to receive the product and must be included with the monthly report.</p> <p>(b) Distributors do not pay taxes on beer and/or wine received from another in-state licensed distributor who has already paid the Washington state tax on the product.</p> <p>(c) Distributors may claim a tax refund or credit, provided that they have paid the taxes prior to claiming the credit, for the following (see WAC 314-19-030 for information on claiming a tax refund or credit):</p> <p>(i) Shipments exported directly to a point outside the state of Washington, including sales to interstate common carriers;</p> <p>(ii) Sales to any military reservation in Washington state;</p> <p>(iii) Product that is deemed unsalable due to freight damage, product quality, or other causes that occurred prior to receipt by the distributor, subject to the following conditions:</p> <p>(A) The unsalable product must be destroyed within the state of Washington (per RCW 66.24.305);</p>

Type of Licensee	Tax Payment Requirements
	<p>(ii) Shipped out of a particular location for an interplant transfer;</p> <p>(iii) Exported directly to a point outside the state of Washington, including sales to interstate common carriers;</p> <p>(iv) Sold to the Washington state liquor control board;</p> <p>(v) Sold to any military reservation in Washington state; or</p> <p>(vi) Provided as a tasting on the brewery or winery premises or at additional winery locations at no charge, as authorized by RCW 66.24.170(4). See WAC 314-19-010(3) for the definition of " Tastings."</p>
(5) Domestic brewery--Brand owners	<p>(a) Domestic brewery-brand owners must file a report showing the quantity of all beer sold or delivered to each licensed beer distributor, or beer exported directly to a point outside the state of Washington, during the preceding month.</p> <p>(b) Domestic brewery-brand owners are not responsible for the tax on beer that is contract produced.</p>
(6) Out-of-state beer and/or wine certificate of approval holders	<p>(a) Certificate of approval holders must file a report showing the quantity of all beer and/or wine sold or delivered to each licensed beer or wine distributor or importer, including samples, during the preceding month.</p> <p>(b) Tax is due from the certificate of approval holder:</p> <p>(i) On samples shipped to licensed agents, and</p> <p>(ii) On donations to the Washington wine commission per RCW 66.12.180 and 66.24.210 or to 501 (c)(3) nonprofit charitable associations within Washington state per RCW 66.28.040.</p>
(7) Out-of-state United States beer and/or wine certificate of approval holders with a direct shipping to Washington retailer endorsement	<p>(a) Certificate of approval holders with this endorsement must file an addendum report showing the quantity of beer and/or wine sold or delivered to each licensed retailer, including samples, during the preceding month.</p> <p>(b) Tax is due from the certificate of approval holder on beer and/or wine sold or delivered to retail licensees and on sales to nonprofit charitable associations.</p>
(8) Out-of-state United States wine certificate of approval holders with a direct shipping to consumers endorsement	<p>(a) A certificate of approval holder with this endorsement must report the total quantity of wine sold to consumers in Washington state during the preceding month.</p> <p>(b) Tax is due from the certificate of approval holder on wine sold or delivered to Washington state residents.</p>
(9) Authorized representative certificate of approval holders-U.S. and/or foreign produced beer or wine	<p>(a) Authorized representative certificate of approval holders must file a report showing the quantity of all beer and/or wine sold or delivered to each licensed beer or wine distributor or importer, including samples. They must list the brewery and/or winery that they represent and that had shipments into Washington state during the preceding month.</p>

that qualify for the reduced tax rate; and

(b) The qualifying brewery is responsible to inform the distributors when product sold to distributors exceeds the first sixty thousand barrels exempted from the additional tax.

(c) Once a qualifying brewery's sales to distributors exceeds sixty thousand barrels, the distributors must begin paying the full tax rate on their next monthly tax report.

(5) Per RCW 66.24.290, authorized representative certificate of approval holders do not qualify for the reduced rate in Washington state.

(6) The tax exemption will not apply to strong beer. Strong beer must be paid at the higher rate even when the brewery meets the qualifications for the reduced rate. Strong beer is any malt beverage that contains more than eight percent alcohol by weight.

AMENDATORY SECTION (Amending WSR 04-24-097, filed 12/1/04, effective 1/1/05)

WAC 314-20-001 Definitions. (~~(1)~~) Per RCW 66.04.010(2), an "authorized representative" means a person who:

~~((a))~~ (1) Is required to have a federal basic permit issued by the alcohol and tobacco tax and trade bureau;

~~((b))~~ (2) Has its business located in the United States outside of the state of Washington;

~~((c))~~ (3) Acquires ownership of beer that is produced anywhere outside Washington by a brewery (~~(which does not hold a certificate of approval issued by the board,)~~) who does not distribute those brands for transportation into and resale in the state of Washington(~~-~~);

~~((d))~~ (4) Is appointed by the brewery referenced in (~~(c)~~) subsection (3) of this (~~subsection~~) section as its (~~exclusive~~) authorized representative for marketing and selling its products within the United States or within Washington state, in accordance with a written agreement between the authorized representative and the brewery. (~~(The board may waive the requirement for the written agreement of exclusivity in situations consistent with the normal marketing practices of certain products.)~~)

AMENDATORY SECTION (Amending WSR 07-02-076, filed 12/29/06, effective 1/29/07)

WAC 314-20-050 Beer distributors--Importers--Brewers--Records--Preservation. (1) Breweries, microbreweries, beer certificate of approval holders, and beer distributors must keep beer accounts separate and independent from other accounts and maintain proper records in a form approved by the board, showing all transactions in beer.

(2) Breweries, microbreweries, beer distributors, and beer importers must in case of beer exported or beer sold, transferred or shipped to another distributor, preserve all bills of lading or other evidence of shipment for a period of (~~two~~) three years after such exportation, and must in the case of sales to retailers preserve all sales slips and keep the same on file in the office of the wholesaler for at least (~~two~~) three years after each sale.

(3) Each brewery, beer distributor, and beer importer may maintain microfilm records containing reproductions (including microfiche) of any record, document, or report if first approved by the board. Request for approval shall be directed to the financial

sales to retailers. Each manufacturer functioning as a distributor must maintain a price list showing all such prices for sales to retailers as well as showing such prices for sales to distributors. The price list will contain the wholesale prices at which any and all brands of beer sold by the supplier or distributor shall be available to retailers within the state.

(b) A "beer supplier" means a microbrewery, domestic brewery, certificate of approval holder, beer importer, beer distributor acting as the first United States importer, or a distributor selling beer to another distributor.

(c) A "beer distributor" means a distributor selling to a retailer, a domestic brewery acting as a distributor, a microbrewery acting as a distributor, or a certificate of approval holder with a direct shipping to Washington retailer endorsement selling beer of its own production to a retailer.

(2) (~~Filing deadlines.~~

(a) Beer supplier filing deadlines	(b) Beer distributor filing deadlines
All price postings, distributor appointments, written contracts, and memoranda of oral agreements must be received by the board not later than the twenty-fifth day of the month, and if approved will become effective on the first day of the second calendar month following the date of filing.	All price postings must be received by the board not later than the tenth day of the month, and if approved will become effective on the first day of the calendar month following the date of filing.

~~((c) The board will allow up to an additional five days for revisions of filings to correct errors and omissions filed during the current price posting period. The board may in individual cases, for good cause shown, extend the filing date.~~

~~(d) When a price posting has been deposited in the United States mail addressed to the board, it will be considered filed or received on the date shown by the United States post office cancellation mark on the envelope, or on the date it was mailed if it is established to the satisfaction of the board that the actual mailing occurred on an earlier date.~~

~~(3) **Filing date exceptions**--Whenever a filing deadline falls on Saturday, Sunday, or a legal holiday, a price posting may be filed not later than midnight the next business day.~~

~~(4) **No changes from previous month**--If a beer supplier or distributor makes no changes in any items or prices listed in the last filed and approved price posting, the prices will remain in effect for each succeeding posting period until a revised price posting is filed and approved.~~

~~(5) **Temporary) Products and price ((reductions)) lists**--If a beer supplier or distributor ((files price postings that)) lists selected items on which prices are temporarily reduced ((for one~~

NEW SECTION

WAC 314-28-005 Definitions. The following definition applies to distilleries.

"Domestic distillery" means any distillery licensed under RCW 66.24.140 and located in the state of Washington.

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

WAC 314-44-005 Agent's license required--Eligible employers defined--Certain classes limited--Bona fide entity defined--Prohibited practices. (1) No person shall canvass for, solicit, receive or take orders for the purchase or sale of any liquor, or act as the agent for the purchase or sale of liquor, nor contact any licensees of the board in goodwill activities, unless such person is holder of an agent's license as provided in RCW 66.24.310, and this regulation.

(2) An agent's license may be issued to the accredited representative of ~~((a person, firm, or corporation holding a certificate of approval issued pursuant to RCW 66.24.270 or 66.24.206, a beer distributor's license, a brewer's license, a beer importer's license, a domestic winery license, a wine importer's license, or a wine distributor's license within the state of Washington, or the accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor, or foreign produced beer or wine. A person, firm, or corporation so qualified, is herein defined to be an eligible employer. Such employer))~~ an industry member. An industry member shall apply to the board for ~~((such))~~ an agent's license for ~~((his))~~ its accredited representatives on application forms prescribed and furnished by the board.

(3) Every ~~((firm which))~~ industry member who applies for an agent's license under the provisions of this section shall furnish the board with satisfactory proof ~~((that such firm is))~~ they are in fact a bona fide business entity.

(4) Only the licensed agent of ~~((a distiller, manufacturer, importer, or distributor of spirituous liquor))~~ an industry member may contact retail licensees in goodwill activities when such contacts pertain to spirituous liquor products.

(5) No ~~((distiller, manufacturer, importer, distributor of liquor, or agent thereof,))~~ industry member shall solicit ~~((either in person, by mail or otherwise))~~ in any way, any liquor vendor or employee of the board, except the purchasing agent ~~((thereof))~~, for the purpose or with the intent of furthering the sale of a particular brand or brands of merchandise as against another brand or brands of merchandise.

(6) No ~~((distiller, manufacturer, importer, distributor of liquor, or agent thereof,))~~ industry member shall visit any state liquor store or agency for the purpose of exerting influence on employees for sales promotion or to secure information regarding inventory or any other matter relating to sales. They may deliver, or have delivered, and assemble where required, consumer offers and display material that have been approved by the board ~~((or its~~

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

WAC 314-52-080 Novelty advertising. (1) Novelty branded promotional advertising items (~~shall~~) which are of nominal value, singly or in the aggregate, may be provided to retailers by industry members. Singly or in the aggregate is per licensed location. Such items include, but (~~shall~~) are not (~~be~~) limited to(~~7~~): Trays, lighters, blotters, post cards, pencils, coasters, menu cards, meal checks, napkins, clocks, (~~wearing apparel~~), mugs, glasses, (~~knives, lamp shades, or similar items on which the logo, liquor brand name or name of a manufacturer of an alcoholic beverage has been imprinted.~~

~~(2) No liquor manufacturer, distributor, or importer, or employee thereof, shall provide without charge, directly or indirectly, any novelty advertising items to any retail licensee; nor shall any retail licensee, or employee thereof, accept without charge any liquor novelty advertising items directly or indirectly, from any manufacturer, distributor, or importer, or employee thereof.~~

~~(3) A manufacturer, distributor, or importer,)) bottle or can openers, corkscrews, matches, printed recipes, shirts, hats, visors, and other similar items. Branded promotional items:~~

~~(a) Must be used exclusively by the retailer or its employees in a manner consistent with its license;~~

~~(b) Must bear imprinted advertising matter of the industry member only;~~

~~(c) May only be provided by industry members to retailers and their employees;~~

~~(d) May not be provided by or through retailers or their employees to retail customers.~~

~~(2) An industry member is not obligated to provide any branded promotional items, and a retailer may not require an industry member to provide such branded promotional items as a condition for selling any alcohol to the retailer.~~

~~(3) Any industry member, retailer, or other person asserting the provision of branded promotional items has resulted or is more likely than not to result in undue influence or an adverse impact on public health and safety, or is otherwise inconsistent with the criteria in subsection (1) of this section, may file a complaint with the board.~~

~~Upon receipt of a complaint the board may conduct an investigation as it deems appropriate in the circumstances.~~

~~(a) The board may issue an administrative violation notice to the industry member, to the retailer, or both.~~

~~(b) The recipient of the administrative violation notice may request a hearing under chapter 34.05 RCW.~~

AMENDATORY SECTION (Amending WSR 04-24-097, filed 12/1/04, effective 1/1/05)

WAC 314-24-001 Definitions. ~~((+))~~ Per RCW 66.04.010(2), an "authorized representative" means a person who:

~~((a))~~ (1) Is required to have a federal basic permit issued by the alcohol and tobacco tax and trade bureau;

~~((b))~~ (2) Has its business located in the United States outside of the state of Washington;

~~((c))~~ (3) Acquires ownership of wine that is produced anywhere outside Washington by a winery which does not ~~((hold a certificate of approval issued by the board,))~~ distribute those brands for transportation into and resale in the state of Washington~~(())~~;

~~((d))~~ (4) Is appointed by the winery referenced in ~~((c))~~ subsection (3) of this ~~((subsection))~~ section as its ~~((exclusive))~~ authorized representative for marketing and selling its products within the United States or within Washington state, in accordance with a written agreement between the authorized representative and the winery. ~~((The board may waive the requirement for the written agreement of exclusivity in situations consistent with the normal marketing practices of certain products, such as classified growths.))~~

AMENDATORY SECTION (Amending Order 184, Resolution No. 193, filed 5/13/86)

WAC 314-24-070 Domestic wineries--Purchase and use of bulk wines, brandy or wine spirits--Import permit required--Records--Wine returned to Washington. (1) Domestic wineries may purchase and receive under federal bond from any holder of a domestic winery license, holder of the fruit and/or wine distillery license provided in section 23-D of the Washington State Liquor Act (RCW 66.24.140), or out-of-state holder of a federal winery or fruit distillery basic permit, bulk wine, brandy or bulk wine spirits manufactured or produced by such holder, and use the same in the manufacture or production of wines: Provided, That every domestic winery which imports wine, brandy or wine spirits manufactured outside the state of Washington for use as authorized in this section must first be in possession of a permit issued by the board, in accordance with RCW 66.20.010(5) of the Washington State Liquor Act. Applications for such permits must be submitted to the board in writing. Such permits expire at the end of the board's

premises that is used for the storage of bulk wine and the distribution of the winery's own products. Storage of bulk wine may require a federal registry number.

(3) No part of the production process may take place at the winery warehouse premises.

(4) There may be no retail sales from the winery warehouse premises.

(5) The winery warehouse must be approved by the board under RCW 66.24.010 and the number of warehouses off the winery premises may not exceed one.

AMENDATORY SECTION (Amending WSR 07-02-076, filed 12/29/06, effective 1/29/07)

WAC 314-24-150 Wine records--Preservation. (1) Every domestic winery, wine distributor, wine certificate of approval holder, wine shipper permit holder, and wine importer shall keep wine accounts separate from other accounts, and maintain proper records in a form approved by the board showing all transactions in wine.

(2) Every domestic winery, wine distributor, and wine importer, shall, in the case of sales of wine within the state, keep and preserve all invoices, bills of lading, sales slips, and other evidence of sale, in the office of the domestic winery, wine distributor or wine importer for at least (~~two~~) three years after each sale.

(3) Every domestic winery, wine distributor, and wine importer, shall, in the case of wine exported from the state, keep and preserve all bills of lading and other evidence of shipment in the office of the domestic winery, wine distributor, or wine importer for at least (~~two~~) three years after each shipment.

(4) Both the shipping and receiving licensees and permittees, as the case may be, shall keep and preserve all invoices, bills of lading, sales slips, and other evidence of sale, transfer or shipment in their respective offices for at least (~~two~~) three years after each sale, transfer or shipment.

(5) Licensees and permittees may maintain microfilm records containing reproductions (including microfiche) of any record, document, or report if first approved by the board. Request for approval shall be directed to the financial division of the Washington state liquor control board and must include the following information:

- (a) Records proposed to be reproduced.
- (b) Reproduction process.
- (c) Manner of preserving the reproduction.

(d) Facilities provided for examining or viewing such reproduction.

If the request is approved, the licensee or permittee shall

first United States importer, or a distributor selling wine to another distributor.

(c) A "wine distributor" means a distributor selling to a retailer, a domestic winery acting as a distributor, or a certificate of approval holder with a direct shipping to Washington retailer endorsement selling wine of its own production to a retailer.

(2) ~~((Filing deadlines.~~

(a) Wine supplier filing deadlines	(b) Wine distributor filing deadlines
All price postings; distributor appointments; written contracts; and memoranda of oral agreements must be received by the board not later than the twenty-fifth day of the month, and if approved will become effective on the first day of the second calendar month following the date of filing.	All price postings must be received by the board not later than the tenth day of the month, and if approved will become effective on the first day of the calendar month following the date of filing.

~~(c) The board will allow up to an additional five days for revisions of filings to correct errors and omissions filed during the current posting period. The board may in individual cases, for good cause shown, extend the filing date.~~

~~(d) When a price posting has been deposited in the United States mail addressed to the board, it will be considered filed or received on the date shown by the United States post office cancellation mark on the envelope, or on the date it was mailed if it is established to the satisfaction of the board that the actual mailing occurred on an earlier date.~~

~~(3) **Filing date exception**--Whenever a filing deadline falls on Saturday, Sunday, or a legal holiday, a price posting may be filed not later than the close of business the next business day.~~

~~(4) **No changes from previous month**--If a wine supplier or distributor makes no changes in any items or prices listed in the last filed and approved price posting, the prices will remain in effect for each succeeding posting period until a revised price posting is filed and approved.~~

~~(5) **Temporary Products and price ((reductions)) lists**--If a wine supplier or distributor ((files price postings that)) lists selected items on which prices are temporarily reduced ((for one posting period only)), ((these)) the prices ((postings)) must clearly reflect all items((7)) and the selling price((7) and the posting period for which the price reductions will be in effect. At the expiration of the posting period during which the reductions were in effect, the special price posting will become void and the last regularly filed and effective price posting will again become effective)). All products must be made available to all retail licensees to the extent it is reasonably practical to do so and all~~

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

WAC 314-24-210 Return of wine by retailer--Replacement--Conditions. No wine shall be returned by any retail licensee to any wine distributor except as herein provided.

(1) Wine which is not in a salable condition may be returned by a retail licensee to the wine distributor from whom purchased, provided it is immediately replaced by the wine distributor with an identical quantity, type and brand of wine: Provided, That if the brand of wine is not presently in the wine distributor's stock and is not available to the distributor in the immediate future, a cash refund may be made to the retail licensee upon the approval of the board first being obtained.

(a) Every wine distributor shall maintain on the licensed premises for a period of (~~two~~) three years complete records of all refunds and exchanges made under this section including an inventory of unsalable wine returned to such distributor by any retail licensee.

(b) Such unsalable wine which requires reconditioning or destruction shall be returned by the wine distributor to the domestic winery which manufactured or produced the same, or to the importer who imported such wine. When wine which has been returned to a domestic winery by any person for reconditioning or destruction has been assembled at the winery, a complete inventory in duplicate of unsalable wine shall be filed with the board by the winery with a request that inspection be made of the returned wine before the reconditioning process or destruction is started. When wine has been returned by the distributor to the importer who imported such wine, a complete inventory of said wine shall be filed in duplicate with the board by the importer with a request that inspection be made of the returned wine before the wine is destroyed or returned to the out-of-state manufacturer.

(c) Wine which is not in a salable condition and has been returned to a domestic winery or importer by a distributor may be replaced by the supplier with an identical quantity, type, and brand of wine: Provided, That if the brand of wine is not presently in the winery or importer's stock and is not available to the supplier in the immediate future, a cash refund or credit may be made to the distributor by the supplier. Credit extended for the return of product should be noted on a separate document from the original invoice. Except as provided herein, no other adjustment, by way of a cash refund or otherwise, shall be made by the winery or wine distributor.

(2) Wine may be returned by a retail licensee or by a governmental agency who has seized the same to the wine distributor selling such wine in the event the retailer goes out of the business of selling wine at retail or has their license changed to a wine restricted license, and in such case a cash refund may be made upon return of the wine, provided that consent of the board is first had and obtained.

(3) Wine different from that ordered which has been delivered

AMENDATORY SECTION (Amending WSR 01-06-015, filed 2/26/01, effective 3/29/01)

WAC 314-13-015 What method of payment can a retailer use to purchase beer or wine from (~~a manufacturer or distributor~~) an industry member? Per RCW 66.28.010(1), a retail licensee must pay cash for beer and wine prior to or at the time of delivery by (~~a distributor, brewery, or winery~~) an industry member. The board will recognize the following forms of payment as cash payment for the purposes of this title, under the conditions outlined in this rule and in WAC 314-13-020.

(1) **Checks**, under the provisions of WAC 314-13-020.

(2) **Credit/debit cards**, under the following provisions:

(a) The credit or debit card transaction agreement must be voluntary on the part of both the retailer and the (~~manufacturer, importer, or distributor~~) industry member, and there must be no discrimination for nonparticipation in credit or debit card transactions.

(b) A sale must be initiated by an irrevocable invoice or sale order before or at the time of delivery.

(c) Both parties must bear their respective banking costs or other costs associated with the credit or debit card service.

(d) Both parties must maintain records of transactions and have the records readily available for board review.

(e) The credit or debit card charge must be initiated by the (~~manufacturer, importer, or distributor~~) industry member no later than the first business day following delivery.

(3) **Electronic funds transfer (EFT)**, under the following provisions:

(a) The EFT agreement must be voluntary on the part of both the retailer and the (~~manufacturer, importer, or distributor~~) industry member, and there must be no discrimination for nonparticipation in EFT.

(b) Prior to any EFT transaction, the retail licensee must enter into a written agreement with the (~~manufacturer, importer, or distributor~~) industry member specifying the terms and conditions for EFT as payment for alcohol or nonalcohol beverages.

(c) A sale must be initiated by an irrevocable invoice or sale order before or at the time of delivery.

(d) Both parties must bear their respective banking costs or other costs associated with EFT service.

(e) Both parties must maintain records of transactions and have the records readily available for board review.

(f) The electronic funds transfer must be initiated by the (~~manufacturer, importer, or distributor~~) retailer or industry member no later than the first business day following delivery and must be paid as promptly as is reasonably practical, and in no

spirituous liquor for resale, the following licensees must purchase spirituous liquor from the board at a fifteen percent discount:

- (a) Spirits, beer, and wine restaurants;
- (b) Spirits, beer, and wine private clubs; (~~and~~)
- (c) Spirits, beer, and wine nightclubs; and
- (d) Sports/entertainment facilities.

(2) When purchasing spirituous liquor, the licensee must present the tear-off portion of the business' master license that shows its liquor endorsement.

(3) This discounted spirituous liquor may only be used for resale on the licensed premises (see WAC 314-70-010 for instructions on when a business discontinues).

(a) Possession of discounted liquor off of the licensed premises will be *prima facie* evidence of a violation of this rule, unless:

(i) The liquor is en route from the point of purchase to the licensed premises (~~(7)~~); or

(ii) The liquor is en route from the licensed premises of a beer and/or wine restaurant or a spirits, beer, and wine restaurant with a caterer's endorsement to an approved event being catered by the licensee.

(b) Any spirituous liquor on the licensed premises must be liquor purchased at a discount from the board, except:

(i) Under the authority of a banquet permit, see chapter 314-18 WAC; or

(ii) Liquor bottles if they are used as part of the decor, and any bottles containing liquor are locked in a display case and are not for sale.



Washington State
Liquor Control Board

Date: December 16, 2009
To: Sharon Foster, Board Chair
Ruthann Kurose, Board Member
From: Karen McCall, Agency Rules Coordinator
Copy: Pat Kohler, Administrative Director
Rick Garza, Deputy Administrator
Alan Rathbun, Director, Licensing and Regulation
Pat Parmer, Chief, Enforcement and Education
Subject: Approval of final rulemaking (CR 103)

At the Board meeting on December 16, 2009, the Rules Coordinator requests that the Liquor Control Board approve final rule making to adopt new rules and modify rules to implement the **2009 legislation relating to retail liquor licensees.**

The Board was briefed on the rule making background, public comment, and agency response. An issue paper on this rule change and new rule language are attached.

If approved, the Rules Coordinator will send an explanation of the rule making to all persons who submitted comments in writing or in person at the public hearing on December 9, 2009, held in the Board's meeting room in Olympia, Washington. After sending this explanation, the Rules Coordinator will file the rules with the Office of the Code Reviser. The effective date of the rules will be 31 days after filing.

Approve Disapprove Sharon Foster 12/16/09
Sharon Foster, Chairman Date

Approve Disapprove Ruthann Kurose 12/16/09
Ruthann Kurose, Board Member Date

Attachment: Issue Paper
Proposed Rule Language

Washington State Liquor Control Board

Issue Paper

Rule Making to Implement Legislation for Retail Licensees

Date: December 16, 2009

Presented by: Karen McCall, Agency Rules Coordinator

Description of the Issue

The purpose of this issue paper is to recommend that the Washington State Liquor Control Board (WSLCB) proceed with final rule making and adopt the rules implementing **2009 legislation relating to retail liquor licensees**.

Why is rule making necessary?

The following bills were passed during the 2009 legislative sessions that require changes in existing administrative rules (WAC) or the development of new rules:

- **SSB 5367** – Creates a Nightclub liquor license
- **SSB 5834** – Allows Beer/Wine Specialty Shops to sell kegs for off-premises consumption, allows spirits, beer, and wine private clubs and beer and wine private clubs to sell bottled wine for off-premises consumption, allows retail-to-retail product (wine) transfers, and changes the process of electronic fund transfers (EFT)
- **EHB 2358** – Increases most retail liquor license fees

Public Comment

No public comment was received at the public hearing held December 9, 2009. One comment was received via email. The comment is attached to this document.

What changes are being proposed?

Amendatory Section WAC 314-02-005 – What is the purpose of chapter 314-02 WAC? Added nightclubs to the list of liquor licenses and permits.

Amendatory Section WAC 314-02-010 – Definitions. Added definitions for “entertainer”, “entertainment”, “minimum food service”, and “snack food”.

Amendatory Section WAC 314-02-020 – What are the fee categories for a spirits, beer, and wine restaurant license? Revised the fee matrix to implement EHB 2358.

Amendatory Section WAC 314-02-035 – What are the food service requirements for a spirits, beer, and wine restaurant license? Revised the fees listed for this license type per EHB 2358.

Amendatory Section WAC 314-02-105 – What is a beer and/or wine specialty shop license? Revised the license fee, and revised the language regarding keg sales.

Amendatory Section WAC 314-02-125 – What types of activities on a licensed premises require notice to the board? Corrected the WAC reference in subsection (1) to 314-11-050.

Amendatory Section WAC 314-02-130 – What types of changes to a licensed premises require board approval? Added spirits, beer, and wine nightclub to subsection (1).

Amendatory Section WAC 314-16-040 – Drink menu. Changed the title of the section from "Price list" to "Drink menu".

Amendatory Section WAC 314-16-110 – Liquor purchases by spirits, beer, and wine licensees. Changed the title of the section. Added spirits, beer, and wine nightclub license throughout the section as needed. Plain talked.

Amendatory Section WAC 314-16-160 – Purchases—Reports. Plain talked.

Attachments: Proposed Rule Language
Stakeholder Comments



Washington State Liquor Control Board

The following comments were submitted regarding the proposed rules to implement 2009 legislation relating to retail liquor licensees:

Michael Transue – Washington Restaurant Association

Comments:

WAC 314-02-010 (6) – “we’re not certain about the broader legal ramification of defining an entertainer as an employee. Clarifying explicitly that the definition is applicable only to this chapter, would help – I suppose we could insert similar language into this section’s preamble. After “An entertainer” insert, “for the purposes of this chapter only.”

Response: Entertainers have always been considered an employee based on the definition of “employee” in WAC 314-01-005. “Employee” means any person performing services on a licensed premises for the benefit of the licensee.” The definition of “entertainer” doesn’t change the fact that they are considered an employee of the licensee.

WAC 314-02-037 (1)(a) – “seems oddly worded.”

Response: The language reads, “Any areas in the licensed premises where alcohol is sold, served, or consumed is classified as off-limits to minors (RCW 66.44.310 (2)). The rulemaking group does not see this language as “oddly worded”.

WAC 314-02-039 (1)(c) – is it intended that only the board enforce local approved restrictions?

Response: No. The proposed language doesn’t state that only the board will enforce local approved restrictions.

WAC 314-02-039 (1)(d) - “change “restriction” to “restrictions” as there may be more than one restriction in a GNA and adopting the entire GNA might not be necessary.”

Response: This subsection refers to the agreement only. The GNA is one restriction.

WAC 314-02-090 (3) - proposed language reads, “sales are “conducted” but is consumption “conducted”? You might consider changing “be conducted” to “occur”. Also, if sales can occur “after” the performance as well you should consider putting that word into this section.”

Response: There is no need to add the suggested language to the rule. As a liquor licensee alcohol can be sold until 2 am if they choose. The areas of service and consumption are the issue for this license type.

AMENDATORY SECTION (Amending WSR 01-06-014, filed 2/26/01, effective 3/29/01)

WAC 314-16-040 (~~(Price list.)~~) Drink menu. No holder of a beer and/or wine restaurant license shall advertise for sale, nor sell, any mixed drink under the name of "Old Fashioned," "Whiskey Sour," "Singapore Sling," "Martini," "Manhattan," nor any other name which, by long and general usage, has become associated in the public mind as being the name of a mixed drink made from spirituous liquor, unless the name of such drink is prefaced by the word "wine," such as Wine Old Fashioned. The holder of a beer and/or wine restaurant license may advertise for sale, mix, compound or sell upon order, mixed drinks made from one or more wines under a name which does not conflict with this section.

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

WAC 314-16-110 Liquor purchases by spirits, beer, and wine (~~(restaurant, club and sports/entertainment facility)~~) licensees.
(1) Any employee authorized by the board may sell spirituous liquor at a discount of fifteen percent from the retail price fixed by the board, together with all taxes, to any spirits, beer and wine restaurant, spirits, beer, and wine nightclub, spirits, beer, and wine club or sports/entertainment facility licensee upon presentation to such employee at the time of purchase of a special permit issued by the board to such licensee or through such other means of insuring identification of the authorized purchaser as are approved by the board (~~(. Provided, however, That)~~). Prior to license delivery, a new licensee (~~(or transferee)~~) may, with board authorization, be sold discount liquor and beer and wine purchased under Title 66 RCW for the purpose of stocking the premises. The employee shall at the time of selling any spirituous liquor to a spirits, beer and wine restaurant, spirits, beer, and wine nightclub, spirits, beer, and wine club or sports/entertainment facility licensee make a record of the liquor so sold, together with the name of the spirits, beer and wine restaurant, spirits, beer, and wine nightclub, spirits, beer, and wine club or sports/entertainment facility licensee making the purchase. No sale of beer, wine, or spirituous liquor shall take place until the premises of the new licensee (~~(or transferee)~~) have been inspected by the board and the spirits, beer and wine restaurant, spirits, beer, and wine nightclub, spirits, beer, and wine club or

by spirit hydrometer or otherwise, as the inspector deems proper. Such inspectors are authorized to seize as evidence any bottles or other containers and the contents thereof which they have determined have been reused, refilled, tampered with, adulterated, diluted, fortified or substituted.

AMENDATORY SECTION (Amending WSR 07-02-076, filed 12/29/06, effective 1/29/07)

WAC 314-16-160 Purchases--Reports. (1) Failure by (~~licensees~~) industry members and retailers to keep accurate accounting records which result in the extension of or receipt of credit from (~~a manufacturer, importer, or distributor~~) an industry member through the use of a prior cash deposit which is overextended may result in administrative action being taken against the liquor license.

(2) Prior to license delivery, a new beer and/or wine (~~licensee or transferee~~) retailer may, with board authorization, be sold beer and/or wine for the purpose of stocking the premises. No retail sale of beer and/or wine shall take place until the applicant premises have been inspected by the board and the liquor license is delivered.

AMENDATORY SECTION (Amending WSR 08-17-067, filed 8/19/08, effective 9/19/08)

WAC 314-02-005 What is the purpose of chapter 314-02 WAC?
Chapter 314-02 WAC outlines the qualifications for the following liquor licenses and permits:

- (1) Spirits, beer, and wine restaurants;
- (2) Nightclubs;
- (3) Hotels;
- (~~(+3)~~) (4) Beer and/or wine restaurants;
- (~~(+4)~~) (5) Snack bars;
- (~~(+5)~~) (6) Taverns;
- (~~(+6)~~) (7) Motels;
- (~~(+7)~~) (8) Bed and breakfasts;
- (~~(+8)~~) (9) Nonprofit arts organizations;
- (~~(+9)~~) (10) Public houses;
- (~~(+10)~~) (11) Grocery stores;
- (~~(+11)~~) (12) Beer/wine specialty shops; and
- (~~(+12)~~) (13) Beer/wine gift delivery business.

AMENDATORY SECTION (Amending WSR 08-17-067, filed 8/19/08, effective 9/19/08)

WAC 314-02-010 Definitions. The following definitions are to clarify the purpose and intent of the rules and laws governing liquor licenses and permits. Additional definitions can be found in RCW 66.04.010.

(1) "Adjacent" means having a common endpoint or border where the extension of the property lines of the licensed premises contacts that common border.

the counter. Any alcohol served is incidental to food service.

~~((7))~~ (9) "Game room" means an area of a business set up for the primary purpose of patrons using games or gaming devices.

~~((8))~~ (10) "Liquor bar" means a table or counter where alcohol is stored or prepared and served to customers who sit or stand at the bar. Liquor bars can only be in lounges or in premises where minors are not allowed at any time.

~~((9))~~ (11) "Lounge" means the portion of a restaurant used primarily for the preparation, sale, and service of beer, wine, or spirits. Minors are not allowed in a lounge (see RCW 66.44.316 for information on employees and professional musicians under twenty-one years of age).

~~((10))~~ (12) "Minimum food service" means items such as sandwiches, salad, soup, hamburgers, and fry orders.

(13) "Minor" means a person under twenty-one years of age.

~~((11))~~ (14) "Service bar" means a fixed or portable table, counter, cart, or similar work station primarily used to prepare, mix, serve, and sell alcohol that is picked up by employees or customers. Customers may not be seated or allowed to consume food or alcohol at a service bar.

(15) "Snack food" means items such as peanuts, popcorn, and chips.

AMENDATORY SECTION (Amending WSR 05-22-022, filed 10/24/05, effective 11/24/05)

WAC 314-02-020 What are the fee categories for a spirits, beer, and wine restaurant license? (1) Per RCW 66.24.420, the annual fee for a spirits, beer, and wine restaurant license is graduated, as follows:

Amount of customer service area dedicated to dining	Annual fee
100%	\$((1,000)) <u>1,105</u>
50 - 99%	\$((1,600)) <u>1,768</u>
Less than 50%	\$((2,000)) <u>2,210</u>

(2) In order for an area to qualify as a dedicated dining area it must be a separate and distinct portion of a restaurant that is used primarily for the sale, service, and consumption of food, and have accommodations for eating, e.g., tables, chairs, booths, etc. Areas dedicated to live music or entertainment, such as dance floors or stages are not considered dedicated dining areas. Dedicated dining areas may not contain:

- (a) Liquor bars (see definition under WAC 314-02-010(2)); or
- (b) Areas dedicated to games or gaming devices.

(3) The fee for a spirits, beer, and wine restaurant license outside of an incorporated city or town will be prorated according to the calendar quarters the licensee is open for business. This

category) must maintain complete meal service for a minimum of five hours a day during the hours of 11:00 a.m. and 11:00 p.m. on any day liquor is served. The board may consider written requests for exceptions to this requirement due to demonstrated hardship, under such terms and conditions as the board determines are in the best interests of the public.

(a) Minimum food service, such as sandwiches, hamburgers, or fry orders, must be available outside of these hours.

(b) Snacks such as peanuts, popcorn, and chips do not qualify as minimum food service.

(9) The hours of complete meal service must be conspicuously posted on the premises or listed on the menu. If applicable, a statement that minimum food service is available outside of those hours must also be posted or listed on the menu.

NEW SECTION

WAC 314-02-036 What is a spirits, beer, and wine nightclub license? (1) This license allows a nightclub as defined in RCW 66.04.010(28) to:

(a) Sell and serve spirituous liquor by the individual drink for on-premises consumption;

(b) Sell and serve beer by the open bottle, can, or by tap for on-premises consumption; and

(c) Sell and serve wine for on-premises consumption.

(2) To obtain and maintain a spirits, beer, and wine nightclub license the nightclub must have primary business hours between 9:00 p.m. and 2:00 a.m.

(3) There are no food requirements for a spirits, beer, and wine nightclub license. Food sales and service are incidental to the sale and service of alcohol.

(4) The annual fee for a spirits, beer, and wine nightclub license is two thousand dollars.

NEW SECTION

WAC 314-02-037 What are the floor space requirements for a spirits, beer, and wine nightclub license? (1) The liquor control board has the responsibility to classify what licensed premises or what portions of a licensed premises are off limits to minors.

(a) Any areas in the licensed premises where alcohol is sold, served, or consumed is classified as off-limits to minors (RCW 66.44.310(2)).

(b) Minors may be allowed on the licensed premises but only in

minors from the premises may not employ minors. (See WAC 314-11-040 for more information on employing minors.)

NEW SECTION

WAC 314-02-039 What type of restrictions may be placed on a spirits, beer, and wine nightclub license? (1) Local government may petition the board to request further restrictions be imposed on a spirits, beer, and wine nightclub license in the interest of public safety. Public safety does not include items such as noise ordinances and trash pickup.

(a) The local authority must request any additional restrictions within twenty days from the date of the local authority notice sent by the board.

A request for additional restrictions must be accompanied by a written explanation for the restriction and how the restriction relates to public safety.

(b) If the local authority requests further restrictions on the license, the board will notify the applicant of the local authorities' request.

(c) Any restrictions requested by the local authority and approved by the board may be enforced by the board.

(d) The board may impose the restriction of a "good neighbor agreement" requested by the local authority, but will not enforce agreements between a local authority and liquor licensee or applicant.

(2) The local authority, the applicant, or the licensee may request an administrative hearing per chapter 34.05 RCW if they disagree with the decision the board makes on additional restrictions to the license, based on the interest of public safety.

AMENDATORY SECTION (Amending WSR 05-22-022, filed 10/24/05, effective 11/24/05)

WAC 314-02-045 What is a beer and/or wine restaurant license?

(1) Per RCW 66.24.320 and 66.24.354, this license allows a restaurant to:

Privilege	Annual fee
(a) Serve beer by the bottle or can or by tap for on-premises consumption.	\$(200) 221

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-065 What is a snack bar license? (1) Per RCW 66.24.350, a snack bar license allows a licensee to serve beer by the opened bottle or can for on-premises consumption only.

(2) Snack bar licensees must have snack food, as defined in WAC 314-02-010(15), available whenever beer is sold or served.

(3) Snack bars must have designated seating for on-premises consumption of beer.

(4) The annual fee for this license is one hundred (~~twenty-five~~) thirty-eight dollars.

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-070 What is a tavern license? (1) Per RCW 66.24.330 and 66.24.354, this license allows a tavern to:

Privilege	Annual fee
(a) Serve beer by the bottle or can or by tap for on-premises consumption.	\$(200) <u>221</u>
(b) Serve wine for on-premises consumption.	\$(200) <u>221</u>
(c) Sell beer and/or wine in the original, unopened containers for off-premises consumption.	\$(120) <u>133</u>
(d) Sell tap beer for off-premises consumption in a sanitary container holding less than four gallons of beer, and brought to the premises by the purchaser.	In conjunction with off-premises privilege outlined in subsection (c).
(e) Sell beer in kegs or other containers holding at least four gallons of beer (see WAC 314-02-110 regarding the requirements for registering kegs).	In conjunction with off-premises privilege outlined in subsection (c).

(2) A tavern licensee may not allow persons under twenty-one years of age on the premises at any time (see RCW 66.44.316 for information regarding employees and professional musicians under twenty-one years of age).

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-100 What is a grocery store license? (1) Per RCW 66.24.360, a grocery store license allows a licensee to sell beer and/or wine for off-premises consumption.

(2) The annual fee for this license is one hundred (~~fifty~~) sixty-six dollars.

(3) In order to obtain and maintain a grocery store license, the premises must be stocked with an inventory of at least three thousand dollars wholesale value of food for human consumption, not including soft drinks, beer, or wine. This minimum inventory must be:

(a) Stocked within the confines of the licensed premises; and
(b) Maintained at the premises at all times the business is licensed, with the exception of:

(i) The beginning and closing inventory for seasonal operations; or

(ii) When the inventory is being sold out immediately prior to discontinuing or selling the business.

(4) A grocery store licensee may sell beer in kegs or other containers holding at least four gallons and less than five and one-half gallons of beer. See WAC 314-02-115 regarding keg registration requirements.

(5) A grocery store applicant or licensee may apply for an international exporter endorsement for five hundred dollars a year, which allows the sale of beer and wine for export to locations outside the United States.

AMENDATORY SECTION (Amending WSR 04-19-156, filed 9/22/04, effective 10/23/04)

WAC 314-02-105 What is a beer and/or wine specialty store license? (1) Per RCW 66.24.371, a beer and/or wine specialty store license allows a licensee to sell beer and/or wine for off-premises consumption.

(2) The annual fee for this license is one hundred eleven dollars.

(3) Qualifications for license--To obtain and maintain a beer and/or wine specialty store license, the premises must be stocked with an inventory of beer and/or wine in excess of three thousand dollars wholesale value. This inventory must be:

(a) Stocked within the confines of the licensed premises; and
(b) Maintained on the premises at all times the premises is licensed, with the exception of beginning and closing inventory for seasonal operations or when the inventory is being sold out immediately prior to discontinuing or selling the business.

(4) Qualifications to sample--A beer and/or wine specialty

entertainment; and

(4) Hours of operation in between 2:00 a.m. and 6:00 a.m. for licensees that sell liquor for on-premises consumption.

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-130 What types of changes to a licensed premises require board approval? The following changes to a licensed premises require prior board approval, by submitting a form provided by the board's licensing and regulation division:

Type of alteration	Approval process and timeline
<p>(1)</p> <ul style="list-style-type: none">● excluding persons under twenty-one years of age from a spirits, beer, and wine restaurant <u>or a spirits, beer, and wine nightclub</u>;● excluding persons under twenty-one years of age from the dining area of a beer and/or wine restaurant;● reclassifying a lounge as open to persons under twenty-one years of age;● extending the location of alcohol service, such as a beer garden or patio/deck service (areas must be enclosed with a barrier a minimum of forty-two inches in height);● storing liquor off of the licensed premises;● initiating room service in a hotel or motel when the restaurant is not connected to the hotel or motel;● installing a pass-through window for walk-up customers; and● using a licensed premises as an access to another business.	<p>(a) The board's licensing and regulation division will respond to the request for alteration within five business days.</p> <p>(b) The licensee may begin liquor service in conjunction with the alteration as soon as approval is received.</p> <p>(c) Board approval will be based on the alteration meeting the requirements outlined in this title.</p>



Washington State
Liquor Control Board

Date: December 16, 2009

To: Sharon Foster, Board Chair
Ruthann Kurose, Board Member

From: Karen McCall, Agency Rules Coordinator

Copy: Pat Kohler, Administrative Director
Rick Garza, Deputy Administrator
Pat Parmer, Chief, Enforcement and Education

Subject: Approval of final rulemaking (CR 103)

At the Board meeting on December 16, 2009, the Rules Coordinator requests that the Liquor Control Board approve final rule making to adopt new rules and modify rules to implement the **2009 legislation relating to cigarette and tobacco products license administration.**

The Board was briefed on the rule making background, public comment, and agency response. An issue paper on this rule change and new rule language are attached.

If approved, the Rules Coordinator will send an explanation of the rule making to all persons who submitted comments in writing or in person at the public hearing on December 9, 2009, held in the Board's meeting room in Olympia, Washington. After sending this explanation, the Rules Coordinator will file the rules with the Office of the Code Reviser. The effective date of the rules will be 31 days after filing.

Approve Disapprove Sharon Foster 12/16/09
Sharon Foster, Chair Date

Approve Disapprove Ruthann Kurose 12/16/09
Ruthann Kurose, Board Member Date

Attachment: Issue Paper
Proposed Rule Language

Washington State Liquor Control Board

Issue Paper

Rule Making to Implement Legislation for Cigarette and Tobacco Licensing

Date: December 16, 2009

Presented by: Karen McCall, Agency Rules Coordinator

Description of the Issue

The purpose of this issue paper is to recommend that the Washington State Liquor Control Board (WSLCB) proceed with final rule making and adopt the rules regarding **Cigarette and Tobacco Licensing**.

Why is rule making necessary?

SHB 1435 passed in the 2009 legislative session, gives the Liquor Control Board the administrative authority to approve, deny, suspend, or revoke retail, wholesale, or distributor cigarette and tobacco products licenses. Rules are needed to further clarify the application process and requirements.

Public Comment

No public comment was received in writing or at the public hearing held December 9, 2009.

What changes are being proposed?

New Chapter 314-33 Cigarette and Tobacco Products License Process

New Section 314-33-001 Cigarette and tobacco products license qualifications and application process. Explains the requirement of a criminal history background check and explains the application process to obtain a cigarette or tobacco products license.

New Section 314-33-005 Reasons the board may deny a cigarette or tobacco products license application. Lists the reasons the board may deny the license.

New Section 314-33-020 What criminal history might prevent an applicant from receiving or keeping a cigarette or tobacco products license? Includes a matrix that includes a point value for different types of criminal convictions. Explains the board's scoring of criminal convictions and how a decision is made when criminal history is involved.

New Section 314-33-025 What liquor and cigarette and tobacco products law or rule violation history might prevent an applicant from receiving a cigarette or tobacco products license? Explains how the board uses violation history in determining licensure.

Chapter 314-33 WAC

CIGARETTE AND TOBACCO PRODUCTS LICENSE PROCESS

NEW SECTION

WAC 314-33-001 Cigarette and tobacco products license qualifications and application process. (1) Each cigarette and tobacco products license application is unique and investigated individually. The board may inquire and request documents regarding matters in connection with the cigarette and tobacco products license application. Following is a general outline of the cigarette and tobacco products license application process:

(a) The board may require proof concerning the applicant's identity.

(b) The board may conduct an investigation of the applicants' criminal history and administrative violation history, per RCW 82.24.510 and 82.26.150.

(2) Failure to respond to the board's requests for information within the timeline provided may cause the application to be denied.

NEW SECTION

WAC 314-33-005 Reasons the board may deny a cigarette or tobacco products license application. The following is a list of reasons the board may deny a cigarette or tobacco products license application:

(1) Failure to meet qualifications or requirements for the specific cigarette or tobacco products license, as outlined in this chapter and chapters 82.24 and 82.26 RCW.

(2) Failure to submit information or documentation requested by the board.

(3) Misrepresentation of fact by any applicant.

(4) Willfully withholding information.

(5) Submitting false or misleading information.

(6) The applicant has failed to submit payments of the taxes imposed under chapter 82.24 or 82.26 RCW along with reports and returns to the department of revenue as required.

within ninety days, the board may administratively close the application.

NEW SECTION

WAC 314-33-025 What liquor and cigarette and tobacco products law or rule violation history might prevent an applicant from receiving a cigarette or tobacco products license? The board will conduct an investigation of all applicants' liquor and cigarette and tobacco products law and/or rule administrative violation history. The board will not normally issue a cigarette and tobacco products license to a person, or to an entity that has the following violation history or to any person that has demonstrated a pattern of disregard for laws or rules: Four or more violations within the last two years of the date the application is received by the board.

NEW SECTION

WAC 314-33-030 What is the process if the board denies a cigarette or tobacco products license application? If the board denies a cigarette or tobacco products license application, the applicant may:

- (1) Request an administrative hearing per chapter 34.05 RCW;
- or
- (2) Reapply for the license no sooner than one year from the original denial date.

Chapter 314-34 WAC

CIGARETTE AND TOBACCO PRODUCTS VIOLATIONS

NEW SECTION

WAC 314-34-001 Purpose of chapter. The purpose of this chapter is to outline what a cigarette and/or tobacco products licensee can expect if a licensee receives an administrative violation notice alleging a violation of a statute under chapters 82.24 and 82.26 RCW, or under chapter 314-33 WAC.

NEW SECTION

WAC 314-34-003 Authority--Suspension or revocation of wholesale and retail cigarette and tobacco products licenses. (1) The board has full power and authority to suspend or revoke the license of any cigarette wholesale or retail licensee and tobacco products distributor or retail licensee upon sufficient showing that the license holder has violated the provisions of chapters 82.24 and 82.26 RCW or chapter 314-33 WAC.

(2) Any person possessing both a cigarette license and a tobacco products license is subject to suspension and revocation of both licenses for violation of either chapter 82.24 or 82.26 RCW or this chapter. For example, if a person has both a cigarette license and a tobacco products license, revocation of the tobacco products license will also result in revocation of the cigarette license.

(3) A person whose license has been suspended or revoked must not sell or permit the sale of tobacco products or cigarettes during the period of the suspension or revocation.

(4) For the purposes of this rule, "cigarettes" has the same meaning as in RCW 82.24.010 and "tobacco products" has the same meaning as in RCW 82.26.010.

(5) Any person whose license has been revoked must wait one year following the date of revocation before requesting a hearing for reinstatement. Reinstatement hearings are held pursuant to chapter 34.05 RCW.

given the option to renegotiate with the hearings examiner or captain, of accepting the originally recommended penalty, or of requesting an administrative hearing on the charges.

(d) If the licensee and the hearing examiner or captain cannot reach agreement on a settlement proposal, the licensee may accept the originally recommended penalty, or the hearing examiner or captain will forward a request for an administrative hearing to the board's hearings coordinator.

NEW SECTION

WAC 314-34-015 What are the penalties if a cigarette and/or tobacco products license holder violates a cigarette or tobacco products law or rule? For the purposes of chapter 314-33 WAC, a two-year window for violations is measured from the date one violation occurred to the date a subsequent violation occurred.

(1) 1st offense - License suspension for not less than thirty consecutive business days.

(2) 2nd offense - License suspension for not less than ninety days - or more than twelve months.

(3) 3rd and consecutive offenses - Subject to revocation.

NEW SECTION

WAC 314-34-020 Information about cigarette and/or tobacco products license suspensions. (1) On the date a cigarette and/or tobacco products license suspension goes into effect, a liquor enforcement officer will post a suspension notice in a conspicuous place on or about the licensed premises. This notice will state that the license has been suspended by order of the liquor control board due to a violation of a cigarette or tobacco products law or rule.

(2) During the period of cigarette and/or tobacco products license suspension, the licensee and employees:

(a) Are required to maintain compliance with all applicable cigarette and tobacco products laws and rules;

(b) May not remove, alter, or cover the posted suspension notice, and may not permit another person to do so;

(c) May not place or permit the placement of any statement on the licensed premises indicating that the premises have been closed for any reason other than as stated in the suspension notice;

(d) May not advertise by any means that the licensed premises is closed for any reason other than as stated in the liquor control board's suspension notice.

- (f) Retailer not licensed as a distributor and obtaining tobacco products from an unlicensed distributor;
- (g) Manufacturer representative's violation; and
- (h) License suspension violations.



Topic: Entertainers Consuming Alcohol While Performing

Date: December 16, 2009

Presented by: Karen McCall

Problem or Opportunity

Many liquor licensees have entertainment at their premises. Our definition of "entertainer" means someone who performs for an audience such as a disc jockey, singer, or comedian, or anyone providing entertainment for the licensee. An entertainer is considered an employee of the liquor licensee. Patrons participating in entertainment are not considered employees. Current rules prohibit entertainers from consuming alcohol while performing because they are considered employees of the licensee.

Background

Staff has met with several members of the Seattle Nightlife and Music Association and liquor licensees that hold a spirits, beer, wine restaurant liquor license. The majority of these licensees operate their businesses as nightclubs rather than restaurants, with entertainment and alcohol sales their primary business.

In our conversations with this group of licensees we were asked why entertainers are prohibited from consuming alcohol while they are performing. They stated it is difficult to sign some performers due to our current restrictions. The licensees asked if this practice could be allowed. The answer is that entertainers are employees of the licensee and as employees they are not allowed to consume alcohol while working. I contacted 12 control states and 12 open states to inquire their practice on this activity. All of the open states and 9 of the control states allow this practice. In states that allow this practice, entertainers at the licensed premises are considered to be employees of the licensee, but they are allowed to consume alcohol the same as patrons. They must purchase the alcohol from a bartender or server and they may not be served if intoxicated.

WAC 314-11-015(3)(d) states, "Licensees have the responsibility to control their conduct and the conduct of employees and patrons on the premises at all times. Except as otherwise provided by law, licensees or employees may not consume liquor of any kind while working on the licensed premises."

Recommendations

Director's Office staff recommends the board allow entertainers to consume alcohol while performing at a nightclub liquor licensed premises. The following conditions should apply:

- alcohol must be purchased from the bartender or server;
- no alcohol sales to intoxicated persons; and
- entertainers may not promote any alcoholic beverages, alcoholic beverage specials, or patron participation games with alcohol involved.

Industry	
Vendors	

Acceptance

We have reviewed this document and approve:

Approved by	Signature	Date
Name Title		
Name Title		



Washington State
Liquor Control Board

Liquor Control Board Interim Policy #01-2010

Subject: Outside One-Time Events at Private Clubs
Effective Date: February 10, 2010
Ending Date: Upon adoption of rules to implement this policy.

Approved:

Sharon Foster, Chairman

Ruthann Kurose, Board Member

Purpose:

The purpose of Liquor Control Board Interim Policy #01-2010 is to provide the requirements for an outside one-time event conducted by a private club for the club members.

Background:

Enforcement policy does not allow outside one-time events unless there is an interior access from the inside of the building to the outside area where the event is being held. Currently there is no RCW or WAC that addresses "interior access".

Enforcement division responds to requests for outside one-time events. The current policy of Enforcement division for these types of events requires the licensee to have an interior access from the outside area to the liquor licensed premises in addition to the area being enclosed with a barrier a minimum of forty-two inches high. The Enforcement policy was approved in October 2008.

WAC 314-02-130(1) is the only reference to outside service at a liquor licensed premises and states, "The following changes to a licensed premises require prior board approval, by submitting a form provided by the board's licensing and regulation division: extending the location of alcohol service, such as a beer garden or patio/deck service (the area must be enclosed with a barrier a minimum of forty-two inches in height).

WASHINGTON STATE LIQUOR CONTROL BOARD
INTEROFFICE CORRESPONDENCE

Date: December 16, 2009
To: Chairman Sharon Foster
Board Member Ruthann Kurose
From: Debi Besser, Marketing Manager
Subject: POTENTIAL NEW LISTINGS AND REJECTIONS

In accordance with the criteria set forth in Agency Policy #915 Listing and Delisting Liquor Products, I recommend that the Board approve the following actions.

<u>Description</u>	<u>Recommendations</u>
Jameson 18 Year Irish Whiskey, 750 ml (\$89.95)	List
Absolut Berri Acai Vodka, 750 ml (\$23.95)	List
Belvedere Intense 100 Proof Vodka, 750 ml (\$37.95)	List
Pinnacle Cherry Lemonade Flavored Vodka, 750 ml (\$14.95)	List
Forty Creek Barrel Select Canadian Whiskey, 750 ml (\$24.95)	List
Corsair Gin, 750 ml (\$31.90)	Reject
Corsair Red Absinthe Superieure Liqueur, 750 ml (\$59.35)	Reject
Farigoule Thyme Liqueur, 375 ml (\$21.70)	Reject
Riga Black Balsam Herbal Liqueur, 375 ml (\$18.95)	Reject
Pinnacle Tropical Punch Flavored Vodka, 750 ml (\$14.95)	Reject
El Relingo Anejo Tequila, 750 ml (\$29.90)	Reject
El Relingo Reposado Tequila, 750 ml (\$29.45)	Reject
El Relingo Gold Tequila, 750 ml (\$19.40)	Reject
Mezcal Anejo Felino, 750 ml (\$42.99)	Reject
Mezcal Reposado Felino, 750 ml (\$38.99)	Reject
Mezcal Blanco Felino, 750 ml (\$32.99)	Reject

FOR BOARD CONCURRENCE: 12/16/09 DATE


Sharon Foster
Chairman


Ruthann Kurose
Board Member

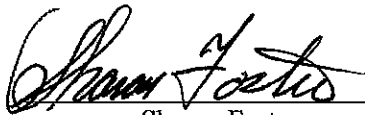
ma
cc: Pat Kohler
Pat McLaughlin
John Redal
Randy Simmons
Steve Burnell
Meagan Renick
Kelly Higbee
Cindy Doughty
Robin Hall
Kim Ward
Casey Walker
Lacinda Thomas
Frances Munez-Carter
Shayna Burmeister

**WASHINGTON STATE LIQUOR CONTROL BOARD
INTEROFFICE CORRESPONDENCE**

Date: December 16, 2009
To: Chairman Sharon Foster
Board Member Ruthann Kurose
From: Steve Burnell, Marketing Manager
Subject: POTENTIAL WINE LISTINGS

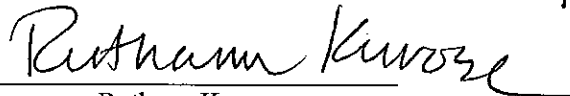
The Purchasing Division and I recommend the Board approve the following *One-Time-Only listings*.

Wine	Region	Vntg	Retail	Number of Cases
Stimson Estate Cabernet Sauvignon	WA	2003	\$2.99	560 Cases
Columbia Crest V10 Rose'	WA	2007	\$2.99	336 Cases
CSM Nellie's Garden Rose'	WA	2007	\$2.99	448 CAses



Sharon Foster
Chairman

FOR BOARD CONCURRENCE: 12/16/09 DATE



Ruthann Kurose
Board Member

cc: Pat Kohler
Pat McLaughlin
Debi Besser
John Redal
Randy Simmons
Meagan Renick
Kelly Higbee
Cindy Doughty
Robin Hall
Kim Ward
Casey Walker
Lacinda Thomas
Frances Munez-Carter
Shayna Burmeister

WASHINGTON STATE LIQUOR CONTROL BOARD

INTEROFFICE CORRESPONDENCE

Date: December 16, 2009
To: Chairman Sharon Foster
Board Member Ruthann Kurose
From: Steve Burnell, Marketing Manager
Subject: POTENTIAL PROOF CHANGES

The supplier of the following products is requesting that the Board approve their proof changes. The supplier will no longer be producing the original proof of these products.

<u>Brand</u>	<u>Description</u>	<u>Original Proof</u>	<u>New Proof</u>	<u>Current Retail</u>	<u>Average Monthly Case Sales</u>
034189	Effen Black Cherry Vodka, 750 ml	70	75	\$29.95	63
044419	Cruzan Black Cherry Rum, 750 ml	55	42	\$16.95	19 (listed 3 months)
044476	Cruzan Coconut Rum, 750 ml	55	42	\$16.95	90
044499	Cruzan Mango Rum, 750 ml	55	42	\$16.95	82
044520	Cruzan Vanilla Rum, 750 ml	55	42	\$16.95	83
044546	Cruzan Guava Rum, 750 ml	55	42	\$16.95	31

I recommend that the Board approve the suppliers request for the proof changes. We will post signage in our retail outlets notifying customers of the proof changes.

FOR BOARD CONCURRENCE: 12/16/09 DATE



Sharon Foster
Chairman



Ruthann Kurose
Board Member

ma

cc: Pat Kohler
Pat McLaughlin
John Redal
Randy Simmons
Debi Besser
Meagan Renick
Kelly Higbee
Cindy Doughty
Robin Hall
Kim Ward
Casey Walker
Lacinda Thomas
Frances Munez-Carter
Shayna Burmeister