

**OFFICE OF THE
WASHINGTON STATE LIQUOR CONTROL BOARD
Board Meeting Minutes – June 24, 2009**

Board Chairman Lorraine Lee called the regular meeting of the Washington State Liquor Control Board to order at 10:05 a.m., on Wednesday, June 24, 2009 in the boardroom, 3000 Pacific Avenue SE, Olympia, Washington. Board Members Roger Hoen and Ruthann Kurose were present. This meeting was audio recorded.

New Employee Introductions / Employee Recognition – Pat Kohler, Administrative Director

Keri Smith, General Accounting Manager, introduced new employee Aaron Hanson. Aaron has joined the Accounting Department in Financial. Debi Besser, Purchasing Director recognized Casey Walker for 10 Years of Service. Pat Parmer, Enforcement Director, recognized Paula Bowen and Alana Cooper for Years of Service. Lorraine Lee recognized Jeanne Reschan for 20 Years of Service.

Employee Recognition – Lorraine Lee

Lorraine recognized the agency senior management team for a letter she received from Governor Gregoire. The Governor wrote a letter of thanks for the LCB's senior management team embracing her call to service by volunteering at the Olympia Salvation Army one Saturday each month.

Board Approval to File CR103 – Liquor Samples – Karen McCall, Rules Coordinator

Karen requests the Board members approve final rule making (CR 103) to amend the rules of Chapter 314-64 WAC – Liquor Samples. The Board was briefed on the rule making background, public comment, and agency response for this rule making.

The Board Members unanimously approved filing notice of proposed rule making (CR 103) for rules review of Chapter 314-64 WAC – Liquor Samples. *(See attached approval for filing notice of proposed rulemaking (CR 103) for rules review of Chapter 314-64 WAC – Liquor Samples, Public comment participant list, and issue paper for rule making on liquor samples.*

Airway Heights Contract Liquor Store (CLS) Manager – Rick Garza

Rick introduced Kelly and Kevin Osterberger. The Airway Heights CLS is located near the Spokane and Kalispel tribal lands. Kelly and Kevin have concerns related to new tribal stores opening in their area and that the Kalispel Tribe no longer purchases product from their store. They expressed concerns related to lost sales for the store. They do not feel the Liquor Control Board (LCB) has been responsive to their requests to assist them in keeping the Kalispel Tribe liquor account with their store. The Osterbergers also thought the Kalispel Tribe could buy directly from the LCB. In addition, the Osterbergers are experiencing product shortages and are fearful that loyal and regular customers may start purchasing product elsewhere.

The Board members apologized to Kelly and Kevin for them feeling the LCB was uncooperative. The Board members clarified that the LCB does not sell directly to licensees. In addition, the Spokane Tribe submitted three requests for new liquor stores and after an analysis; the LCB approved a new store near the town of Davenport.

Pat Kohler indicated that in the current CLS manual, retail licensees do have the right to change stores. Pat commented that a letter sent to the legislature from the Osterbergers related to the Spokane and Kalispel Tribes may have caused the Kalispel's decision to change stores.

Kelly indicated that she has attempted to contact the Kalispel Tribe numerous times; however they have not been responsive. The Board recognizes that the Kalispel Tribe and the Osterbergers are not communicating well.

John Redal commented on issues related to product shortages and briefed the group on the distribution center contingency plan. John offered to assist the Osterbergers with product transfers to help get customer desired products in their store.

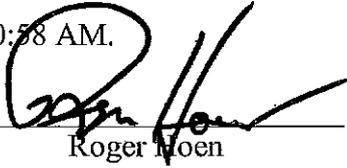
Kelly asked if the LCB intends to make new policy decisions related to opening new tribal stores. The Board members informed Kelly that their have been no new policy decisions related to tribal store locations. The LCB will be proactive in communicating any recommended changes with all stakeholders.

Pat Kohler stated that their have been several areas of concern among CLS managers. Pat recommends the Contract Managers Advisory Committee (CMAC) create a list of concerns and communicate them to LCB management.

In closing, Lorraine Lee clarified that the business side is only one side of the LCB's mission. We emphasize public safety and the balancing of various interests (tribal, businesses, retailers, etc.) can often be difficult.

The Board Meeting was adjourned at 10:58 AM.

Lorraine Lee
Board Chairman



Roger Noen
Board Member



Ruthann Kurose
Board Member

**AGENDA
BOARD MEETING
WA STATE LIQUOR CONTROL BOARD
Wednesday, June 24, 2009
Headquarter Building
3000 Pacific Ave, Olympia WA 98504**

10:00 a.m.

- 1. New Employee Introduction/Employee RecognitionPat Kohler**
- 2. Recognition EventLorraine Lee**
- 3. Board Approval to File CR103 – Liquor SamplesKaren McCall**
- 4. Airway Heights Contract Liquor Store Managers.....Pat Kohler**
- 5. Old Business.....Board Members**
- 6. New Business.....Board Members**

Recess/Adjourn



State of
Washington
Office of the
Governor



June 1, 2009

Lorraine Lee, Chair
Liquor Control Board
P.O. Box 43075
Olympia, WA 98504-3075

Dear Lorraine,

I was delighted to learn that the LCB Management Team has embraced my call to service by volunteering at the Olympia Salvation Army one Saturday each month.

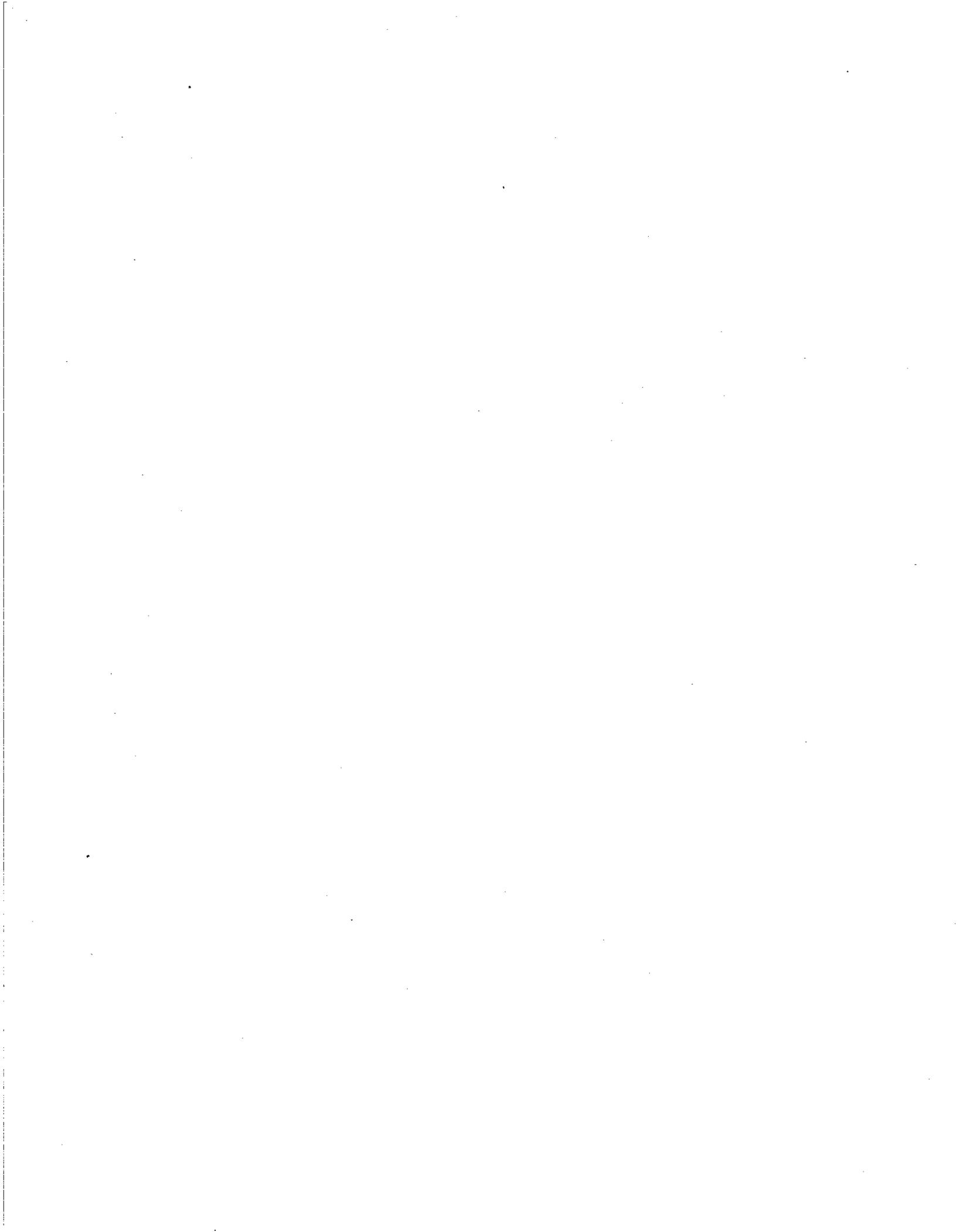
During these challenging times, it is more important than ever that we open our hearts and give back to our communities. I applaud your leadership and example, and I know that together, we will see each other through this difficult period and emerge stronger than ever before.

Thank you for your generosity and spirit of action. I know your team's acts of kindness will long be remembered with gratitude.

Sincerely,

A handwritten signature in cursive script that reads "Christine".

Christine O. Gregoire
Governor





**Washington State
Liquor Control Board**

Date: June 24, 2009

To: Lorraine Lee, Board Chairman
Roger Hoen, Board Member
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
Debi Besser, Director of Purchasing

Subject: ¹⁰³ Approval for filing notice of proposed rulemaking (CR 102) for rules review of Chapter 314-64 WAC – Liquor Samples

At the Board meeting on June 24, 2009, the rules coordinator requests that the Liquor Control Board approve final rulemaking (CR 103) to amend the rules of Chapter 314-64 WAC – Liquor Samples. The Board was briefed on the rule making background, public comment, and agency response for this rule making. An issue paper with the text of the rule changes is attached.

If approved, the Rules Coordinator will send an explanation of the rule making to all persons who submitted comments. One comment was received after the public meeting held on June 10, 2009. 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 Lorraine Lee 6-24-09
Lorraine Lee, Chairman Date

Approve Disapprove Roger Hoen 6-24-09
Roger Hoen, Board Member Date

Approve Disapprove Ruthann Kurose 6/24/09
Ruthann Kurose, Board Member Date





Rule making to review rules on Liquor Samples – WAC 314-64 Public Comment Participant List

David Wojnar, DISCUS, Vice President Control States: (Letter Attached)

Comment:

314-64-08001 (1) Revise the sample size from a 50 ml (mini) to a 750 ml container size and also allow the furnishing of a sample in the next available size if a particular distilled spirits is unavailable in a 750 ml container size.

Response:

Based on the following information the rule has been amended to allow for sample size limits of 750 ml:

The Board researched the other control states and found that 2 states do not allow samples of spirits to be provided to retail licensees. Three states (including Washington) limit the sample size of spirits to 50 ml. and one sample of each product. Five states allow sample sizes between 200 ml and 750 ml. Federal statutes allow 1 liter sample sizes of spirits. The Board's Purchasing Director has stated that 750ml is the most popular package size for spirits.

Comment:

314-64-08001(3) We urge the WSLCB to allow suppliers to furnish product samples to a retailer that has not purchased the products from the distiller or agent within the last 12 months. This would bring Washington in line with federal guidelines.

Response:

The rule was amended to clarify suppliers may furnish product samples to a retailer that has not purchased the products from the distiller or agent within the last 12 months.

Comment:

314-54-08001 (3) We suggest adding language that clarifies that, if a retail licensee purchases product from a distiller or agent and subsequently a complete change of ownership of the retail license, the former retail licensee's purchase of product will not be attributed to the new retailer for the purposes of this rule.

Response:

Although a new entity would not be held responsible for a former licensee's purchases, the change was made to clarify this rule.

Comment:

314-64-08001 (4) Eliminate or revise the record keeping requirements. If the Board retains the record keeping requirements, we strongly urge that the WALCB allow these records to be generated and maintained electronically.

Response:

This rule was amended to allow electronic record keeping. WSLCB allows breweries, wineries, distributors, and importers to use automated data processing systems and felt distillers and their agents should be included.

Attachment: Letter from DISCUS

AMENDATORY SECTION (Amending Order 40, filed 8/21/75)

WAC 314-64-020 Definitions. Samples shall mean:

~~((1) Beer and/or containers submitted to the board for chemical analysis of the beer, as required by WAC 314-20-020 (2) (b).~~

~~(2) Wine and/or containers submitted to the board for chemical analysis of the wine, as required by WAC 314-24-040 (1) (b).~~

(3) ~~Malt liquor~~) Beer, wine, spirits and/or containers submitted to the board for the purpose of negotiating the sale of liquor to the state liquor control board as provided in RCW 66.28.040.

AMENDATORY SECTION (Amending Order 200, Resolution No. 209, filed 10/21/86)

WAC 314-64-040 Procedures for board samples. Procedures for submitting samples to the board for the purpose of negotiating the sale of liquor to the board are as follows:

(1) Quantity. Samples shall not exceed in quantity that authorized by the ~~((U.S. Bureau of Alcohol, Tobacco and Firearms))~~ Tobacco Tax and Trade Bureau.

(2) Identification. Suppliers shall identify the items on the cartons and shipping documents as "samples for the board."

(3) Shipping instructions. Suppliers shall deliver or ship samples prepaid to the Washington State Liquor Control Board, Attention ~~((Liquor Purchasing Agent))~~ Director of Purchasing, ~~((1025 East Union Avenue))~~ 3000 Pacific Ave. S.E., Olympia, Washington 98504.

(4) In those instances where it becomes necessary for the board to incur some costs in receiving the samples, such costs shall be recovered from the supplier.

(5) Use and disposition of samples. Samples furnished for the purpose of negotiating the sale of liquor to the board shall be examined and tested by members of the board, or their designees, and/or the ~~((liquor purchasing agent))~~ director of purchasing, or ~~((his))~~ their designee, for appearance, aroma and taste, and to determine their probable customer acceptability. ~~((After such examination and testing, any remaining portion of said samples shall be disposed of by members of the board, or their designees who examined and tested said samples, or by the purchasing agent, or his designee who examined and tested said samples.))~~

(6) Reports. Members of the board, or their designees, and/or

the (~~liquor purchasing agent, or his~~) director of purchasing or their designee, shall report their findings and recommendations on (~~appropriate forms~~) sample surveys to the (~~liquor purchasing agent for consolidation and report to the board~~) director of purchasing or their designee. The board shall consider such findings and recommendations, along with other documents furnished by the supplier, in determining whether the items represented by the samples shall be purchased by the board for resale through state liquor stores.

(7) Excess. Samples received in excess of the quantity authorized in (~~WAC 314-64-040~~) this section for the purpose of negotiating the sale of liquor to the board will be held by the (~~liquor board purchasing agent~~) director of purchasing until the supplier has been notified of the overshipment and given fifteen days in which to respond as to whether he wants the excess returned to him at his expense. Failure of the supplier to respond within the time limitation, or notification from the supplier that he does not want the excess returned to him, will result in the excess item or items being destroyed by a liquor control board auditor in the presence of the (~~liquor purchasing agent~~) director of purchasing, or (~~his~~) their designee, after which a destruction notice will be prepared by the auditor and be certified by the (~~liquor board purchasing agent~~) director of purchasing or (~~his~~) their designee who witnessed the destruction. Copies of such destruct notices shall be (~~distributed to members of the board, the liquor purchasing agent, and the liquor control board controller~~) kept in the purchasing division of the liquor control board.

(8) Containers. Containers submitted without alcohol to the board for the purpose of negotiating the sale of liquor shall, after examination by the board and/or the (~~liquor purchasing agent~~) director of purchasing, be disposed of as follows:

(a) Figurines, decanters, or other decorative containers may be retained for public display in the board offices in Olympia. After such display, the containers shall be disposed of as provided in (b) of this subsection.

(b) Figurines, decanters, or other decorative containers will be held by the (~~liquor purchasing agent~~) director of purchasing until the supplier has been notified that the containers have been examined by the board, and the supplier will be given fifteen days in which to respond as to whether he wants the containers returned to him at his expense. Failure of the supplier to respond within the time limitation, or notification from the supplier that he does not want the containers returned to him, will result in the containers being disposed of as surplus property, pursuant to RCW 43.19.1919, if the anticipated revenue to be derived from the sale of the containers as surplus property is deemed to exceed the anticipated costs attributable to the sale.

(~~(c) Containers whose anticipated revenue to be derived from their sale as surplus property is deemed not to exceed the anticipated costs attributable to the sale shall be disposed of by members of the board, or their designees who examined and tested said samples, or by the liquor purchasing agent, or his designee~~)

~~who examined and tested said samples.))~~

AMENDATORY SECTION (Amending WSR 91-19-070, filed 9/16/91, effective 10/17/91)

WAC 314-64-050 Accounting for board samples. Samples as defined in WAC 314-64-020 shall be accounted for as follows:

~~((1) Malt liquor, wine or spirits submitted to the board for the purpose of negotiating the sale of liquor to the board.~~

~~(a)) (1) Upon receipt of the samples by the ((liquor purchasing agent)) director of purchasing in Olympia, the ((liquor purchasing agent)) director of purchasing, or his designee, shall ((prepare a multiple copy receiving and disposition report)) record the receipt for said samples ~~((, clearly identifying them as "samples for the purpose of negotiating the sale of liquor to the board."~~~~

~~(b))~~.

~~(2) If more than the amount authorized in WAC 314-64-040 is received, the ((liquor purchasing agent)) director of purchasing, or ((his)) their designee, ((shall prepare a separate receiving report for the)) will record them as excess samples and dispose of them as provided in WAC 314-64-040(7).~~

~~((c)) (3) The ((liquor purchasing agent)) director of purchasing, or ((his)) their designee, shall sign the ((multiple copy receiving and disposition report in the applicable section,)) record of receipt indicating ((his)) receipt of the samples.~~

~~((d)) (4) The ((liquor purchasing agent)) director of purchasing, or ((his)) their designee, shall ((distribute)) retain the signed ((multiple copies of the receiving and disposition reports as follows: The original to be retained by the liquor purchasing agent, one copy to each member of the board, and one copy to the liquor control board controller)) record of receipt.~~

~~((e)) (5) The ((purchasing agent)) director of purchasing, or ((his)) their designee, shall provide ((an analysis report form, as required in WAC 314-64-040(6)) a sample survey for each sample. ((The receiving and disposition reports and analysis report forms shall be numbered consecutively, and shall correspond one with the other.~~

~~(f)) (6) The ((liquor purchasing agent)) director of purchasing shall deliver a copy of the ((receiving and disposition report and the analysis report forms)) sample survey with the samples, to members of the board, or their designees, and/or to the ((liquor purchasing agent)) director of purchasing, or ((his)) their designee, for examination, testing and reporting as provided in WAC 314-64-040 (4) ~~((7)) and (5) ((and (6))~~.~~

~~((g)) (7) Members of the board, or their designees, and/or the ((liquor purchasing agent)) director of purchasing, or ((his)) their designee, shall sign the ((receiving and disposition report))~~

copy of the record of receipt in the applicable section, indicating receipt of the samples.

~~((h) The purchasing agent shall distribute the signed receiving and disposition report as follows: The original to the member of the board, or his designee, or the liquor purchasing agent, or his designee, to whom the sample was delivered, one copy to the liquor control board controller, and one copy to be retained by the liquor purchasing agent.~~

~~((i)) (8) Members of the board, or their designees, and/or the ((liquor purchasing agent)) director of purchasing, or ((his)) their designee, shall examine, test and report on the sample, as provided in WAC 314-64-040 ~~((4), (5), and (6),)~~ complete the ~~((analysis report form,))~~ sample survey, sign, and ((distribute the form as follows: The original)) return to the ~~((liquor purchasing agent, one copy to the liquor control board controller, and one copy to be retained by the member of the board, or his designee, and/or the liquor purchasing agent, or his designee who examined and tested the sample.~~~~

~~((j)) director of purchasing, or their designee.~~

~~(9) The ((liquor control board controller)) purchasing division shall maintain the official copies of the ((receiving and disposition reports)) records of receipt, together with the ((matching analysis report forms)) sample surveys, and, where applicable, the destruction notices.~~

AMENDATORY SECTION (Amending WSR 94-14-022, filed 6/27/94, effective 7/28/94)

WAC 314-64-080 Procedures. Procedures for furnishing samples of beer and wine to licensees for the purpose of negotiating a sale are as follows:

(1) Quantity. Except as provided in (d) of this subsection, samples may be furnished only in their original packages or containers as produced by the manufacturer or bottler, as follows:

(a) Wholesaler or importer. A brewer, winery or importer may furnish a sample of beer or wine to a wholesaler or importer who has not previously purchased the brand and type or vintage year from the supplier furnishing the sample. For each wholesaler or importer, the brewer, winery or importer may give not more than seventy-two ounces of any brand and type of beer, and not more than one liter of any brand and type of wine.

(b) Retailer. A brewer, winery, importer or wholesaler may, except as hereinafter provided, furnish a sample of beer or wine to a retail licensee who has not previously purchased the brand and type or vintage year from the supplier furnishing the sample. For each retail licensee, the brewer, winery, importer or wholesaler may give not more than seventy-two ounces of any brand and type of beer, and not more than one liter of any brand and type of wine.

If a particular product is not available in a size within the quantity limitations of this section, a brewer, winery, importer or wholesaler may furnish the next largest size.

(c) Out-of-state brewers and wineries who hold a certificate of approval to ship their products into this state who provide samples to retailers as outlined in (b) of this subsection shall be responsible for reporting monthly to the board any shipments of samples to retailers in Washington state and shall also be responsible for paying the taxes due on such beer and wine samples provided to retailers as provided for in WAC 314-20-010 and 314-24-110 as if they were a domestic brewer or a domestic winery.

(d) Samples in other than the original packages or containers may, subject to the conditions and limitations stated in (a), (b), and (c) of this subsection, be furnished as follows:

(i) A brewery, winery, importer, or wholesaler, either directly or through their licensed agents, may furnish to authorized licensees at their licensed premises or business office samples of beer and wine from an opened container carried by a licensed agent, provided such samples are furnished only in single-serving samples not to exceed two ounces of wine or twelve ounces of beer.

(ii) A brewery, winery, importer, or wholesaler, either directly or through their licensed agents, may furnish samples of beer or wine to authorized licensees at the premises of a retail licensee.

(iii) A licensed importer or licensed wholesaler may furnish samples to authorized licensees on the licensed premises of the importer or wholesaler.

(2) Identification. Brewers, wineries, importers or wholesalers shall identify the samples on the containers, cartons and shipping documents as "Samples for licensees."

(3) Shipping instructions. Brewers, wineries, importers or wholesalers shall, except as provided in subsection (1)(d) of this section, deliver or ship samples to licensees at their licensed premises or business office.

(4) Use and disposition of samples. Samples may be furnished for the purpose of negotiating a sale of beer or wine to a wholesaler, importer, or retail licensee.

AMENDATORY SECTION (Amending WSR 98-08-041, filed 3/25/98, effective 4/25/98)

WAC 314-64-08001 Procedures for providing spirit samples to authorized retail licensees for the purpose of negotiating a sale. A distiller, craft distiller, or their agent may, for the purpose of product promotion, provide without charge single samples to retail licensees authorized to sell spirits and their employees.

((1.7)) (1) Samples are limited to ((1.7 ounces (50 ml))) 750

ml and no more than one sample of each product may be provided to any one licensed business.

~~((2.))~~ (2) All spirit samples must be purchased at retail from the board from existing stocks or by special order.

~~((3.))~~ (3) Only products not ~~((previously))~~ purchased by the retail licensee within the last twelve months from the distiller or their agent or existing products with a change in alcohol proof or formula may be sampled. If there is a complete change of ownership of the retail licensee to another entity, the former retail licensee's purchase of the product is not deemed a purchase made by the successor retail licensee for purposes of this provision.

~~((4.))~~ (4) Both the retailer and distiller must retain records of sampling for a period of two years. The records shall include the brand and type of sample and the date of sampling.

(5) If the distiller keeps records within an automated data processing (ADP) system, the system must include a method for producing legible records that will provide the required information. The ADP system is acceptable if it complies with the following guidelines:

(a) Provides an audit trail so that details (invoices) underlying the summary account data may be identified and made available upon request.

(b) Provides the opportunity to trace any transaction back to the original source or forward to a final total. If printouts of transactions are not made when they are processed, the system must have the ability to reconstruct these transactions.

(c) Has available a full description of the ADP portion of the accounting system. This should show the applications being performed, the procedures employed in each application, and the controls used to ensure accurate and reliable processing.

(6) The provisions contained in subsection (4) of this section do not eliminate the requirement to maintain source documents, but they do allow the source documents to be maintained in some other location.

Washington State Liquor Control Board

Issue Paper

Rule Making on Liquor Samples

Date: June 24, 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 to revise the current rules regarding **Liquor Samples (Chapter 314-64 WAC)**.

Why is rule making necessary?

As part of the Liquor Control Board's on-going rules review process, rules regarding liquor samples have been reviewed for relevance, clarity, and accuracy. Rules regarding Liquor Samples did not represent the Liquor Control Board's current practice in its entirety, and needed to be expanded to provide more detail about the process and to plain talk the language used.

Public Comment

Comment was received from one stakeholder, DISCUS. The comments are attached. Changes were made to WAC 314-64-08001 (3) based on the comments received. These are not substantial changes, but further clarify:

- the sample size a manufacturer or their agent may provide to a retail liquor licensee;
- that suppliers may furnish product samples to a retailer that has not purchased the products from the distiller or agent within the last 12 months; and
- an allowance for electronic record keeping.

What changes are being proposed?

No changes. WAC 314-64-010 – Purpose.

Amendatory Section WAC 314-64-020 – Definitions.

Defines "samples" submitted to the board.

Amendatory Section WAC 314-64-040 - Procedures for board samples.

Describes the procedures for submitting samples to the board for the purpose of negotiating the sale of liquor to the board.

Amendatory Section 314-64-050 – Accounting for board samples.

Explains how samples submitted to the board shall be accounted for.

No changes. WAC 314-64-070 – Definition for samples furnished to licensees.

No changes. WAC 314-64-080 – Procedures for furnishing samples of beer and wine to licensees for the purpose of negotiating a sale.

Amendatory Section WAC 314-64-08001 – Procedure for providing spirit samples to authorized retailers for the purpose of negotiating a sale.

Added craft distiller to this rule and clarified subsection 3. Increased the sample size on products distillers or craft distillers provide to retail licensees. Added an allowance for sampling records to be kept electronically.

No changes. WAC 314-64-090 – Accounting.

Attachment: Public Comment Summary
WAC 314-64

DISTILLED
SPIRITS
COUNCIL
OF THE
UNITED
STATES

June 10, 2009

Ms. Karen J. McCall
Rules Coordinator
Washington State Liquor Control Board
P.O. Box 43080
Olympia, Washington 98504-3080

Re: Notice of Proposed Rulemaking #09-07 (Chapter 314-64 WAC-Liquor Samples)

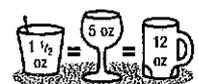
Dear Ms. McCall:

The Distilled Spirits Council of the United States, Inc. (DISCUS), a national trade association representing producers and marketers of distilled spirits and importers of wines sold in the United States, welcomes the opportunity to comment upon the Washington State Liquor Control Board's notice of proposed rulemaking regarding Chapter 314-64 WAC – Liquor Samples.

We commend the WSLCB for undertaking this important rulemaking to clarify and update Chapter 314-64. The rules in this Chapter have a significant impact upon the ability of suppliers to introduce and re-introduce products into the marketplace in this State. A fair and reasonable regulatory scheme is vital to the ongoing competitive viability of the approximately 1,860 brands of distilled spirits and thousands of wine and beer brands in the Washington marketplace, as well as crucial to the overall economy of the State.

The focus of our comment is upon WAC 314-64-08001, "Procedures for providing spirit samples to authorized retail licensees for the purpose of negotiating a sale." To that end, we offer a few suggestions to this proposal to ensure fair and reasonable opportunities for suppliers in furnishing distilled spirits samples to retail licensees so they are able to make well-informed purchasing decisions. Our recommendations also would eliminate unnecessary requirements and burdens for both the Board and industry, and bring this rule into greater conformity with the WSLCB's beer and wine rule, the federal rules and the rules of other states.

Under this Chapter of the WSLCB's rules regarding liquor samples, we also suggest that the Board consider providing for a specific regulation that would allow industry members to provide samples for market research purposes. Industry members generally conduct market research via a market research company and/or otherwise before a product launch as a means to test new products. Market research activities also are utilized to conduct surveys regarding products already in the market.



These activities obviously include participants of legal purchase age and the test participants only taste enough of a particular product to formulate their opinion about that product. A straightforward procedure streamlining this taste test/market research activity would serve all interests, including the WSLCB in its offer of product choices for Washington consumers.

Specific Comments Regarding WAC 314-64-08001

Revise the sample size limit

We urge the WSLCB to increase the sample size from a 50 ml to a 750 ml container size and also allow the furnishing of a sample in the next available size if a particular distilled spirits is unavailable in a 750 ml container size. In that regard, not all distilled spirits products are available in 50 mls; consequently, a 750 ml container size limit with the proviso noted above would ensure that all suppliers are afforded the opportunity to furnish samples to Washington retailers. Adopting our proposed size limit change would provide greater flexibility in furnishing retailers with samples and also would bring the rule more into sync with what the Board already allows for beer and wine.

In that regard, the current and proposed versions of WAC 314-64-080(1) permit an industry member to furnish a 72-ounce sample of beer (which exceeds two liters) and a one-liter sample of wine to a retail licensee. By increasing the sample size limit to 750 ml, the Board also would bring its rule into greater conformity with the modern-day practice allowed under the federal rule (three-liter limit), in a majority of Control States (750 ml or larger depending upon the state), and in a majority of all states that permit furnishing of samples (750 ml or larger depending upon the state). In contrast to the widespread practice of states allowing a 750 ml or larger-sized samples, only two states other than Washington limit sample sizes to only a 50 ml size.

Similarly, our proposed change, allowing the furnishing of a sample in the next available size, would afford the same flexibility in providing distilled spirits samples that already is allowed for beer and wine samples. Under both current and proposed WAC 314-64-080(1)(b), beer and wine industry members are permitted to furnish the next available larger size if a particular product is unavailable within the size limitation, and the same treatment should apply to distilled spirits samples. As in the federal rules and the rules of other states, the fact that a distilled spirits product is not available within the size limitation should not operate to forfeit a supplier the opportunity to furnish a retailer with a product sample, thereby allowing for more knowledgeable purchasing decisions.

Certainly any regulatory concerns about the sample size of distilled spirits are obviated by the current rules governing the sample sizes for beer and wine where a 72-ounce sample of beer is 6 standard drinks and a one liter sample of wine is almost seven standard drinks – far more than the standard drinks in a 50 ml.

Allow the furnishing of samples of product not purchased within the previous 12 months

We urge the WSLCB to allow suppliers to furnish product samples to a retailer that has not purchased the product from the distiller or agent within the last 12 months. The federal rule (27 C.F.R. § 6.91) and the rules of other states provide for this “within last 12 months” opportunity to furnish retailer samples.

We also suggest adding language that clarifies that, if a retail licensee purchases product from a distiller or agent and subsequently there is a transfer or other complete change of ownership of the retail license, the former retail licensee’s purchase of product will not be attributed to the new retailer for purposes of this rule. Thus, a sample may be furnished to the successor retailer regardless of whether the former retailer previously purchased the product within the 12-month timeframe.

Our recommendations would ensure that a distiller or its agent could “re-introduce” a product to a retailer who has not purchased the product recently, and the retailer would be given an adequate opportunity to become re-familiar with the product and thus make better purchasing decisions.

Eliminate or alternatively revise the recordkeeping requirements

Section (4) of WAC 314-64-08001 requires distillers and retailers to maintain records of samples for a period of two years, including the brand, type of sample and date of sampling. We urge the Board to eliminate this recordkeeping requirement. Industry should be allowed to rely upon their ordinary commercial records to respond to any WSLCB investigation or other compliance inquiry.

If the Board nevertheless decides to retain the recordkeeping requirements, we recommend adding that a distiller or retailer that does not maintain these records may be able to otherwise show compliance with sections (1), (2) and (3) of the rule, and that there would be no separate violation of this rule.

Further, if the recordkeeping requirements are retained, we strongly urge that the WSLCB allow these records to be generated and maintained electronically. Computerized records achieve cost savings, reduce the current labor-intensive paperwork procedures, and equally important reduce the “carbon footprint” for these activities, thereby advancing our collective goal of protecting the environment.

We would welcome the opportunity to share ideas regarding how electronic records could be used to satisfy WSLCB’s regulatory objectives and to engage in a pilot program to that end. We understand that the Board’s enforcement officers currently use electronic means in their activities and we propose a similar capability for the regulated community.

Recommended changes to the language of the proposed rule

Our suggested revisions to the WSLCB's proposed rule are in bold type face and our deletions are struck and bracketed. In addition, we have included our preferred and alternate approaches to the recordkeeping requirements set forth in section (4) of the rule.

With our suggested changes, WAC 314-64-08001 would read as follows:

A distiller, craft distiller, or their agent may, for the purpose of product promotion, provide without charge single samples to retail licensees authorized to sell spirits and their employees.

1. Samples are limited to [~~1.7 ounces (50 ml)~~] **750 ml** and no more than one sample of each product may be provided to any one licensed business. **If a particular product is not available in a size within the quantity limits of this section, a distiller or their agent may provide to a retail licensee the next available larger size.**

2. All spirit samples must be purchased at retail from the board from existing stocks or by special order.

3. Only products not previously purchased **by the retail licensee within the last 12 months from the distiller or their agent** or existing products with a change in alcohol proof or formula may be sampled. **If there is a transfer or other complete change in ownership of the retail license to another person, the former retail licensee's purchase of the product is not deemed a purchase made by the successor retail licensee for purposes of this provision.**

~~[4. Both the retailer and distiller must retain records of sampling for a period of two years. The records shall include the brand and type of sample and the date of sampling.]~~

[OR]

4. Both the retailer and distiller must retain records of sampling for a period of two years. The records shall include the brand and type of sample and the date of sampling. **Records may be generated and maintained in electronic form. Failure of a retailer or distiller to keep records required under this rule may result in a violation of sections (1), (2) and/or (3) of this rule only if the retailer or distiller is not otherwise able to establish compliance with these respective sections, but does not result in a separate violation of this rule.**

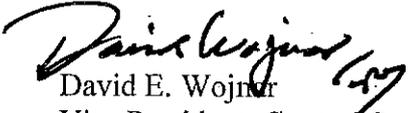
Ms. Karen J. McCall
June 10, 2009
Page 5

Conclusion

Once again, thank you for allowing us to share our views and we respectfully submit that the adoption of our recommendations will provide distillers the opportunity to compete more effectively in today's marketplace, as well as eliminate unnecessary burdens for both the WSLCB and industry members.

We stand ready to work with the WSLCB in this matter and, as always, if you have any questions concerning our submission, please do not hesitate to call.

Sincerely,


David E. Wojnar
Vice President, Control States

LJO:bca

cc: Mr. Rick Garza
Deputy Administrative Director
Washington State Liquor Control Board

