



Notice of Rule Change – Explanatory Statement Liquor Samples

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

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

Once persons who gave comment during this rule making have had a chance to receive this document, the Liquor Control Board will file the amended rules with the Office of the Code Reviser. These rule changes will become effective 31 days after filing (approximately July 25, 2009).

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

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

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

What changes are being made?

The Board adopted these rule changes on June 24, 2009. The rules will be filed on June 24, 2009 and will be effective on July 25, 2009.

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.

Summary of all public comments received on this rule proposal.

The Liquor Control Board received public comment in writing on Liquor Samples during the comment period that ended June 10, 2009.

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.

Testimony at Public Hearing – June 10, 2009 Olympia, WA

None

WAC Changes

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.

[Order 40, § 314-64-020, Rule 130, filed 8/21/75.]

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.))~~

[Statutory Authority: RCW 66.28.045. 86-21-117 (Order 200, Resolution No. 209), § 314-64-040, filed 10/21/86. Statutory Authority: RCW 66.08.030 and 66.98.070. 82-04-035 (Order 95, Resolution No. 104), § 314-64-040, filed 1/28/82; Order 40, § 314-64-040, filed 8/21/75.]

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.

[Statutory Authority: RCW 66.08.030. 91-19-070, § 314-64-050, filed 9/16/91, effective 10/17/91; 88-14-001 (Order 252, Resolution No. 261), § 314-64-050, filed 6/23/88. Statutory Authority: RCW 66.08.030 and 66.98.070. 82-04-035 (Order 95, Resolution No. 104), § 314-64-050, filed 1/28/82; Order 40, § 314-64-050, filed 8/21/75.]

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.

[Statutory Authority: RCW 66.08.030. 94-14-022, § 314-64-080, filed 6/27/94, effective 7/28/94; 86-11-015 (Order 185, Resolution No. 194), § 314-64-080, filed 5/13/86. Statutory Authority: RCW 66.08.030 and 66.98.070. 82-04-035 (Order 95, Resolution No. 104), § 314-64-080, filed 1/28/82. Statutory Authority: RCW 66.08.030, 66.08.060 and 66.98.070. 81-23-038 (Order 84, Resolution No. 93), § 314-64-080, filed 11/18/81.]

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.))~~ (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.

[Statutory Authority: RCW 66.08.030. 98-08-041, § 314-64-08001, filed 3/25/98, effective 4/25/98.]