



Notice of Permanent Rules for Spirits Certificate of Approval Licenses

This explanatory statement concerns the **Washington State Liquor Control Board's adoption of WAC 314-23-030 - What does a spirits certificate of approval license allow?**

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 April 7, 2013).

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 adopting this rule?

On May 29, 2012 the board adopted WAC 314-23-030 as part of the rules to implement Initiative 1183. On July 2, 2012 the board received a petition for rulemaking signed by five stakeholders to amend this rule to allow all spirits certificate of approval holders to sell directly to retailers in Washington State. The current rule only allows a spirits manufacturer located outside of Washington but within the US to sell their products directly to a Washington retailer.

Summary of all public comments received on this rule proposal.

No comment was received at the public hearing held on February 27, 2013. Five written comments were received in support of this rulemaking. The comments received were from the following:

Lynne Omlie – Distilled Spirits Council of the United States
James P. Finkle – International Federation of Wines and Spirits
David Williamson – Scotch Whiskey Association
Jan H. Westcott – Spirits Canada
Eduardo Orendain – Tequila Chamber

Comment: We commend the board for the revision to WAC 314-23-030 to allow both domestic and foreign produced spirits to be eligible for an added endorsement to ship directly to licensed retailers. The rule rightly and appropriately eliminates the discriminatory treatment between domestic and foreign spirits.

Denis Stevens – Consul General of Canada, Seattle

Comment: I would like to express my sincere appreciation for the Washington State Liquor Control Board's constructive approach to this matter. Canada welcomes the revision and applauds this step as further testimony to our countries' shared commitment to non-discriminatory policies that reflect international trade obligations as the key to truly competitive and dynamic markets.

Jan H. Westcott – Spirits Canada

Comment: I commend the board for the revision to WAC 314-23-030. It is our experience that NAFTA-consistent, non-discriminatory beverage alcohol policies are essential to ensuring local consumers benefit from the development of a truly competitive and dynamic beverage alcohol market.

Vicky McDowell – The President's Forum of the Distilled Spirits Industry

Comment: We are seeking clearer definitions of the three separate spirits certificates of approval licenses.

LCB Response: The board feels the language is clear in the revised rules for the three separate spirits certificate of approval licenses.

Ulrike B. Connelly – Representing Washington Restaurant Association; Northwest Grocery Association; and Costco Wholesale Corporation.

Comment: We propose the board issue four separate certificates of approval licenses by also creating "limited" certificates of approval that can only sell to Washington spirits distributors or importers. Increase the fees for certificates of approval that sell direct to retailers from \$200 to \$300 and get rid of the endorsement to sell directly to retailers. Remove the requirement which imposes the distributor license fees on non-distributor licenses.

LCB response: The revised rules allow all spirits certificates of approval eligibility to sell their product directly to Washington retailers. The board's opinion remains that a supplier selling directly to a retailer is required to pay the 10% or 5% distributor fees.

WAC Changes

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

WAC 314-23-030 What does a spirits certificate of approval license allow? (1) A spirits certificate of approval licensee may not commence sales until March 1, 2012. A spirits certificate of approval license may be issued to spirits manufacturers located outside of the state of Washington but within the United States.

(2) There are three separate spirits certificate of approval licenses as follows:

(a) A holder of a spirits certificate of approval may act as a distributor of spirits they are entitled to import into the state by selling directly to spirits distributors or spirits importers licensed in Washington state. The fee for a certificate of approval is two hundred dollars per year.

(b) A holder of an authorized representative out-of-state spirits importer or brand owner for spirits produced in the

United States but outside of Washington state may obtain a spirits authorized representative domestic certificate of approval license which entitles the holder to import spirits into the state by selling directly to spirits distributors, or spirits importers licensed in Washington state. The fee for an authorized representative certificate of approval for spirits is two hundred dollars per year.

(c) A holder of an authorized representative out-of-state spirits importer or brand owner for spirits produced outside of the United States obtains a spirits authorized representative foreign certificate of approval which entitles the holder to import spirits into the state by selling directly to spirits distributors, or spirits importers licensed in Washington state. The fee for an authorized representative certificate of approval for foreign spirits is two hundred dollars per year.

(3) A spirits certificate of approval holder, a spirits authorized representative domestic certificate of approval holder, and/or a spirits authorized representative foreign certificate of approval holder must obtain an endorsement to the certificate of approval that allows the shipment of spirits the holder is entitled to import into the state directly to licensed liquor retailers. The fee for this endorsement is one hundred dollars per year and is in addition to the fee for the certificate of approval license. The holder of a certificate of approval license that sells directly to licensed liquor retailers must:

(a) Report to the board monthly, on forms provided by the board, the amount of all sales of spirits to licensed retailers.

(b) Pay to the board a fee of ten percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the first two years of licensure.

(c) Pay to the board five percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the third year of licensure and every year thereafter.

~~((4) An authorized representative out of state spirits importer or brand owner for spirits produced in the United States but outside of Washington state may obtain an authorized representative certificate of approval license which allows the holder to ship spirits to spirits distributors, or spirits importers located in Washington state. The fee for an authorized representative certificate of approval for spirits is two hundred dollars per year.~~

~~(5) An authorized representative out of state spirits importer or brand owner for spirits produced outside of the United States may ship spirits to licensed spirits distributors, or spirits importers located in Washington state. The fee for an authorized representative certificate of approval for foreign spirits is two hundred dollars per year.))~~

[Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160,
66.24.630, and 66.24.640. 12-12-065, § 314-23-030, filed
6/5/12, effective 7/6/12.]