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Mr. Steven G. Frost
Chairman
Uniform Law Commission
Study Committee on Direct to Consumer Sales of Wine

September 4, 2020

Re: Preliminary Explanation and Terms for the Registration and Licensing of Direct-to-Consumer Sales of Wine and the Prevention of Illegal Sales Drafting Committee

Chairman Frost,

Wine & Spirits Wholesalers of America (WSWA) thanks you for your diligence during this drafting committee process. The Uniform Law Commission has done remarkable work bringing to light important, timely issues regarding the wine direct-to-consumer (DTC) channel. We commend the Commission's efforts to address compliance and enforcement concerns in a meaningful way and further focus the scope of the committee. We also appreciate the opportunity to participate in this discussion and share our perspective.

WSWA is the national trade association representing the distribution tier of the wine and spirits industry, dedicated to advancing the interests and independence of distributors and brokers of wine and spirits. Founded in 1943, WSWA has more than 380 member companies in 50 states and the District of Columbia, and its members distribute more than 80 percent of all wine and spirits sold at wholesale in the U.S.

WSWA submits the following comments in response to the preliminary explanation and list of terms included in your email dated August 25, 2020. Our suggestions aim to preserve public health and safety while maintaining a fair, robust and dynamic alcohol marketplace.

Limit DTC Shipments to Wine from a Winery's Own Production

As an initial matter, we ask the committee to consider adding an important requirement to the list of compliance and enforcement tools under discussion- an "of own production" requirement. Such a provision requires that under a winery shipping license, the wine shipped can only be from the winery license holder's own production. In other words, a winery shipping license holder can ship the winery's brands DTC which it has had a role in the manufacturing of, but not other company's brands. The latest draft presented in your August 25th email does not contain



such limitation, which leads to ambiguity over what products can be shipped, as well as what types of companies can ship.

Without clear definitions, wineries can not only sell their brands, but also act as a retailer of other wineries' brands. Also, there are retailers that, through certain minor investments, can qualify as a "winery" under certain states' definitions and acquire a winery shipping license. A retailer with a winery shipping license can then ship retail inventory into other states under the thin guise of being a "winery." These types of sales violate the receiving state's shipping laws – especially if the receiving state prohibits retailer shipping. But on the surface, because the retailer was able to obtain a state winery license and then a winery shipping license, the sale appears legitimate. This retail practice is currently occurring on a large scale and is due primarily to lack of clarity in state definitions.

Certainly, these types of disguised retail sales undermine states' authority and complicate enforcement and proper tax collection. Also, state DTC laws did not intend for wineries to sell other wineries' brands DTC, much less for retailers to masquerade as wineries to sell DTC.

A simple solution to this challenging problem is to limit DTC shipping to wine in the winery's own production, which we consider to be wine that the licensee has played an active role in the manufacturing of. This solution would involve states:

- Requiring winery shipping license applicants to:
 - 1) Provide a copy of their current federal basic permit and state wine manufacturer's license. The same proof would also be part of the renewal process.
 - This would help ensure licensees (continue to) meet the minimum regulatory criteria to be considered a winery, *and*
 - 2) Certify that they will only ship those products for which they, or another winery under the same ownership, are the holder of the Certificate of Label Approval (COLA) issued by the U.S. Alcohol and Tobacco Tax and Trade Bureau (TTB) and to submit a copy of the COLA(s) to the state.
 - COLAs demonstrate the applicant is a manufacturer. TTB requires that a COLA applicant hold a permit or approval to operate a bonded wine cellar or tax paid wine bottling house before submitting a COLA application.
- Establishing a minimum production level to be a winery, for instance, 1000 gallons annually. Having a minimum production ensures that the winery is in fact producing wine on a commercial scale.
- Clearly defining "production" as requiring that some combination of fermenting, bottling, or blending occur at the licensed premises.

The following are examples of existing state winery definitions that incorporate parts of the above criteria. We believe these provisions help to ensure integrity of the winery shipping license. We note that today's winery industry can include various structures that go beyond a single physical location and that some of these arrangements appropriately fit within the "of own production" definition. The provisions below help accommodate such situations and



establish parameters within which different models may operate. Core to these provisions, are definitions establishing equipment ownership/control, fermentation and production location requirements in one place.

- New Mexico: *“Winegrower” means a person or entity that is engaged in bona fide manufacture of wine, holds a valid New Mexico winegrower’s license and federal basic permit to manufacture wine, who **owns or controls fully operational winemaking equipment** with capacity for commercial production.* N.M.A.C.

15.10.2.7

- Iowa: *A wine manufacturer licensed or permitted pursuant to laws regulating alcoholic beverages in this state or another state may apply for a wine direct shipper permit, as provided in this section. For the purposes of this section, a “wine manufacturer” means a person who processes the fruit, vegetables, dandelions, clover, honey, or any combination of these ingredients, by **fermentation** into wines.* IA. Code 123.187
- Missouri: *All wine direct shipper licensees shall: (1) Not ship more than two cases of wine per month to any person for his or her personal use and not for resale; (2) Not use any carrier for shipping of wine that is not licensed under this section; (3) Only ship wine that is properly registered with the Alcohol and Tobacco Tax and Trade Bureau; (4) **Only ship wine manufactured on the winery premises**;* MO. Rev. Stat. 311.185

We appreciate your consideration of this issue that is resulting in states losing significant tax dollars from illegal shipping and rendering enforcement efforts ineffective against bad actors. We look forward to a discussion and further study of this matter

Below we provide comments on the three explanations and terms provided in the August 25 draft.

WSWA Comments to Draft Dated August 25, 2020. WSWA comments in red.

Unauthorized shipping:

1. Requiring the carrier to obtain from the **consignor** the winery direct shipper’s license number under which the shipment is made before shipping alcohol into a state.

WSWA agrees. Carriers (such as FedEx, UPS, etc.) collect shipper license information in many instances. Fulfillment or consignor facilities should be required to do the same and make this information available to the carrier. This information should be verified by



the state issuing the DTC license to ensure the underlying winery and fulfillment licenses are valid.

Packages shipped from a fulfillment center should indicate the winery's and fulfillment center's addresses and respective license numbers on the package as well as in all required reports. This is an additional safeguard in DTC laws to ensure wineries are properly licensed and shipping eligible items, such as those of their own production.

2. Requiring the licensing or registration of fulfillment providers that ship into the state, along with identification of the licensed wineries on whose behalf they ship into the state. Further requiring these fulfillment providers to report their shipments into the state, including the winery's directing shipping license number associated with each shipment.

WSWA agrees. Fulfillment providers should have a license comparable to a winery DTC license. The underlying goal here is to ensure that fulfillment centers provide the same level of transparency to the recipient state as would be provided in a shipment fulfilled by the winery itself. Thus, reporting requirements to the state should include:

- All shipments and the wineries that they were shipped on behalf of, and
- Fulfillment center's license number to improve reporting, as well as any other data points a winery licensee must report on its form.

3. Requiring the carrier to report the tracking number for each shipment; the winery to report the tracking number and its direct shipper license number for each shipment; and, as applicable, the fulfillment provider to report the tracking number and the producing winery's direct shipper license number for each shipment.

WSWA agrees. Tracking numbers promote transparency in the transaction to consumers and the receiving state. See also our response to No. 2 above.

4. Requiring the package of wine being shipped to be marked with the winery's direct shipper license number on the outside of the package.

WSWA agrees. Both winery and fulfillment center (if applicable) licenses should be noted on the package. See also our response to No. 2 above.

5. Prescribing a more specific and consistent presentation of information in reporting by carriers, wineries, and, as applicable, fulfillment providers. Prescribing reporting in a searchable, electronic format (but this may impose a cost burden on the states).

WSWA agrees. Consistency across systems is desirable. See also our response to No. 2 above.

Compliance with shipping requirements:



1. Asserting jurisdiction over fulfillment providers that become licensed or registered in the state (and asserting jurisdiction over wineries holding direct shipper's licenses to the extent state law has not already expressly asserted jurisdiction).

WSWA agrees. It is critical that states be able to license the entities shipping into their state and have the ability to enforce the license requirements.

2. Requiring reporting (as discussed above) by fulfillment providers and by wineries and carriers, to the extent not already covered by the state's law. This prong may all require adding representations and/or information on shipments to facilitate compliance. If carriers do not report winery license numbers, we may consider allowing states to request that information for tracking numbers not reported on winery and fulfillment center reports.

WSWA agrees. We encourage the mandatory reporting of license numbers as noted above.

3. Authorizing audits and inspections, and requiring the furnishing of records on request, of licensed or registered businesses shipping wine DTC into the state, to the extent not already covered by the state's law.

WSWA agrees. Information of this type is critical to effective enforcement activities. Many states require this information for the effective regulation of alcohol companies within their state, and out-of-state companies choosing to do business with the receiving state should have the same requirements.

Viable enforcement options:

1. Promoting communication and cooperation between regulators in different states.

WSWA agrees that a universal reporting methodology would greatly assist regulators' enforcement efforts and help quickly spot multi-state violators. We suggest approaching the National Alcohol Beverage Control Association (NABCA) and National Liquor Law Enforcement Association (NLLEA) to discuss this topic further.

2. Granting authority to a state regulator to suspend or revoke the license of a retailer in the retailer's home state if the retailer has shipped wine into another state in violation of that state's law.

WSWA agrees. This is one of the greatest loopholes in enforcement today. States need to be able to i) communicate with each other to share violations of the other states' law, and



ii) take action against violators in their home state for those offenses. States typically have certain requirements for licensure, such as “good character” provisions for in-state entities. Non-compliance in multiple states should be visible to a state considering licensing that entity, in the same way it is visible to them for an in-state entity.

An example of such a provision: New York - A farm winery license shall authorize the holder thereof to: (c) sell from the licensed premises to a licensed winery, farm distiller, farm brewery, farm cidery, farm meadery, wholesaler or retailer, or to a corporation operating railroad cars or aircraft for consumption on such carriers, or at retail for consumption off the premises, wine, cider, or mead manufactured by the licensee as above set forth and to sell or deliver such wine or cider to persons outside the state pursuant to the laws of the place of such sale or delivery. All wine, cider, or mead sold by such licensee for consumption off the premises shall be securely sealed and have attached thereto a label setting forth such information as shall be required by this chapter. N.Y. ABC Law Section 76-a2.

3. Providing a procedure (administrative injunction) under which a state regulator may require a common carrier to stop accepting shipments from a business found to be engaged in illegal shipping.

WSWA agrees this concept should be considered. As noted above, it is essential for states to have enforcement tools available to promote a compliant and fair marketplace.

Other Issues:

WSWA agrees that effective age verification measures are critical, as noted in our previously submitted comments. Violations should be taken seriously, as they are for in-state businesses. States need enforcement mechanisms as described above to ensure non-compliant wineries, fulfillment centers, and carriers are subject to the same penalties as an in-state business.

Once again thank you for your time and consideration. We look forward to further discussion.

Best,

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Wine & Spirits Wholesalers of America