

# SPECIALTY WINE RETAILERS ASSOCIATION

## What Every Wine Shipper Should (But May Not) Know About Compliance

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# GRANHOLM + CONSOLIDATION + MARKET EXPANSION –THE POLITICAL CALCULUS RIGHT NOW



- » Wholesalers push “face to face” transactions only. The internet is an “open bar” See: “[pointclickdrink.com](http://pointclickdrink.com)”
- » Wholesalers support anti-alcohol agenda and are “protecting minors”
- » Wholesalers endorse and support the Anti-alcohol movement [MADD, SADD, etc.] and cater to religious fundamentalists: goal is to restrict retail licenses, condition them to reduce availability of alcohol and to require all alcohol to go through a wholesaler.



# WSWA POSITION

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Craig Wolf – WSWA President attempting to spin the Rowe v. New Hampshire Motor Transport decision for the conclusion that use of the internet to sell wine poses grave dangers to the US:

**“WSWA has long opposed unregulated shipments of alcohol to residences because they dodge the system of state controls which are crucial to preventing abuse. Among the dangers unleashed when these channels are circumvented: potential introduction of counterfeit or tainted product in the marketplace; ineffective and unverifiable tax collection; and loss of the face-to-face transaction at purchase, highly valued by states in addressing a range of regulatory goals, including preventing sales to minors.”**

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# **REGULATORY REACTION**

- ***Regulators are uncertain of the future – focus on basics, sales to minors, addressing abusive consumption and shutting down locations that cause problems [“disorderly houses”].***
- ***Business practice regulation is being pushed by wholesalers [tied-house, at-rest, franchise, credit, etc.] for litigation purposes. If laws are not enforced, they cannot be justified.***
- ***Regulators under scrutiny and reacting by cracking down – expect more enforcement actions.***
- ***NY – wholesalers investigated for things of value. Current investigation of 3-tier marketing practices***
- ***Illinois – Sam’s fined \$300,000 for storing wine in private warehouse.***
- ***CA – Crackdowns on marketing events (Art and Music Festivals) and entertainment venues. Minor stings in winery tasting rooms and at retail stores.***
- ***WA, WY and other states: monitoring internet commerce.***

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# WHAT DOES THIS MEAN?

- The Regulatory Climate is Polarized – most regulators are supporters of consumer rights but are oath-bound to support the law
- Consumers are confused
- Retailers and Wineries are confused
- Traffic on the Internet increases daily so the pressure is NOT abating.

# What does “compliance” mean?

- The use of legal methods of marketing, advertising and shipping wine.
- Recognition that the consumer does have the right to buy, store and move products that the consumer owns.
- Using as many legal tools as possible to maximize your “reach” in the marketplace, including being a marketing agent for another licensee.

# The Tools of Compliance – Legislation and Litigation

- **Reciprocity legislation** In 1985, CA opened to inter-state shipping for wineries & retailers. Over the next decade, 10 more states open to wineries. Fewer to retailers.
- **Permit legislation.** From 1996 to 2005, new “model” legislation opens up 15 new states for wineries. Retailers are included 50% of the time.
- **Developments since Granholm in 2005.**
  - Up to 2005, wineries could ship inter-state to 27 states. Since Granholm, 7 new states added (TX, IN, NY, FL, OH, CT & MI).
  - Up to 2005, wine retailers could ship inter-state to 15 states. By court order, only TX and CA have opened up to retailers since then.
  - Since Granholm, wine retailers have been excluded from direct shipping legislation almost 100% of the time (Oregon included retailers).
  - All reciprocity bills need to be replaced with model direct shipping.
  - IL will level down on July 1, 2008.

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# SWRA Working Draft – “Code of Conduct”

- **Sell wine only to adults who can legally possess and consume alcoholic beverages and make all reasonable efforts to verify the age of the purchaser before the sale.**
- **Do not deliver wine to a consumer in a state where wine shipments are prohibited or to a “dry” region within a state that otherwise allows direct shipment of wine.**
- **Prominently mark all packages to be shipped that contain wine with a visible notice that the package contains alcohol and with a notification that: *“signature of person age 21 or older required for delivery”*.**
- **Comply with all appropriate state regulations concerning the remittance of state taxes, state reporting requirements and state permit acquisition.**

# SWRA WORKING DRAFT

## Model “Direct Shipment” Permit – Potential Federal Bill?

- Registration - payment of a fee
- Prohibit shipping to Dry areas.
- Mark packages as “alcoholic beverages.”
- File annual report of gallons, pay taxes and consent to audit.
- Be subject to state jurisdiction and authorize the state to discipline permit for violations of the permit conditions.
- Allow consumers to exercise their personal importation privileges

# Using Permits

- Register for your own permits
- File the reports called for by the state
- Pay taxes
- Advantage: using permits properly allows for marketing and advertising of wine for sale to consumers in the state where you have a permit.

# Other Methods of Doing Business – Personal Importation

- Almost every Consumer has the right to import or ship alcoholic beverages to themselves (including from foreign countries), depending on the law of the state in which they live.
- This right is often qualified by the requirement that the consumer obtain a permit or file with the state (i.e., Montana, Ohio).
- This right has been recognized by many states (i.e., WA) who seek to persuade retailers not to cooperate in consumers shipping to themselves.
- Always advise the consumer to know the laws of his or her state, and to obey them.

# Other Methods of Doing Business – Marketing Agents

- Retailers are marketers.
- Retailers can forward orders they receive for wine – for a marketing fee - from consumers to wineries who have the appropriate permit to ship to that consumer.
- This broadens the reach, including the marketing and advertising reach, of a retailer well beyond the limited number of states in which a retail permit is currently available.