



# National Liquor Law Enforcement Association



July 29, 2021

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Senator Michael Bergstrom  
Chairman, CIED Task Force

RE: Statement of Principles on Direct-to-Consumer Shipping of Spirits

Dear Chairman and Committee Members,

The National Liquor Law Enforcement Association (NLLEA) would like to bring attention and awareness to the challenges Alcohol Law Enforcement (ALE) have encountered with the direct shipment of alcohol (wine/beer/spirits).

The goal of ALE and the NLLEA is to ensure alcohol is being promoted, distributed, and consumed in a legal fashion. This includes the direct shipment of alcohol by a manufacturer (producer/shipper) that has a license or permit from the regulatory body in the state they are shipping alcohol into and that alcohol is delivered to the consumer who is 21 years of age or older and is not visibly intoxicated at the time of delivery. As an association the NLLEA does not believe direct-to-consumer shipping of alcohol, in its current state, allows for best practice guidelines to be adhered to and it raises a concern for public health and safety.

**NLLEA is aware of the following suspected unlawful activity related to the direct-to-consumer shipment of alcohol as reported by member agencies:**

1. Unlicensed/permitted shipper
2. Failure to pay proper alcohol excise tax
3. Failure to pay proper alcohol sales tax
4. Unauthorized alcoholic beverages being shipped
5. Direct shipper permit holder is not bottling or producing the product they sold to the consumer
6. Over shipment of product per state limitations
7. Shipping to an unapproved address
8. Tainted/counterfeit product
9. Shipping into local option communities where it is illegal to possess alcohol
10. Shipping into states that don't allow out of state shipments
11. Failure to properly verify age of the consumer upon delivery
12. Failure to obtain a signature of consumer upon delivery in states that require

If good governance practices are to ensure and promote transparency, accountability and elimination of fraud to require liability in the regulatory process. Then good practice and commonsense solutions should allow for those enforcing and regulating model policies around alcohol to have a seat at the table.

There is a lack of understanding of the modern market of e-commerce alcohol delivery, but it has nothing to do with consumer demand and everything to do with the illegal shipment of alcohol as the lines have been blurred between interstate shipping of alcohol by manufactures and interstate shipping of alcohol by retailers. While direct-to-consumer shipping of wine is allowed in 46 states and has been in practice for over twenty-years it does not mean the system is without its flaws. The industry and those advocating for direct shipment of spirits need to turn their attention to the current flawed system and fix it first by providing principles on real solutions and collaboration with those that enforce and regulate the industry.

From delivery to dry counties to delivering to underage youth, hurdles of tracking the purchase back to the manufacturer from common carriers, lack of training and buy-in for better alcohol delivery models to fulfillment houses and third-party-providers hiding behind their FOB terms and conditions; who is responsible for the loss of billions of dollars in taxes? Do we have to wait for a tragedy to occur before this issue is taken seriously? Not to mention the **huge burden of time and resources placed on ALE** to investigate these crimes. In order for ALE to audit alcohol shipments coming into their state they must comb through reports provided to them by the three main common carriers (ex. FedEx, Fed Ex Ground and UPS). These reports are very voluminous and one state reports that it takes approximately forty-work hours per report or 3 weeks a month dedicated to determining illegal shipments. If direct shipping is opened up to spiritous liquor where is the funding coming from for all 50 state and the District of Columbia to ensure the shipments are legal and states are receiving proper taxes that they in-turn use to help fund schools, healthcare, homelessness, etc.

### **Direct shipping of alcohol is a complex process that must be properly regulated**

Shipping of alcohol directly from the manufacturer to a consumer (purchaser) eliminates two of the three checks and balances of the three-tier-system, the wholesaler and the retailer, and relies on common carriers to deliver alcohol. The courier employed by a common carrier then takes on the role much like a server/seller in a licensed brick-and-mortar establishment, but does not receive the same intensive responsible alcohol service training to properly ensure those deliveries of alcohol are not made to persons under the age of 21 and not made to persons showing any signs of visible (over) intoxication. Common carriers are also responsible for ensuring that the manufacturer has a license or permit to ship alcohol legally into the state of the consumer. Common carriers also ensure that the manufacturers have packaged the alcohol properly with the required labeling needed pursuant to their license. In some states common carriers are not licensed or permitted and there is no good way to hold them accountable for illegal shipments or deliveries.

Shipping of alcohol directly from the manufacturer to a consumer may also take the route of being packaged and labeled for shipment by a fulfillment house or logistics center. Manufacturers contract with fulfillment houses to ship alcohol on their behalf as they may not have the room to store all of their product and/or a fulfillment house may be closer to the states they are shipping alcohol into and therefore product can get to the consumer quicker. The alcohol is then picked up by a common carrier and delivered to the consumer.

Ordering of alcohol to be shipped directly to the consumer may also go through a third-party provider (e-commerce platform/white label ) that acts as an agent of the manufacturer to help promote their product. The third-party provider advertises product on behalf of the manufacturer, makes recommendations to consumers, directs consumers to licensees that carry the product they are looking for, receives orders from consumers, passes orders to licensees, and in some cases processes the payment. The third-party provider may also be responsible for packaging, labeling and preparing the alcohol for shipment. The alcohol is then picked up by a common carrier and delivered to the consumer.

The use of third-party providers and fulfillment houses has added another layer to the investigation process of tracking illegal shipments of alcohol. The NLEA is working to educate policy makers, regulatory bodies and comptrollers through investigations on how some of these entities are circumventing the system by taking a percentage of payment for alcohol ordered online and bypassing the collection of taxes.

Circumventing and bypassing the three-tier-system of alcohol regulation causes an unfair marketplace and opens the public up to possible dangerous situations of counterfeit and tainted alcohol. NLEA advocates for full transparency of the direct shipment of alcohol in regards to reporting, remittance of taxes, tracking and mandated training of all entities involved in the shipment and delivery of alcohol in order to eliminate violators evading proper business practices.

**Alcohol Law Enforcement have reported the following challenges in working with fulfillment houses:**

It can be nearly impossible to verify alcohol shipments from common carrier reports when a manufacturer uses a fulfillment house to prepare shipments of their product. In some instances, a fulfillment house receives inter-state shipments of alcohol and passes those shipments to common carriers as intra-state shipments making the job of ALE even more complicated in tracking the shipment back to the originating manufacturer. In most states' fulfillment houses are not licensed or permitted and therefore are not required to report receiving and disbursement of alcohol. This is all done on an honor system and is highly underreported causing ALE difficulty in obtaining needed information to track an alcohol delivery to the manufacturer who may or may not have a license to ship alcohol. In most states' fulfillment houses are required to maintain records but not provide them when requested. It is also a challenge for an alcohol regulatory body to conduct inspections on fulfillment houses that prepare shipments of alcohol into their state as they may be located in another state.

**Alcohol Law Enforcement have reported the following challenges with third-party providers:**

Third-party providers (ex. ReserveBar, Thirstie, Speakeasy) may circumvent the system by acting on behalf of a manufacturer that may not be licensed to sell alcohol or sell as a retailer. If a customer orders a bottle of spirituous liquor online from a manufacturer that is out-of-state or in another country the customer is under the impression that their alcohol is coming from the manufacturer when in some cases the third-party provider has a contract with an in-state or out-of-state retailer that fulfills the order. Tracking the origin of that alcohol is a challenge as, the manufacturer does not have a license to sell alcohol as a retailer and the retailer is not permitted to allow access to their license to sell alcohol in this manner and therefore, taxes may not be properly collected. To make matters even worse some third-party providers are hiding behind their FOB terms and conditions in their on-line customer agreements and placing all of the responsibility on the customer for setting up the shipment claiming that they are acting as agents of the customer when they facilitate the shipment. Their rationalization is, the customer is responsible for the illegal shipment of alcohol because they placed the order.

**Alcohol Law Enforcement have reported the following challenges with common carriers:**

Common carriers are responsible for confirming that a manufacturer has a shipper permit/license to ship alcohol into their state of delivery. This ensures the collection of taxes and reduces the number of illegal shipments. This process becomes more difficult when there is a failure to include alcoholic beverage permit numbers on the package slip from the manufacturer (originator) and report it on the state common carrier report.

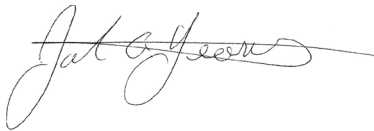
Another challenge is the package itself. Common carriers may indicate that a package is labeled as wine or alcoholic beverages, but there is no way to confirm that unless someone is there to witness the product being packaged. Common carriers indicate they have a list of prohibited items from being shipped but they can't confirm. It is important that shipments contain proper labeling as states have limitations on volumes that can be shipped.

Lastly, the challenge of ensuring that alcohol is not being delivered to a minor under the age of 21 or to someone that is visibly intoxicated. The three main common carriers have training for their delivery personnel and use age verification software in most cases, but taking the time to confirm this information is just not a priority in their business model and in most cases packages containing alcohol are left unattended on the consumer's doorstep. This type of negligence is how ALE in most cases become aware of an illegal shipment, after the delivery, upon further investigative research. Just because a package is labeled "contains alcohol" does not guarantee that the courier is taking the proper steps for a safe delivery, as shipping boxes can be re-used for all kinds of deliveries. Couriers are trained to read their DIAD (Delivery Information Acquisition Device) and the information that has been pre-loaded for that delivery including prompts for a package containing alcohol, checking identification and obtaining a signature.

As the alcohol beverage marketplace changes rapidly with the deregulation of alcohol control policies, the dismantling of the three-tier system, increased licensing in non-traditional retail settings and expanded distribution channels through shipment and deliveries of alcohol, comes increased responsibilities for ALE and alcohol regulatory authorities to maintain compliance and an orderly and safe alcohol marketplace to protect the public's health and safety from alcohol-related harms. The demand on ALE resources has hit a crescendo; however, few jurisdictions, including policymakers, prevention and public health organizations, are discussing the impact of these dwindling resources critical to protecting the public from alcohol-related harms amidst a backdrop of increased access and availability. The NLLEA recognizes this larger landscape and will continue to work to enforce and prevent the prevalence of illegal access to alcohol and hopes that the American Legislative Exchange Council, Commerce Insurance and Economic Development Task Force will do the same and not rush policy on this very important public health and safety issue.

If you need further information or have any questions please contact our Executive Director, Carrie A. Christofes at (724)762-5939 or by email at [carrie.christofes@nllea.org](mailto:carrie.christofes@nllea.org).

Sincerely,

A handwritten signature in cursive script, appearing to read "John Yeomans", with a long horizontal flourish extending to the right.

John Yeomans, President