

**Senate Bill 16-197 Working Group  
Legislative Report Recommendation Form**

1. Work Group Sponsor (s):
  - a) Colorado Wine Industry Development Board
  - b) Wine Institute

2. Describe the Recommendation:

**In order to clarify the parameters and procedures of the manufacturing process for the purposes of tax collection, implementation and control of premises, create a definition of the manufacturing process under Regulation 47-100 (B) by inserting language after the existing list of licenses that qualify as a “manufacturer” that would either:**

- a. **(Similar to how the manufacturing process is treated on the federal level) Define that the manufacturing process of an alcoholic beverage ends when the beverage has been released from a bonded warehouse or from the licensee’s own federally bonded premises and placed in commerce (e.g. sold directly by a winery to a consumer or a licensed retail outlet, or taken by a distributor for distribution, or taken by a common carrier for delivery); or**
  - b. **Recognize that the manufacturing process continues until such time as the product is bottled or packaged in such a way that it could legally be sold to a consumer, in accordance with state and federal rules governing labeling and packaging, and is ready to be placed into commerce. This would apply whether the product is sold by the manufacturer to a wholesaler, a retailer or the final consumer (either in person or through delivery by common carrier), if allowed by the manufacturer’s license.**
3. Which portion or portions of Senate Bill 16-197 does this recommendation address (underline all those that apply)?
    - a) Develop an implementation process for grocery and convenience stores to apply for a license to sell malt liquor and fermented malt beverages containing at least one-half percent alcohol by volume starting January 1, 2019.
    - b) Analyze the impact that removing the alcohol content limit on fermented malt beverages will have on the alcohol beverage industry as a whole, as well as on current retail licensees.
    - c) Legislative, regulatory, or administrative changes necessary to promote the three-tiered distribution system in Colorado.
    - d) Laws governing tastings conducted on retail premises licensed under article 47 of this title and the ability of retail liquor stores licensed under section 12-47-407 to sell growlers containing malt liquors.

4. Please summarize the rationale for the recommendation – why is it important?

**The lack of a definition of the terms “manufacture” and to a lesser extent “produce” (both in the transitive verb form) have created confusion for licensees and inconsistent regulatory applications by LED over the years. Inserting a basic definition of the term “manufacture” would provide guidance in excise tax collection, control of premises and product, and create a clearer delineation between the first and second tiers of the three-tier system.**

**One way to create such a definition is to align Colorado law with how federal law considers the manufacturing process complete: the process is complete when an alcoholic product is released from bond (whether from a bonded warehouse, a bonded winery, or other bonded manufacturing facility) and placed into commerce, such as when the manufacturer (1) sells the product directly to a consumer or a licensed retail outlet, (2) delivers the product to an in-state or out-of-state wholesaler for distribution, or (3) puts the product on a common carrier for delivery.**

**Another way to define that the manufacturing process ends once the product is packaged in such a way that it can legally be sold to the consumer or customer. The wine industry believes that it is ready to enter commerce, regardless of whom the “first sale” is made to, once the product is packaged.**

5. What issue or issues does your recommendation resolve? Please identify the issues.

**These recommendations resolve confusion and questions surrounding the delineation of the manufacturing process and when excise tax should be paid on a product;**

6. Which of the following does the recommendation impact (underline those that apply):

- a. Statute (legislation)
- b. Policy
- c. Rules and Regulations
- d. Other: (please describe)

7. Who owns implementation of the recommendation (underline those that apply):

- a. State Legislature
- b. Department of Revenue
- c. Local Government
- d. Other: (please describe)

8. Is there a dissenting voice on the working group concerning this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.

Micki Hackenberger, representing the Colorado Wine and Spirits Wholesalers, has expressed concerns that the language in the proposed definition of manufacturing circumvents the second tier of the three-tier system. We have tried to address that concern by specifically including the wholesaler as one of the recipients of a manufactured products.

9. Are you aware of any statutory authority or regulation that supports the basis of this recommendation? If yes, please include it here.

When the Colorado Revised Statutes address the timing and payment of excise taxes by wholesalers or manufacturers, they state the tax is payable to the department of revenue “on or before the twentieth day of the month following the month in which such alcohol beverages are first sold in this state. As used in this subsection (3), “first sold” means the sale or disposal that occurs when a licensed wholesaler sells, transfers, or otherwise disposes of a product, when a manufacturer sells to a licensed wholesaler or a consumer, or when a holder of a winery direct shipper’s permit ships to a personal consumer in this state.” (12-47-503 (3) CRS, emphasis added). This statute provides for a manufacturer to sell the product subject to excise tax to a consumer or to a wholesaler.

10. Is the implementation of your recommendation dependent on another decision or action? If yes, specifically what actions or decisions are required before this recommendation can be implemented?

The implementation of wine industry’s recommendations is dependent upon the ultimate recommendation by the LED’s SB-197 Working Group final report.

11. Will the recommendation have a cost to implement? If yes, please explain the reason for the cost and provide an estimate.

No cost to implement.

12. Provide an estimate of how long it would take to implement the recommendation.

The recommendation would take effect when the rule making process is completed and would then for the basis for all future policy decisions and actions by LED. If statutory changes require action by the Colorado State Legislature, that would delay implementation until after the 2018 Session ends and rulemaking commences.