

**AGENDA
BOARD MEETING
WA STATE LIQUOR CONTROL BOARD
Wednesday, December 9, 2009
Headquarter Building
3000 Pacific Ave, Olympia WA 98504**

10:00 a.m.

Roll Call

- 1. Public Hearing on Approval for filing a proposed rule (CR 102) to implement 2009 legislation relating to manufacturers, distributors, importers, and retailers.....Karen McCall**
- 2. Public Hearing on Approval for filling proposed rule (CR 102) to implement 2009 legislation relating to retail liquor licensees.....Karen McCall**
- 3. Public Hearing on Approval for filing proposed rules (CR 102) to implement 2009 legislation regarding cigarette and tobacco license administration.....Karen McCall**
- 4. New Business.....Board Members**
- 5. Old Business.....Board Members**

Recess/Adjourn



**OFFICE OF THE
WASHINGTON STATE LIQUOR CONTROL BOARD
Board Meeting Minutes – December 9, 2009**

Board Chair Sharon Foster called the regular meeting of the Washington State Liquor Control Board to order at 10:05 a.m., on Wednesday, December 9, 2009 in the Boardroom, 3000 Pacific Avenue SE, Olympia, Washington. Board Member Ruthann Kurose was present.

Public Hearing on Approval for filing a proposed rule (CR 102) to implement 2009 legislation relating to manufacturers, distributors, importers, and retailers - Karen McCall, Senior Policy / Legislative Analyst

Karen reviewed that the purpose of this issue paper is to request approval from the Board to file the notice of proposed rulemaking (CR 102) for rule changes implementing **EHB 2040**, and **SSB 5834**.

The following bills were passed during the 2009 legislative sessions that require changes in existing administrative rules (WAC) or the development of new rules:

- EHB 2040 – changes in beer and wine regulation including financial ownership or interest, money's worth – advertising, price post and hold, and minimum markup
- SSB 5834 – addresses authorized representatives, creates a winery warehouse, provides new exceptions to tied house

Rules are also required to implement the following Interim Board Policy:

- Liquor Control Board Interim Policy #03-2009 – Washington Domestic Winery Returning Exported Product back to Producing Winery

The LCB filed a Pre-Proposal (CR 101) for this rulemaking on June 3, 2009. The WSLCB now enters into the second step of rule development by filing proposed rules language with the State Register (CR-102). *(See attachments)*

Public Hearing on Approval for filling proposed rule (CR 102) to implement 2009 legislation relating to retail liquor licensees - Karen McCall, Senior Policy / Legislative Analyst

Karen reviewed that the following bills were passed during the 2009 legislative sessions that require changes in existing administrative rules (WAC) or the development of new rules:

- SSB 5367 – Creates a Nightclub liquor license
- SSB 5834 – Allows Beer/Wine Specialty Shops to sell kegs for off-premises consumption, allows spirits, beer, and wine private clubs and beer and wine private clubs to sell bottled wine for off-premises consumption, allows retail-to-retail product (wine) transfers, and changes the process of electronic fund transfers (EFT)
- EHB 2358 – Increases most retail liquor license fees

If approved for filing, the tentative timeline for the rule making process is outlined below:

November 4, 2009	Board is asked to approve filing the proposed rule making (CR 102 filing). LCB sends notice to rules distribution list.
November 18, 2009	Code Reviser publishes notice
December 9, 2009	Public Hearing
December 9, 2009	End of written comment period
December 16, 2009	Board is asked to adopt rules
December 16, 2009	Agency sends notice to those who commented both at the public hearing and in writing.
December 16 2009	Agency files adopted rules with the Code Reviser
January 17, 2010	Rules are effective (31 days after filing)

(See attachments)

Public Hearing on Approval for filling proposed rule (CR 102) to implement 2009 legislation relating to cigarette and tobacco tax licensees - Karen McCall, Senior Policy / Legislative Analyst SHB 1435 passed in the 2009 legislative session, gives the Liquor Control Board the administrative authority to approve, deny, suspend, or revoke retail, wholesale, or distributor cigarette and tobacco products licenses. Rules are needed to further clarify the application process and requirements.

New Chapter 314-33 Cigarette and Tobacco Products License Process

New Section 314-33-001 Cigarette and tobacco products license qualifications and application process. Explains the requirement of a criminal history background check and explains the application process to obtain a cigarette or tobacco products license.

New Section 314-33-005 Reasons the board may deny a cigarette or tobacco products license application. Lists the reasons the board may deny the license.

New Section 314-33-020 What criminal history might prevent an applicant from receiving or keeping a cigarette or tobacco products license? Includes a matrix that includes a point value for different types of criminal convictions. Explains the board's scoring of criminal convictions and how a decision is made when criminal history is involved.

New Section 314-33-025 What liquor and cigarette and tobacco products law or rule violation history might prevent an applicant from receiving a cigarette or tobacco products license? Explains how the board uses violation history in determining licensure.

New Section 314-33-030 What is the process if the board denies a cigarette or tobacco products license application? Explains the options for the applicant if their application is denied.

New Chapter 314-34 Cigarette and Tobacco Products Violations

New Section 314-34-001 Purpose of chapter. Explains what is covered in this chapter.

New Section 314-34-003 Authority—Suspension or revocation of wholesale and retail cigarette and tobacco products licenses. Explains the board's authority to suspend or revoke a wholesale or retail cigarette and tobacco products license.

New Section 314-34-005 What are the procedure for notifying a licensee of an alleged violation of a cigarette or tobacco products statute or regulation? Explains the process the enforcement officer follows in the case of an alleged violation.

New Section 314-34-010 What options does a licensee have once they receive a notice of administrative violation? Explains the process the licensee follows if they want to request a settlement conference or an administrative hearing.

New Section 314-34-015 What are the penalties if a cigarette and/or tobacco products license holder violates a cigarette or tobacco products law or rule? Lists the penalties for the first, second, third and consecutive offenses.

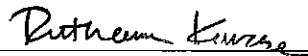
New Section 314-34-020 Information about cigarette and/or tobacco products license suspensions. Explains the process followed for license suspensions.

New Section 314-23-030 Cigarette and other tobacco products violations. Lists the violation types for cigarette and other tobacco products. (see attachment)

The Board Meeting was adjourned at 11:00 AM.



Sharon Foster
Board Chair



Ruthann Kurose
Board Member



**Washington State
Liquor Control Board**

Date: November 4, 2009

To: Sharon Foster, Board Chair
Ruthann Kurose, Board Member

From: Karen McCall, Agency Rules Coordinator

Copy: Pat Kohler, Administrative Director
Rick Garza, Deputy Administrator
Alan Rathbun, Director, Licensing and Regulation
Pat Parmer, Chief, Enforcement and Education

Subject: **Approval for filing proposed rules (CR 102) to implement 2009 legislation relating to retail liquor licensees**

The following bills were passed during the 2009 legislative sessions that require changes in existing administrative rules (WAC) or the development of new rules:

- **SSB 5367 – Creates a Nightclub liquor license**
- **SSB 5834 – Allows Beer/Wine Specialty Shops to sell kegs for off-premises consumption, allows spirits, beer, and wine private clubs and beer and wine private clubs to sell bottled wine for off-premises consumption, allows retail-to-retail product (wine) transfers, and changes the process of electronic fund transfers (EFT)**
- **EHB 2358 – Increases most retail liquor license fees**

Process

The Rules Coordinator requests approval to file proposed rules (CR 102) for the rule making described above. An issue paper on this rulemaking was presented at the Board meeting on November 4, 2009, and is attached to this order.

If approved for filing, the tentative timeline for the rule making process is outlined below:

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December 9, 2009	End of written comment period
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	the public hearing and in writing.
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Approve Disapprove _____ Sharon Foster, Chairman _____ Date

Approve Disapprove _____ Ruthann Kurose, Board Member _____ Date

Attachment: Issue Paper

Washington State Liquor Control Board

Issue Paper

Rule Making to Implement Legislation for Retail

Licensees

Date: November 4, 2009

Presented by: Karen McCall, Agency Rules Coordinator

Description of the Issue

The purpose of this issue paper is to request approval from the Board to file the notice of proposed rule making (CR 102) for rule changes implementing **SSB 5367, SSB 5834** and **EHB 2358**.

Why is rule making necessary?

The following bills were passed during the 2009 legislative sessions that require changes in existing administrative rules (WAC) or the development of new rules:

- **SSB 5367** – Creates a Nightclub liquor license
- **SSB 5834** – Allows Beer/Wine Specialty Shops to sell kegs for off-premises consumption, allows spirits, beer, and wine private clubs and beer and wine private clubs to sell bottled wine for off-premises consumption, allows retail-to-retail product (wine) transfers, and changes the process of electronic fund transfers (EFT)
- **EHB 2358** – Increases most retail liquor license fees

Background

The Liquor Control Board filed a Pre-Proposal (CR 101) for this rulemaking on June 3, 2009. The WSLCB now enters into the second step of rule development by filing proposed rules language with the State Register (CR-102).

What changes are being proposed?

Amendatory Section WAC 314-02-005 – What is the purpose of chapter 314-02 WAC? Added nightclubs to the list of liquor licenses and permits.

Amendatory Section WAC 314-02-010 – Definitions. Added definitions for "entertainer", "entertainment", "minimum food service", and "snack food".

Amendatory Section WAC 314-02-020 – What are the fee categories for a spirits, beer, and wine restaurant license? Revised the fee matrix to implement EHB 2358.

Amendatory Section WAC 314-02-035 – What are the food service requirements for a spirits, beer, and wine restaurant license? Revised the fees listed for this license type per EHB 2358.

New Section WAC 314-02-036 – What is a spirits, beer, and wine nightclub license? Added a new section to explain what is allowed under a nightclub liquor license, and the fee for the license.

New Section WAC 314-02-037 – What are the floor space requirements for a spirits, beer, and wine nightclub license? Added a new section to explain the floor space requirements, such as barriers to separate areas where minors will be allowed, and what information is needed on a floor plan.

New Section WAC 314-02-038 – Can a spirits, beer, and wine nightclub licensee exclude persons under twenty-one years of age from the premises? Added what is required by the licensee if they want to exclude minors from the premises at all times.

New Section WAC 314-02-039 – What type of restrictions may be placed on a spirits, beer, and wine nightclub license? Added language to implement SSB 5367 regarding local governments ability to petition the board for further restrictions on a nightclub liquor license.

Amendatory Section WAC 314-02-045 – What is beer and/or wine restaurant license? Revised license fee and added a requirement for minimum food service.

Amendatory Section WAC 314-02-060 – What is a caterer's endorsement? Revised the license fee.

Amendatory Section WAC 314-02-065 – What is a snack bar license? Revised license fee and added the seating requirement into the rule.

Amendatory Section WAC 314-02-070 – What is a tavern license? Revised the license fee.

Amendatory Section WAC 314-02-090 – What is a nonprofit arts organization license? Revised the license fee and added the service area requirement into the rule.

Amendatory Section WAC 314-02-095 – What is a public house license? Revised the license fee.

Amendatory Section WAC 314-02-100 – What is a grocery store license? Revised the license fee.

Amendatory Section WAC 314-02-105 – What is a beer and/or wine specialty shop license? Revised the license fee, and revised the language regarding keg sales.

Amendatory Section WAC 314-02-125 – What types of activities on a licensed premises require notice to the board? Corrected the WAC reference in subsection (1) to 314-11-050.

Amendatory Section WAC 314-02-130 – What types of changes to a licensed premises require board approval? Added spirits, beer, and wine nightclub to subsection (1).

Amendatory Section WAC 314-16-040 – Drink menu. Changed the title of the section from "Price list" to "Drink menu".

Amendatory Section WAC 314-16-110 – Liquor purchases by spirits, beer, and wine licensees. Changed the title of the section. Added spirits, beer, and wine nightclub license throughout the section as needed. Plain talked.

Amendatory Section WAC 314-16-160 – Purchases—Reports. Plain talked.

Attachments: Proposed Rules

AMENDATORY SECTION (Amending WSR 01-06-014, filed 2/26/01, effective 3/29/01)

WAC 314-16-040 (~~(Price list.)~~) Drink menu. No holder of a beer and/or wine restaurant license shall advertise for sale, nor sell, any mixed drink under the name of "Old Fashioned," "Whiskey Sour," "Singapore Sling," "Martini," "Manhattan," nor any other name which, by long and general usage, has become associated in the public mind as being the name of a mixed drink made from spirituous liquor, unless the name of such drink is prefaced by the word "wine," such as Wine Old Fashioned. The holder of a beer and/or wine restaurant license may advertise for sale, mix, compound or sell upon order, mixed drinks made from one or more wines under a name which does not conflict with this section.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-16-110 Liquor purchases by spirits, beer, and wine (~~(restaurant, club and sports/entertainment facility)~~) licensees. (1) Any employee authorized by the board may sell spirituous liquor at a discount of fifteen percent from the retail price fixed by the board, together with all taxes, to any spirits, beer and wine restaurant, spirits, beer, and wine nightclub, spirits, beer, and wine club or sports/entertainment facility licensee upon presentation to such employee at the time of purchase of a special permit issued by the board to such licensee or through such other means of insuring identification of the authorized purchaser as are approved by the board (~~(: Provided, however, That)~~). Prior to license delivery, a new licensee (~~(or transferee)~~) may, with board authorization, be sold discount liquor and beer and wine purchased under Title 66 RCW for the purpose of stocking the premises. The employee shall at the time of selling any spirituous liquor to a spirits, beer and wine restaurant, spirits, beer, and wine nightclub, spirits, beer, and wine club or sports/entertainment facility licensee make a record of the liquor so sold, together with the name of the spirits, beer and wine restaurant, spirits, beer, and wine nightclub, spirits, beer, and wine club or sports/entertainment facility licensee making the purchase. No sale of beer, wine, or spirituous liquor shall take place until the premises of the new licensee (~~(or transferee)~~) have been inspected by the board and the spirits, beer and wine restaurant, spirits, beer, and wine nightclub, spirits, beer, and wine club or

sports/entertainment facility license is delivered.

(2) Every spirits, beer and wine restaurant, spirits, beer, and wine nightclub, spirits, beer, and wine club or sports/entertainment facility licensee, upon purchasing any spirituous liquor from the board, shall immediately cause such liquor to be delivered to his or her licensed premises, and he or she shall not (~~thereafter~~) remove or permit to be removed from said premises any bottle or other container containing such liquor, except pursuant to chapter 314-70 WAC or to return it to a state liquor store or agency, nor shall he or she dispose or allow to be disposed the liquor contained therein in any manner except as authorized by his or her license (~~(: Provided, however, That)~~): A delivery service business may pick up more than one liquor order on the same day so long as each of said orders are delivered in the normal course of business on the same day without detour or diversion, except for those stops and deliveries as may be necessary to make deliveries to the other licensees whose order is also on the particular delivery vehicle. The possession of any bottle or other container purchased from the board at a discount by any person other than the licensee or said licensee's agents or employees who purchased the same, or the possession thereof at any place which is not the licensed premises of the licensee who purchased such liquor, shall be prima facie evidence that the licensee unlawfully permitted the removal thereof from his or her licensed premises (~~(: Provided,)~~). The licensee who permanently discontinues business, other than as a result of a legal distraint action, may remove open bottles of liquor from the premises for personal use upon payment to the board of an amount to be determined by the board in lieu of the discount and tax exemption in effect at that time.

(3) No licensee shall keep in or on the licensed premises any spirituous liquor which was not purchased from the board at a discount (~~(: Provided, That)~~). Spirituous liquor not purchased at a discount from the board may be kept in or on the licensed premises under authority of a banquet permit issued pursuant to RCW 66.20.010(3) and chapter 314-18 WAC, but only during the specific date and time for which the banquet permit was issued (~~(: Provided, further, That)~~). Notwithstanding any other provision of Title 314 WAC, a spirits, beer and wine licensee may display antique, unusual, or unique liquor bottles with or without liquor on the licensed premises if such bottles are used as part of the decor, and any such bottles containing liquor are locked securely in display cases, and are not for sale.

(4) No person, including anyone acting as the agent for another other than a spirits, beer and wine licensee shall keep or possess any bottle or other container containing spirituous liquor which was purchased from the board at a discount except as provided in subsection (2) of this section.

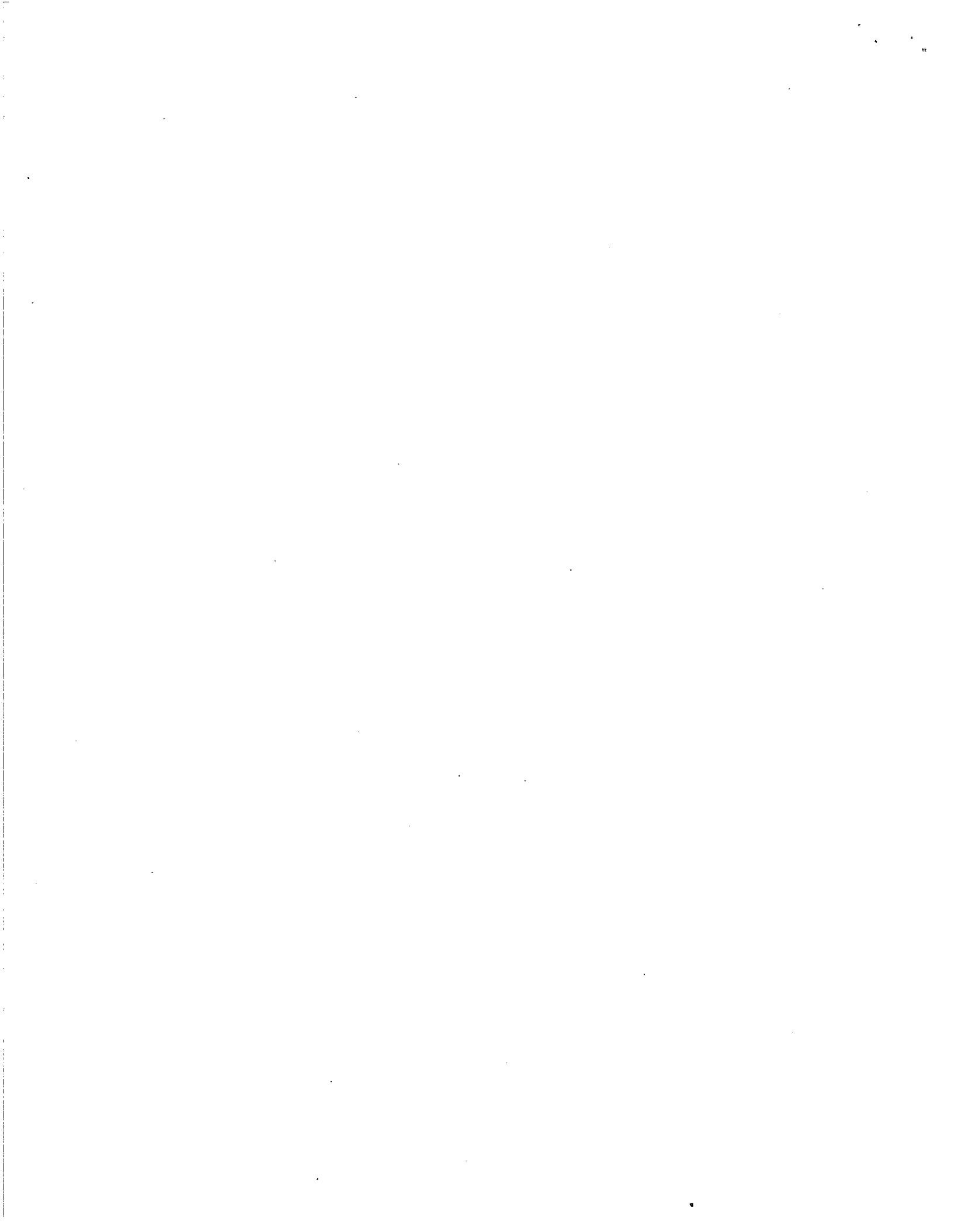
(5) All spirituous liquor in and on the licensed premises shall be made available at all times by every licensee for inspection by the board, and such licensee shall permit any authorized inspector of the board to make such tests or analyses,

by spirit hydrometer or otherwise, as the inspector deems proper. Such inspectors are authorized to seize as evidence any bottles or other containers and the contents thereof which they have determined have been reused, refilled, tampered with, adulterated, diluted, fortified or substituted.

AMENDATORY SECTION (Amending WSR 07-02-076, filed 12/29/06, effective 1/29/07)

WAC 314-16-160 Purchases--Reports. (1) Failure by (~~licensees~~) industry members and retailers to keep accurate accounting records which result in the extension of or receipt of credit from (~~a manufacturer, importer, or distributor~~) an industry member through the use of a prior cash deposit which is overextended may result in administrative action being taken against the liquor license.

(2) Prior to license delivery, a new beer and/or wine (~~licensee or transferee~~) retailer may, with board authorization, be sold beer and/or wine for the purpose of stocking the premises. No retail sale of beer and/or wine shall take place until the applicant premises have been inspected by the board and the liquor license is delivered.



AMENDATORY SECTION (Amending WSR 08-17-067, filed 8/19/08, effective 9/19/08)

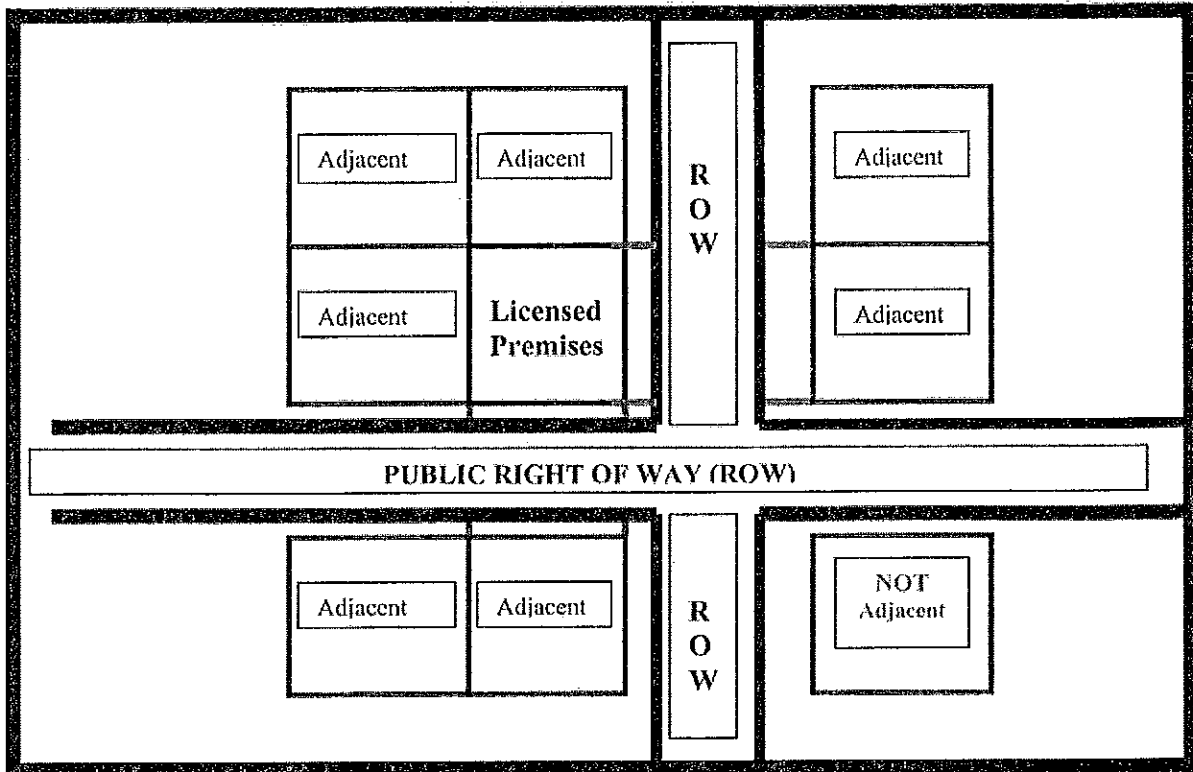
WAC 314-02-005 What is the purpose of chapter 314-02 WAC?
Chapter 314-02 WAC outlines the qualifications for the following liquor licenses and permits:

- (1) Spirits, beer, and wine restaurants;
- (2) Nightclubs;
- (3) Hotels;
- ~~((3))~~ (4) Beer and/or wine restaurants;
- ~~((4))~~ (5) Snack bars;
- ~~((5))~~ (6) Taverns;
- ~~((6))~~ (7) Motels;
- ~~((7))~~ (8) Bed and breakfasts;
- ~~((8))~~ (9) Nonprofit arts organizations;
- ~~((9))~~ (10) Public houses;
- ~~((10))~~ (11) Grocery stores;
- ~~((11))~~ (12) Beer/wine specialty shops; and
- ~~((12))~~ (13) Beer/wine gift delivery business.

AMENDATORY SECTION (Amending WSR 08-17-067, filed 8/19/08, effective 9/19/08)

WAC 314-02-010 Definitions. The following definitions are to clarify the purpose and intent of the rules and laws governing liquor licenses and permits. Additional definitions can be found in RCW 66.04.010.

(1) "Adjacent" means having a common endpoint or border where the extension of the property lines of the licensed premises contacts that common border.



(2) "Banquet room" means any room used primarily for the sale and service of food and liquor to private groups.

(3) "Customer service area" means areas where food and/or liquor are normally sold and served to the public, i.e., lounges and dining areas. A banquet room is not considered a customer service area.

(4) "Dedicated dining area." In order for an area to qualify as a dedicated dining area, it must be a distinct portion of a restaurant that is used primarily for the sale, service, and consumption of food, and have accommodations for eating, e.g., tables, chairs, booths, etc. See WAC 314-02-025 for more information.

(5) "Designated area" means a space where alcohol may be sold, served, or consumed.

(6) "Entertainer" means someone who performs for an audience such as a disc jockey, singer, or comedian, or anyone providing entertainment services for the licensee. An entertainer is considered an employee of the liquor licensee per WAC 314-01-005. Patrons participating in entertainment are not considered employees.

(7) "Entertainment" means dancing, karaoke, singing, comedy shows, concerts, TV broadcasts, contests with patron participation and/or performing for an audience.

(8) "Food counter" means a table or counter set up for the primary purpose of food service to customers who sit or stand at

the counter. Any alcohol served is incidental to food service.

~~((7))~~ (9) "Game room" means an area of a business set up for the primary purpose of patrons using games or gaming devices.

~~((8))~~ (10) "Liquor bar" means a table or counter where alcohol is stored or prepared and served to customers who sit or stand at the bar. Liquor bars can only be in lounges or in premises where minors are not allowed at any time.

~~((9))~~ (11) "Lounge" means the portion of a restaurant used primarily for the preparation, sale, and service of beer, wine, or spirits. Minors are not allowed in a lounge (see RCW 66.44.316 for information on employees and professional musicians under twenty-one years of age).

~~((10))~~ (12) "Minimum food service" means items such as sandwiches, salad, soup, hamburgers, and fry orders.

(13) "Minor" means a person under twenty-one years of age.

~~((11))~~ (14) "Service bar" means a fixed or portable table, counter, cart, or similar work station primarily used to prepare, mix, serve, and sell alcohol that is picked up by employees or customers. Customers may not be seated or allowed to consume food or alcohol at a service bar.

(15) "Snack food" means items such as peanuts, popcorn, and chips.

AMENDATORY SECTION (Amending WSR 05-22-022, filed 10/24/05, effective 11/24/05)

WAC 314-02-020 What are the fee categories for a spirits, beer, and wine restaurant license? (1) Per RCW 66.24.420, the annual fee for a spirits, beer, and wine restaurant license is graduated, as follows:

Amount of customer service area dedicated to dining	Annual fee
100%	\$ ((+000)) <u>1,105</u>
50 - 99%	\$ ((+600)) <u>1,768</u>
Less than 50%	\$ ((2,000)) <u>2,210</u>

(2) In order for an area to qualify as a dedicated dining area it must be a separate and distinct portion of a restaurant that is used primarily for the sale, service, and consumption of food, and have accommodations for eating, e.g., tables, chairs, booths, etc. Areas dedicated to live music or entertainment, such as dance floors or stages are not considered dedicated dining areas. Dedicated dining areas may not contain:

- (a) Liquor bars (see definition under WAC 314-02-010(2)); or
- (b) Areas dedicated to games or gaming devices.

(3) The fee for a spirits, beer, and wine restaurant license outside of an incorporated city or town will be prorated according to the calendar quarters the licensee is open for business. This

proration does not apply in the case of a suspension or revocation of the license.

(4) A duplicate license is required in order to sell liquor from more than one site on your property. These sites must be located on the same property and owned by the same licensee. The following types of businesses may apply for a duplicate license:

Type of Business	Annual fee per duplicate license
Airport terminal	25% of annual license fee
Civic center (such as a convention center)	\$((+0)) <u>11</u>
Privately owned facility open to the public	\$20

AMENDATORY SECTION (Amending WSR 05-22-022, filed 10/24/05, effective 11/24/05)

WAC 314-02-035 What are the food service requirements for a spirits, beer, and wine restaurant license? (1) A spirits, beer, and wine restaurant licensee must serve at least four complete meals. Per RCW 66.24.410(2), a complete meal does not include hamburgers, sandwiches, salads, or fry orders. For purposes of this title:

(a) "Complete meal" means an entree and at least one additional course.

(b) "Entree" means the main course of a meal. To qualify as one of the four required complete meals, the entree must require the use of a dining implement to eat, and cannot consist of a hamburger, sandwich, salad, or fry order.

(2) The restaurant must maintain the kitchen equipment necessary to prepare the complete meals required under this section and RCW 66.24.410(2).

(3) The complete meals must be prepared on the restaurant premises.

(4) A chef or cook must be on duty while complete meals are offered.

(5) A menu must be available to customers that lists, at a minimum, the required complete meals.

(6) The food items required to maintain the menu must be on the restaurant premises. These items must be edible.

(7) Restaurants that have one hundred percent dedicated dining area must maintain complete meal service any time liquor is available for sale, service, or consumption.

(8) Restaurants with less than one hundred percent dedicated dining area (restaurants in the one thousand (~~six~~) seven hundred sixty-eight dollar or two thousand two hundred ten dollar fee

category) must maintain complete meal service for a minimum of five hours a day during the hours of 11:00 a.m. and 11:00 p.m. on any day liquor is served. The board may consider written requests for exceptions to this requirement due to demonstrated hardship, under such terms and conditions as the board determines are in the best interests of the public.

(a) Minimum food service, such as sandwiches, hamburgers, or fry orders, must be available outside of these hours.

(b) Snacks such as peanuts, popcorn, and chips do not qualify as minimum food service.

(9) The hours of complete meal service must be conspicuously posted on the premises or listed on the menu. If applicable, a statement that minimum food service is available outside of those hours must also be posted or listed on the menu.

NEW SECTION

WAC 314-02-036 What is a spirits, beer, and wine nightclub license? (1) This license allows a nightclub as defined in RCW 66.04.010(28) to:

(a) Sell and serve spirituous liquor by the individual drink for on-premises consumption;

(b) Sell and serve beer by the open bottle, can, or by tap for on-premises consumption; and

(c) Sell and serve wine for on-premises consumption.

(2) To obtain and maintain a spirits, beer, and wine nightclub license the nightclub must have primary business hours between 9:00 p.m. and 2:00 a.m.

(3) There are no food requirements for a spirits, beer, and wine nightclub license. Food sales and service are incidental to the sale and service of alcohol.

(4) The annual fee for a spirits, beer, and wine nightclub license is two thousand dollars.

NEW SECTION

WAC 314-02-037 What are the floor space requirements for a spirits, beer, and wine nightclub license? (1) The liquor control board has the responsibility to classify what licensed premises or what portions of a licensed premises are off limits to minors.

(a) Any areas in the licensed premises where alcohol is sold, served, or consumed is classified as off-limits to minors (RCW 66.44.310(2)).

(b) Minors may be allowed on the licensed premises but only in

areas where alcohol is not served or consumed.

(2) **Barriers** - Licensees must place barriers separating restricted areas from areas where minors will be allowed.

(a) The barriers must clearly separate restricted areas and must be at least forty-two inches high.

(b) The barriers may be moveable.

(c) Liquor bars cannot be used as barriers (see definition of liquor bar in WAC 314-02-010(10)).

(d) Entrances to restricted areas may not be wider than ten feet. If a licensee has more than one entrance along one wall, the total entrance areas may not exceed ten feet.

(e) "Minor prohibited" signs, as required under WAC 314-11-060(1), must be posted at each entrance to a restricted area.

(3) If the business allows minors, the primary entrance must open directly into a nonrestricted area. Minors must be able to access restrooms without passing through a restricted area.

(4) **Floor plans** - When applying for a spirits, beer, and wine nightclub license, the applicant must provide to the board's licensing and regulation division two copies of a detailed drawing of the entire premises. If there will be different floor plans for different types of events that change the location and/or dimensions of the restricted area(s), the applicant must provide two copies of a detailed drawing for each floor plan. All restricted areas must be designated on the floor plan(s) and be approved by the board. The drawing must be labeled with the type of event. The drawing must:

(a) Have all rooms labeled according to their use; e.g., lounge, dance floor, stage area, foyer, restrooms, etc.; and

(b) Have all barriers labeled in a descriptive way; e.g., "full wall," "half wall," etc.

NEW SECTION

WAC 314-02-038 Can a spirits, beer, and wine nightclub license exclude persons under twenty-one years of age from the premises? A spirits, beer, and wine nightclub licensee may exclude minors from the premises at all times.

(1) To exclude minors from the entire licensed premises at all times, the applicant must:

(a) Indicate during the liquor license application process that he/she does not wish to have minors on the entire premises at all times; or

(b) If already licensed as a spirits, beer, and wine nightclub license that allows minors, the licensee may request permission from the board's licensing and regulation division to exclude minors at all times. See WAC 314-02-130 for instructions on requesting this approval.

(2) Spirits, beer, and wine nightclub licensees who exclude

minors from the premises may not employ minors. (See WAC 314-11-040 for more information on employing minors.)

NEW SECTION

WAC 314-02-039 What type of restrictions may be placed on a spirits, beer, and wine nightclub license? (1) Local government may petition the board to request further restrictions be imposed on a spirits, beer, and wine nightclub license in the interest of public safety. Public safety does not include items such as noise ordinances and trash pickup.

(a) The local authority must request any additional restrictions within twenty days from the date of the local authority notice sent by the board.

A request for additional restrictions must be accompanied by a written explanation for the restriction and how the restriction relates to public safety.

(b) If the local authority requests further restrictions on the license, the board will notify the applicant of the local authorities' request.

(c) Any restrictions requested by the local authority and approved by the board may be enforced by the board.

(d) The board may impose the restriction of a "good neighbor agreement" requested by the local authority, but will not enforce agreements between a local authority and liquor licensee or applicant.

(2) The local authority, the applicant, or the licensee may request an administrative hearing per chapter 34.05 RCW if they disagree with the decision the board makes on additional restrictions to the license, based on the interest of public safety.

AMENDATORY SECTION (Amending WSR 05-22-022, filed 10/24/05, effective 11/24/05)

WAC 314-02-045 What is a beer and/or wine restaurant license?
(1) Per RCW 66.24.320 and 66.24.354, this license allows a restaurant to:

Privilege	Annual fee
(a) Serve beer by the bottle or can or by tap for on-premises consumption.	\$(200) 221

Privilege	Annual fee
(b) Serve wine for on-premises consumption (see RCW 66.24.320 regarding patrons removing recorked wine from the premises).	\$ ((200)) 221
(c) Sell beer and/or wine in the original, unopened containers for off-premises consumption.	\$ ((120)) 133
(d) Sell tap beer for off-premises consumption in a sanitary container holding less than four gallons of beer, and brought to the premises by the purchaser.	In conjunction with off-premises privilege outlined in subsection (c).
(e) Sell beer in kegs or other containers holding at least four gallons of beer (see WAC 314-02-115 regarding the requirements for registering kegs).	In conjunction with off-premises privilege outlined in subsection (c).

(2) All applicants for a beer and/or wine restaurant license must establish, to the satisfaction of the board, that the premises will operate as a bona fide restaurant, as defined in RCW 66.04.010(30). Minimum food service is required, as defined in WAC 314-02-010(12).

(3) If a beer and/or wine restaurant's dedicated dining area comprises less than fifteen percent of the total customer service area, the premises must maintain a tavern license (see WAC 314-02-070 regarding the tavern license).

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-060 What is a caterer's endorsement? (1) A spirits, beer, and wine restaurant and a beer and/or wine restaurant applicant or licensee may apply for a caterer's endorsement, in order to extend the on-premises license privilege to allow the sale and service of liquor at approved locations other than the licensed premises. See RCW 66.24.420(6) and RCW 66.24.320(2) for more information about this endorsement.

(2) The annual fee for this endorsement is three hundred ~~((fifty))~~ eighty-seven dollars.

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-065 What is a snack bar license? (1) Per RCW 66.24.350, a snack bar license allows a licensee to serve beer by the opened bottle or can for on-premises consumption only.

(2) Snack bar licensees must have snack food, as defined in WAC 314-02-010(15), available whenever beer is sold or served.

(3) Snack bars must have designated seating for on-premises consumption of beer.

(4) The annual fee for this license is one hundred (~~twenty-five~~) thirty-eight dollars.

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-070 What is a tavern license? (1) Per RCW 66.24.330 and 66.24.354, this license allows a tavern to:

Privilege	Annual fee
(a) Serve beer by the bottle or can or by tap for on-premises consumption.	\$(200) <u>221</u>
(b) Serve wine for on-premises consumption.	\$(200) <u>221</u>
(c) Sell beer and/or wine in the original, unopened containers for off-premises consumption.	\$(120) <u>133</u>
(d) Sell tap beer for off-premises consumption in a sanitary container holding less than four gallons of beer, and brought to the premises by the purchaser.	In conjunction with off-premises privilege outlined in subsection (c).
(e) Sell beer in kegs or other containers holding at least four gallons of beer (see WAC 314-02-110 regarding the requirements for registering kegs).	In conjunction with off-premises privilege outlined in subsection (c).

(2) A tavern licensee may not allow persons under twenty-one years of age on the premises at any time (see RCW 66.44.316 for information regarding employees and professional musicians under twenty-one years of age).

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-090 What is a nonprofit arts organization license?

(1) Per RCW 66.24.495, this license allows a bona fide nonprofit organization to sell beer, wine, and spirits by the individual serving in conjunction with artistic or cultural exhibitions or performances.

(2) The nonprofit organization must be organized and operated for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs for viewing by the general public. See RCW 66.24.495(2) for specific organizational requirements.

(3) Alcohol sales and consumption may only be conducted in the lobby area and/or restricted bar area of the premises prior to the commencement of an exhibition or performance and during intermission.

Alcohol is not allowed in the seating areas of the facility.

(4) The annual fee for this license is two hundred fifty dollars.

AMENDATORY SECTION (Amending WSR 05-22-022, filed 10/24/05, effective 11/24/05)

WAC 314-02-095 What is a public house license? (1) Per RCW 66.24.580, a public house licensee is allowed to:

(a) Manufacture between two hundred fifty gallons and two thousand four hundred barrels of beer on the premises per year;

(b) Serve beer by the bottle or can or by tap for on-premises consumption; and

(c) Serve wine for on-premises consumption (see RCW 66.24.320 regarding patrons removing recorked wine from the premises).

(2) The annual fee for this license is one thousand one hundred five dollars.

(3) If a public house licensee wishes to allow persons under twenty-one years of age on the premises, the licensee must meet the requirements of a beer and/or wine restaurant license, per WAC 314-02-045 and 314-02-025.

(4) Public house licensees may apply for a spirits, beer, and wine restaurant license, in order to sell spirits by the individual serving for on-premises consumption (see WAC 314-02-015).

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-100 What is a grocery store license? (1) Per RCW 66.24.360, a grocery store license allows a licensee to sell beer and/or wine for off-premises consumption.

(2) The annual fee for this license is one hundred (~~fifty~~) sixty-six dollars.

(3) In order to obtain and maintain a grocery store license, the premises must be stocked with an inventory of at least three thousand dollars wholesale value of food for human consumption, not including soft drinks, beer, or wine. This minimum inventory must be:

(a) Stocked within the confines of the licensed premises; and
(b) Maintained at the premises at all times the business is licensed, with the exception of:

(i) The beginning and closing inventory for seasonal operations; or

(ii) When the inventory is being sold out immediately prior to discontinuing or selling the business.

(4) A grocery store licensee may sell beer in kegs or other containers holding at least four gallons and less than five and one-half gallons of beer. See WAC 314-02-115 regarding keg registration requirements.

(5) A grocery store applicant or licensee may apply for an international exporter endorsement for five hundred dollars a year, which allows the sale of beer and wine for export to locations outside the United States.

AMENDATORY SECTION (Amending WSR 04-19-156, filed 9/22/04, effective 10/23/04)

WAC 314-02-105 What is a beer and/or wine specialty store license? (1) Per RCW 66.24.371, a beer and/or wine specialty store license allows a licensee to sell beer and/or wine for off-premises consumption.

(2) The annual fee for this license is one hundred eleven dollars.

(3) Qualifications for license--To obtain and maintain a beer and/or wine specialty store license, the premises must be stocked with an inventory of beer and/or wine in excess of three thousand dollars wholesale value. This inventory must be:

(a) Stocked within the confines of the licensed premises; and
(b) Maintained on the premises at all times the premises is licensed, with the exception of beginning and closing inventory for seasonal operations or when the inventory is being sold out immediately prior to discontinuing or selling the business.

(4) Qualifications to sample--A beer and/or wine specialty

store licensee may allow customers to sample beer and wine for the purpose of sales promotion, if the primary business is the sale of beer and/or wine at retail, and the licensee meets the requirements outlined in either subsection (a) or subsection (b) of this rule:

(a) A licensee's gross retail sales of beer and/or wine exceeds fifty percent of all gross sales for the entire business; or

(b) The licensed premises is a beer and/or wine specialty store that conducts bona fide cooking classes for the purpose of pairing beer and/or wine with food, under the following conditions:

(i) The licensee must establish to the satisfaction of the board that the classes are bona fide cooking courses. The licensee must charge participants a fee for the course(s).

(ii) The sampling must be limited to a clearly defined area of the premises.

(iii) The licensee must receive prior approval from the board's licensing and regulation division before conducting sampling with cooking classes.

(iv) Once approved for sampling, the licensee must provide the board's enforcement and education division a list of all scheduled cooking classes during which beer and/or wine samples will be served. The licensee must notify the board at least forty-eight hours in advance if classes are added.

(5) Licensees who qualify for sampling under subsection (4) of this rule may sample under the following conditions:

(a) No more than a total of eight ounces of alcohol may be provided to a customer during any one visit to the premises;

(b) Each sample must be two ounces or less; and

(c) No more than one sample of any single brand and type of beer or wine may be provided to a customer during any one visit to the premises.

(6) A beer and/or wine specialty store licensee may sell beer in kegs or other containers holding at least four gallons (~~and less than five and one-half gallons~~) of beer. See WAC 314-02-115 regarding keg registration requirements.

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-125 What types of activities on a licensed premises require notice to the board? Liquor licensees must notify their local enforcement office in writing at least forty-eight hours before conducting the following activities:

(1) Male/female dance reviews, subject to the provisions of WAC (~~(314-16-125)~~) 314-11-050;

(2) Live boxing or wrestling;

(3) Contests or games where patrons are part of the entertainment; and

(4) Hours of operation in between 2:00 a.m. and 6:00 a.m. for licensees that sell liquor for on-premises consumption.

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-130 What types of changes to a licensed premises require board approval? The following changes to a licensed premises require prior board approval, by submitting a form provided by the board's licensing and regulation division:

Type of alteration	Approval process and timeline
<p>(1)</p> <ul style="list-style-type: none"> ● excluding persons under twenty-one years of age from a spirits, beer, and wine restaurant <u>or a spirits, beer, and wine nightclub</u>; ● excluding persons under twenty-one years of age from the dining area of a beer and/or wine restaurant; ● reclassifying a lounge as open to persons under twenty-one years of age; ● extending the location of alcohol service, such as a beer garden or patio/deck service (areas must be enclosed with a barrier a minimum of forty-two inches in height); ● storing liquor off of the licensed premises; ● initiating room service in a hotel or motel when the restaurant is not connected to the hotel or motel; ● installing a pass-through window for walk-up customers; and ● using a licensed premises as an access to another business. 	<p>(a) The board's licensing and regulation division will respond to the request for alteration within five business days.</p> <p>(b) The licensee may begin liquor service in conjunction with the alteration as soon as approval is received.</p> <p>(c) Board approval will be based on the alteration meeting the requirements outlined in this title.</p>

Type of alteration	Approval process and timeline
<p>(2)</p> <ul style="list-style-type: none"> ● any alteration that affects the size of a premises' customer service area. 	<p>(a) The board's licensing and regulation division will respond to the licensee's request for alteration within five business days.</p> <p>(b) The licensee must contact their local liquor control agent when the alteration is completed.</p> <p>(c) The licensee may begin liquor service in conjunction with the alteration after the completed alteration is inspected by the liquor control agent.</p> <p>(d) Board approval will be based on the alteration meeting the requirements outlined in this title.</p>



**Washington State
Liquor Control Board**

Date: November 4, 2009

To: Sharon Foster, Board Chairman
Ruthann Kurose, Board Member

From: Karen McCall, Agency Rules Coordinator

Copy: Pat Kohler, Administrative Director
Rick Garza, Deputy Administrator
Alan Rathbun, Director, Licensing and Regulation
Pat Parmer, Chief, Enforcement and Education

Subject: **Approval for filing a proposed rules (CR 102) to implement 2009 legislation relating to manufacturers, distributors, importers, and retailers**

The following bills were passed during the 2009 legislative sessions that require changes in existing administrative rules (WAC) or the development of new rules:

- **EHB 2040 – changes in beer and wine regulation including financial ownership or interest, money’s worth – advertising, price post and hold, and minimum markup**
- **SHB 1812 – requirements for wine labels**
- **ESHB 1441 – process for terminating or cancelling agreements between distributors and producers of malt beverages**
- **SSB 5834 – addresses authorized representatives, creates a winery warehouse, provides new exceptions to tied house**

Process

The Rules Coordinator requests approval to file the notice of proposed rulemaking (CR 102) for the rule making described above. An issue paper on this rulemaking was presented at the Board meeting on November 4, 2009, and is attached to this order.

If approved for filing, the tentative timeline for the rule making process is outlined below:

November 4, 2009	Board is asked to approve filing the proposed rule making (CR 102 filing). LCB sends notice to rules distribution list.
November 18, 2009	Code Reviser publishes notice,
December 9, 2009	Public hearing held
December 9, 2009	End of written comment period

December 16, 2009	Board is asked to adopt rules
December 16, 2009	Agency sends notice to those who commented both at the public hearing and in writing.
December 16, 2009	Agency files adopted rules with the Code Reviser
January 17, 2009	Rules are effective (31 days after filing)

Approve Disapprove _____ Sharon Foster, Chairman _____ Date

Approve Disapprove _____ Ruthann Kurose, Board Member _____ Date

Attachment: Issue Paper

Washington State Liquor Control Board

Issue Paper

Rule Making to Implement Legislation for Manufacturers, Distributors, Importers, and Retailers

Date: November 4, 2009

Presented by: Karen McCall, Agency Rules Coordinator

Description of the Issue

The purpose of this issue paper is to request approval from the Board to file the notice of proposed rulemaking (CR 102) for rule changes implementing **EHB 2040**, and **SSB 5834**.

Why is rule making necessary?

The following bills were passed during the 2009 legislative sessions that require changes in existing administrative rules (WAC) or the development of new rules:

- EHB 2040 – changes in beer and wine regulation including financial ownership or interest, money's worth – advertising, price post and hold, and minimum markup
- SSB 5834 – addresses authorized representatives, creates a winery warehouse, provides new exceptions to tied house

Rules are also required to implement the following Interim Board Policy:

- Liquor Control Board Interim Policy #03-2009 – Washington Domestic Winery Returning Exported Product back to Producing Winery

Background

The Liquor Control Board filed a Pre-Proposal (CR 101) for this rulemaking on June 3, 2009. The WSLCB now enters into the second step of rule development by filing proposed rules language with the State Register (CR-102).

What changes are being proposed?

Amendatory Section WAC 314-11-015 – What are my responsibilities as a liquor licensee? Corrected WAC references for the penalties for violations.

Amendatory Section WAC 314-11-095 – What records am I required to keep regarding my licensed premises? Changed the requirement to keep records from two years to three years to be consistent with federal laws. To keep all rules regarding general records in one chapter, the language from 314-12-135 (business entertainment records) was added to this rule.

New Section – WAC 314-11-097 – Credit on nonliquor food items—Conditions—Recordkeeping. To keep all rules regarding general records in

one chapter, the language from 314-12-145 (the title of this section) was added to this chapter by creating a new section.

New Section – WAC 314-12-027 – Financial interest and ownership. Created a new section to implement the allowance of financial interest and/or ownership between the tiers. Included examples to explain when a separate business entity would be required to purchase financial interest or ownership.

Repealed Section – WAC 314-12-135 – Business entertainment—Records. Moved this language to 314-11-095 in order to keep recordkeeping rules in one chapter.

Amendatory Section – WAC 314-12-140 – Prohibited practices—Contract—Gifts—Rebates, etc. Amended this section to reflect changes to the law in EHB 2040 (manufacturers, distributors, and importers are all included in the name "industry member"). Plain-talked.

Amendatory Section – WAC 314-12-141 – Courses of instruction. Amended this section to reflect changes to the law in EHB 2040 (manufacturers, distributors, and importers are all included in the name "industry member").

Repealed Section – WAC 314-12-145 – Credit on nonliquor food items—Conditions—Recordkeeping. Moved this language to 314-11-097 in order to keep recordkeeping rules in one chapter.

Amendatory Section – WAC 314-13-015 – What method of payment can a retailer use to purchase beer or wine from an industry member? Amended this section to reflect changes to the law in EHB 2040 (manufacturers, distributors, and importers are all included in the name "industry member"). Revised language regarding initiation and payment of electronic fund transfers (EFT).

Amendatory Section – WAC 314-13-020 – What if a check, EFT transaction, or credit/debit card transaction is reported as having nonsufficient funds (NSF)? Amended this section to reflect changes to the law in EHB 2040 (manufacturers, distributors, and importers are all included in the name "industry member").

Amendatory Section – WAC 314-13-025 – How do retail licensees purchase spirituous liquor at a discount from the board? Added the new spirits, beer, and wine nightclub license to the list of licensees that must purchase spirituous liquor from the board at a fifteen percent discount.

Amendatory Section – WAC 314-19-015 – What are the monthly reporting and tax payment requirements? Added language to implement interim board policy #01-2009 (Washington domestic wineries returning exported product back to the producing winery).

Amendatory Section – WAC 314-19-035 – Reduced tax rate for beer. Added language to implement a change in the tax rate for strong beer (effective in 2003). Strong beer is any malt beverage that contains more than 8% alcohol by weight.

Amendatory Section – WAC 314-20-001 – Definitions. Revised the definition of “authorized representative”.

Amendatory Section – WAC 314-20-050 – Beer distributors—Importers—Brewers—Records--Preservation. Revised language to required three years records be kept to be consistent with the federal laws.

Amendatory Section – WAC 314-20-100 – Beer suppliers and distributors. The title of this section was previously “price postings”. Revised language to remove price posting requirements and added a requirement that a “price list” be available at the suppliers and distributors liquor licensed location. Defines “price list”. Added language requiring all prices be available to all retail licensees and all retail licensees must be given reasonable notice of all prices and changes in price. Plain talked.

Amendatory Section – WAC 314-24-001 – Definitions. Revised the definition of “authorized representative”.

Amendatory section – WAC 314-24-070 – Domestic wineries—Purchase and use of bulk wines, brandy or wine spirits—Import permit required—Records—Wine returned to Washington. Added subsection (3) to implement interim board policy #03-2009 (Washington domestic winery returning exported product back to producing winery).

New Section – WAC 314-24-207 – Winery warehouse license. Added a new section to implement the winery warehouse license requirements.

Amendatory section – WAC 314-24-150 – Wine records—Preservation. Revised language to required three years records be kept to be consistent with the federal laws.

Amendatory section – WAC 314-24-190 – Wine suppliers and distributors. The title of this section was previously “price postings”. Revised language to remove price posting requirements and added a requirement that a “price list” be available at the suppliers and distributors liquor licensed location. Defines “price list”. Added language requiring all prices be available to all retail

licensees and all retail licensees must be given reasonable notice of all prices and changes in price. Plain talked.

Amendatory section – WAC 314-24-210 – Return of wine by retailer—Replacement—Conditions. Revised language to required three years records be kept to be consistent with the federal laws.

Amendatory section – WAC 314-44-005 – Agent’s license required—Eligible employees defined—Certain classes limited—Bona fide entity defined—Prohibited practices. Plain talked.

Amendatory section – WAC 314-44-015 – Agency license limited authority. Plain talked.

Amendatory section – WAC 314-52-080 – Novelty advertising. Added language to implement the allowance in EHB 2040 regarding novelty branded promotional advertising items of nominal value. Industry members may provide these items to retailers. Included language regarding action by the board if a complaint is filed by any industry member, retailer, or any other person asserting the provision of branded promotional items has resulted in or is more likely than not to result in undue influence or an adverse impact on public health and safety.

Attachment: Proposed rules

AMENDATORY SECTION (Amending WSR 04-15-162, filed 7/21/04, effective 8/21/04)

WAC 314-11-015 What are my responsibilities as a liquor licensee? (1)(a) Liquor licensees are responsible for the operation of their licensed premises in compliance with the liquor laws and rules of the board (Title 66 RCW and Title 314 WAC). Any violations committed or permitted by employees will be treated by the board as violations committed or permitted by the licensee.

(b) The penalties for violations of liquor laws or rules are in: WAC (~~(314-12-300)~~) 314-29-015 through (~~(314-12-340)~~) 314-29-035, as now or hereafter amended, for licensees; and WAC 314-17-105 and 314-17-110, as now or hereafter amended, for employees who hold mandatory alcohol server training permits. These rules also outline aggravating and mitigating circumstances that may affect what penalty is applied if a licensee or employee violates a liquor law or rule.

(2) Licensees and their employees also have the responsibility to conduct the licensed premises in compliance with the following laws, as they now exist or may later be amended:

- Titles 9 and 9A RCW, the criminal code laws;
- Title 69 RCW, which outlines the laws regarding controlled substances; and
- Titles 70.155, 82.24 RCW, and RCW 26.28.080 which outline laws regarding tobacco.

(3) Licensees have the responsibility to control their conduct and the conduct of employees and patrons on the premises at all times. Except as otherwise provided by law, licensees or employees may not:

(a) Be disorderly or apparently intoxicated on the licensed premises;

(b) Permit any disorderly person to remain on the licensed premises;

(c) Engage in or allow behavior that provokes conduct which presents a threat to public safety;

(d) Consume liquor of any kind while working on the licensed premises; except that:

(i) Licensed beer manufacturers and their employees may sample beer of their own manufacture for manufacturing, evaluating or pricing product in areas where the public is not served, so long as the licensee or employee does not become apparently intoxicated;

(ii) Licensed wine manufacturers and their employees may:

(A) Sample wine for manufacturing, evaluating, or pricing product, so long as the licensee or employee does not become apparently intoxicated; and the licensee or employee who is sampling for these purposes is not also engaged in serving alcohol to the public; and

(B) Sample wine of their own manufacture for quality control or consumer education purposes, so long as the licensee or employee does not become apparently intoxicated.

(e) Engage in, or permit any employee or other person to engage in, conduct on the licensed premises which is prohibited by any portion of Titles 9, 9A, or 69 RCW; or

(f) Sell or serve liquor by means of "drive-in" or by "curb service."

(4) Licensees have the responsibility to control the interaction between the licensee or employee and their patrons. At a minimum, licensees or employees may not:

(a) Solicit any patron to purchase any beverage for the licensee or employee, or allow a person to remain on the premises for such purpose;

(b) Spend time or dance with, or permit any person to spend time or dance with, any patron for direct or indirect compensation by a patron.

(c) See WAC 314-11-050 for further guidelines on prohibited conduct.

AMENDATORY SECTION (Amending WSR 02-11-054, filed 5/9/02, effective 6/9/02)

WAC 314-11-095 What records am I required to keep regarding my licensed premises? Licensees are responsible to keep records that clearly reflect all financial transactions and the financial condition of the business.

(1) All industry members and retailers shall keep and maintain the following records on their premises for a three-year period and the records must be made available for inspection if requested by an employee of the liquor control board, or by a person appointed in writing by the board for the purposes of administering or enforcing any provisions of Title 66 RCW or Title 314 WAC:

(a) Purchase invoices and supporting documents, to include the items and/or services purchased, from whom the items were purchased, and the date of purchase;

(b) Bank statements and (~~cancelled~~) canceled checks for any accounts relating to the licensed business;

(c) Accounting and tax records related to the licensed business and each true party of interest in the liquor license; (~~and~~)

(d) Records of all financial transactions related to the licensed business, including contracts and/or agreements for services performed or received that relate to the licensed business;

(e) Records of all items, services, and moneys' worth furnished to and received by a retailer and of all items, services, and moneys' worth provided to a retailer and purchased by a

retailer at fair market value;

(f) Records of all industry member financial ownership or interests in a retailer and of all retailer financial ownership interests in an industry member; and

(g) Business entertainment records of industry members or their employees who provide either food, beverages, transportation, tickets or admission fees for or at athletic events or for other forms of entertainment to retail licensees and/or their employees.

(2) See ~~((the following))~~ additional rules for ~~((record keeping))~~ recordkeeping requirements specific to breweries and wineries: WAC 314-20-015(2), 314-20-050, 314-24-100, and 314-24-150 (as now or hereafter amended).

NEW SECTION

WAC 314-11-097 Credit on nonliquor food items--Conditions--Recordkeeping. (1) Notwithstanding the provisions of WAC 314-12-140, persons licensed under RCW 66.24.200 as wine distributors and persons licensed under RCW 66.24.250 as beer distributors may sell at wholesale nonliquor food products on thirty days' credit terms to retailers. Complete and separate accounting records shall be maintained for a period of three years on all sales of nonliquor food products to ensure that such persons are in compliance with RCW 66.28.010.

(2) Nonliquor food products include all food products for human consumption as defined in RCW 82.08.0293 as it exists on July 1, 1987, except that for the purposes of this section bottled water and carbonated beverages, whether liquid or frozen, shall be considered food products.

(3) For the purpose of this section, the period of credit is calculated as the time elapsing between the date of delivery of the product and the date of full legal discharge of the retailer, through the payment of cash or its equivalent, from all indebtedness arising from the transaction.

(4) If the board finds in any instance that any licensee has violated this section by extending or receiving credit in excess of the thirty days as provided for by this section, then all licensees involved shall be held equally responsible for such violation.



NEW SECTION

WAC 314-12-027 Financial interest and ownership. Pursuant to the exceptions in chapter 66.28 RCW:

(1) An industry member or affiliate may have a financial interest in another industry member or a retailer, and a retailer or affiliate may have financial interest in an industry member unless such interest has resulted or is more likely than not to result in:

(a) Undue influence over the retailer or the industry member; or

(b) An adverse impact on public health and safety.

(2) The structure of any such financial interest must be consistent with the following:

(a) An industry member in whose name a license or COA has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed pursuant to RCW 66.24.320 through 66.24.570, but the industry member must form a separate legal entity to apply for the retail liquor license.

Example: ABC Inc. is the liquor licensee for ABC Winery. ABC Inc. has two officers and stockholders; John Doe, President and 50% stockholder, and Mary Smith, Secretary and 50% stockholder. ABC Inc. wants to purchase stock in a retail restaurant. ABC Inc. is not required to form a separate legal entity if the amount of stock purchased is 10% or less. If the amount of stock purchased is more than 10%, ABC Inc. must form a separate legal entity to purchase the stock. John Doe and/or Mary Smith as a sole proprietor, could purchase any amount of stock in a retail restaurant;

(b) A retailer in whose name a license has been issued pursuant to this title may wholly own or hold a financial interest in manufacturer, importer, or distributor licensed under RCW 66.24.170, 66.24.206, 66.24.240, 66.24.244, 66.24.270(2), 66.24.200, or 66.24.250, but the retailer must form a separate legal entity to apply for the nonretail liquor license.

Example: Joe and Jane Smith own a grocery store and hold a grocery store liquor license under a sole proprietor legal entity. They want to purchase stock in a local winery. Joe and Jane Smith are not required to form a separate legal entity if the amount of stock purchased is 10% or less. If the amount of stock purchased is more than 10%, Joe and Jane Smith must form a separate legal entity (such as a corporation or limited liability company) to purchase the stock in the winery;

(c) A supplier in whose name a license or certificate of approval has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed as a distributor or importer under this title, but such supplier may not have a license as a distributor or importer issued in its own name.

Example: ABC Inc. is the liquor licensee for ABC Winery. ABC Inc. has two officers and stockholders; John Doe, President and 50% stockholder, and Mary Smith, Secretary and 50% stockholder. ABC Inc. wants to purchase stock in a distributor. ABC Inc. is not required to form a separate legal entity if the amount of stock purchased is 10% or less. If the amount of stock purchased is more than 10%, ABC Inc. must form a separate legal entity to purchase the stock. John Doe and/or Mary Smith as a sole-proprietor, could purchase any amount of stock in a distributor;

(d) A distributor or importer in whose name a license has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed or holding a certificate of approval as a supplier under this title, but such distributor or importer may not have a license or certificate of approval as a supplier issued in its own name.

Example: B&W Distributing, LLC is the liquor licensee for BW Distributing. B&W Distributing, LLC wants to purchase stock in ABC Winery. B&W Distributing, LLC is not required to form a separate legal entity if the amount of stock purchased is 10% or less. If the amount of stock purchased is more than 10%, B&W Distributing, LLC must form a separate legal entity to purchase the stock in the winery.

(3) Any person may request a determination by the board as to whether a proposed or existing financial interest has resulted or is more likely than not to result in undue influence or has resulted or is more likely than not to result in an adverse impact on public health and safety by filing a complaint or request for determination with the board.

(a) The board may conduct an investigation as it deems appropriate in the circumstances.

(b) If the investigation reveals the financial interest has resulted or is more likely than not to result in undue influence or an adverse impact on public health or safety, the board may issue an administrative violation notice or a notice of intent to deny the license to the industry member, the retailer, or both.

The recipient of the administrative violation notice or notice of intent to deny the license may request an administrative hearing under chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 01-06-015, filed 2/26/01, effective 3/29/01)

WAC 314-12-140 Prohibited practices--Contracts--Gifts--Rebates, etc. (1) No ~~((contract shall be made or entered into whereby any retail licensee agrees to handle any particular brand or brands of liquor to the exclusion of any other brand or brands of liquor.~~

~~(2) No contract shall be made or entered into for the future~~

~~delivery of liquor to any retail licensee. Provided, That))~~
industry member or retailer shall enter into any agreement which causes undue influence over another retailer or industry member.
This regulation shall not be construed as prohibiting the placing and accepting of orders for the purchase and delivery of liquor which are made in accordance with the usual and common business practice and which are otherwise in compliance with the regulations.

~~((3))~~ (2) No ~~((manufacturer, distributor, or importer, or his employee,))~~ industry member shall ~~((directly or indirectly solicit, give or offer to, or receive from any retail licensee, any employee thereof, or an applicant for a license, any))~~ advance and no retailer, any employee thereof, or applicant for a retail liquor license shall receive money or money's worth under any written or unwritten agreement or any other business practice or arrangement such as:

(a) Gifts((7));

(b) Discounts((7));

(c) Loans of money((7));

(d) Premiums((7));

(e) Rebates((7));

(f) Free liquor of any kind((7)); or

(g) Treats or services of any nature whatsoever((7) nor shall any retail licensee, employee thereof, or an applicant for a license, directly or indirectly, solicit, receive from, or give or offer to any manufacturer, distributor or importer, or his employee, any gifts, discounts, loans of money, premiums, rebates, free liquor of any kind, treats or services of any nature whatsoever,)) except such services as are authorized in this regulation.

~~((4))~~ (3) Pursuant to RCW 66.28.010 ~~((a manufacturer, distributor, importer,))~~ an industry member or ~~((his))~~ licensed agent may perform the following services for a retailer:

(a) Build, rotate, and restock displays, utilizing filled cases, filled bottles or filled cans of ~~((his))~~ its own brands only, from stock or inventory owned by the retailer.

(b) Rotate, rearrange or replenish bottles or cans of ((his)) its own brands on shelves or in the refrigerators but is prohibited from rearranging or moving displays of ((his)) its products in such a manner as to cover up, hide or reduce the space of display of the products of any other ((manufacturer, distributor or importer, Provided, however, manufacturers, distributors, importers)) industry member.

(c) Industry members or any employees thereof may move or handle in any manner any products of any other manufacturer, importer or distributor on the premises of any retail licensee when ~~((reasonable))~~ a two-day notice is given to other interested ~~((manufacturers, distributors))~~ industry members or their agents and such activity occurs during normal business hours or upon hours that are mutually agreed.

~~((b))~~ (d) Provide price cards and may also price goods of ((his)) its own brands in accordance with the usual and common

business practice and which are otherwise in compliance with the regulations.

~~((c))~~ (e) Provide point of sale advertising material and brand signs.

~~((d))~~ (f) Provide sales analysis of beer and wine products based on statistical sales data voluntarily provided by the retailer involved for the purpose of proposing a schematic display for beer and wine products. Any statistical sales data provided by retailers for this purpose shall be at no charge.

~~((e))~~ (g) Such services may be rendered only upon the specific approval of the retail licensee. Displays and advertising material installed or supplied for use on a retailer's premises must be in conformity with the board's advertising rules as set forth in chapter 314-52 WAC.

~~((5))~~ (4) No ~~((manufacturer, distributor, importer,))~~ industry member or employee thereof shall, directly or indirectly, give, furnish, rent or lend to, or receive from, any ~~((retail licensee))~~ retailer, any equipment, fixtures, supplies or property of any kind, nor shall any retail licensee, directly or indirectly, receive, lease or borrow from, or give or offer to, any ~~((manufacturer, distributor or importer))~~ industry member any equipment, fixtures, supplies or property of any kind. Sales authorized in this regulation shall be made on a cash on delivery basis only.

~~((6))~~ (5) No ~~((manufacturer or distributor))~~ industry member or employee thereof shall sell to any retail licensee or solicit from any such licensee any order for any liquor tied in with, or contingent upon, the retailer's purchase of some other beverage, alcoholic or otherwise, or any other merchandise, property or service.

~~((7))~~ (6) In selling equipment, fixtures, supplies or commodities other than liquor, no ~~((manufacturer, distributor or importer))~~ industry member shall grant to ~~((retail licensees))~~ any retailer, nor shall such ~~((licensees))~~ retailer accept, more favorable prices than those extended to nonlicensed retailers. The price thereof shall be not less than the ~~((manufacturer's, importer's, or distributor's))~~ industry member's cost of acquisition. In no event shall credit be extended to any ~~((retail licensee))~~ retailer.

~~((8))~~ (7) Any ~~((manufacturer, distributor or importer))~~ industry member who sells what is commonly referred to as heavy equipment and fixtures, such as counters, back bars, stools, chairs, tables, sinks, refrigerators or cooling boxes and similar articles, shall immediately after making any such sales have on file and available for inspection ~~((in accordance with WAC 314-20-050)),~~ records including a copy of the invoice covering each such sale, which invoice shall contain the following information:

(a) A complete description of the articles sold~~((7))~~;

(b) The purchase price of each unit sold together with the total amount of the sale~~((7))~~;

(c) Transportation costs and services rendered in connection with the installation of such articles~~((7))~~; and

~~((Such invoice shall list))~~ (d) The date of such sale and affirm that full cash payment for such articles was received from the retailer as provided in subsection ~~((+5+))~~ (4) of this section.

~~((+9+))~~ (8) If the board finds in any instance that any licensee has violated this regulation, then all licenses involved shall be held equally responsible for such violation.

Note: WAC 314-12-140 is not intended to be a relaxation in any respect of section 90 of the Liquor Act (RCW 66.28.010). As a word of caution to persons desiring to avail themselves of the opportunity to sell to retail licensees fixtures, equipment and supplies subject to the conditions and restrictions provided in section 90 of the act and the foregoing regulation, notice is hereby given that, if at any time such privilege is abused or experience proves that as a matter of policy it should be further curtailed or eliminated completely, the board will be free to impose added restrictions or to limit all manufacturers and distributors solely to the sale of liquor when dealing with retail licensees. WAC 314-12-140 shall not be considered as granting any vested right to any person, and persons who engage in the business of selling to retail licensees property or merchandise of any nature voluntarily assume the risk of being divested of that privilege and they will undertake such business subject to this understanding. The board also cautions that certain trade practices are prohibited by rulings issued under the Federal Alcohol Administration Act by the United States Bureau of Alcohol, Tobacco and Firearms, and WAC 314-12-140 is not intended to conflict with such rulings or other requirements of federal law or regulations.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-12-141 Courses of instruction. ~~((Breweries, wineries and distributors))~~ Industry members conducting courses of instruction as authorized by RCW 66.28.150 may provide alcohol at no charge to licensees of the board, their employees, and invited guests who have a legitimate business interest in the manufacturing, importing, distributing and retailing of liquor.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-12-135	Business entertainment--Records.
WAC 314-12-145	Credit on nonliquor food items-- Conditions--Recordkeeping.



AMENDATORY SECTION (Amending WSR 07-02-076, filed 12/29/06, effective 1/29/07)

WAC 314-19-015 What are the monthly reporting and tax payment requirements? (1) The required monthly beer and/or wine tax reports must be:

(a) On a form furnished by the board or in a format approved by the board;

(b) Filed every month, including months with no activity or taxes due;

(c) Submitted, with the tax due, to the board on or before the twentieth day of each month, for the previous month (for example, a report listing transactions for the month of January is due by February 20). When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day; and

(d) Filed separately for each type of liquor license or permit held.

Type of Licensee	Tax Payment Requirements
(2) Washington beer and/or wine distributor	<p>(a) Distributors must pay taxes on all beer and/or wine received during the preceding calendar month, including samples received at no charge (see WAC 314-64-080 and 314-64-090 for more information). The total tax due (per barrel for beer and per liter for wine) is to be paid by the first distributor to receive the product and must be included with the monthly report.</p> <p>(b) Distributors do not pay taxes on beer and/or wine received from another in-state licensed distributor who has already paid the Washington state tax on the product.</p> <p>(c) Distributors may claim a tax refund or credit, provided that they have paid the taxes prior to claiming the credit, for the following (see WAC 314-19-030 for information on claiming a tax refund or credit):</p> <p>(i) Shipments exported directly to a point outside the state of Washington, including sales to interstate common carriers;</p> <p>(ii) Sales to any military reservation in Washington state;</p> <p>(iii) Product that is deemed unsalable due to freight damage, product quality, or other causes that occurred prior to receipt by the distributor, subject to the following conditions:</p> <p>(A) The unsalable product must be destroyed within the state of Washington (per RCW 66.24.305);</p>

Type of Licensee	Tax Payment Requirements
	<p>(B) The licensee must notify their local liquor enforcement officer in advance for destruction of more than fifty cases of wine or two hundred cases of beer;</p> <p>(C) The licensee must report the destroyed product on the next required monthly report;</p> <p>(D) The licensee must keep records showing the reason for the destruction and an inventory of products destroyed. These records must be kept on the licensed premises and available for inspection by board employees for a period of two years; and</p> <p>(E) The licensee must provide documentation from the freight company with the report if they are claiming a credit due to freight damage.</p>
(3) Washington beer and/or wine importers	<p>Importers must pay taxes on samples received during the preceding calendar month, as follows:</p> <p>(a) If the samples are used by the importer within the state of Washington, the importer must pay the tax.</p> <p>(b) If samples are provided to a distributor, the distributor must pay the tax.</p>
(4) Domestic breweries, microbreweries, and domestic wineries	<p>(a) Domestic breweries, microbreweries, and domestic wineries must list production for the current month only. The brewery that the domestic brewery/brand owner contracts with is required to include any products they produce for the brand owner in their production count.</p> <p>(b) Domestic breweries, microbreweries, and domestic wineries must pay taxes on beer and/or wine that is:</p> <p>(i) Sold at retail on the licensed premises (or shipped to additional winery locations as authorized by RCW 66.24.170(4)), including retail sales to out-of-state residents;</p> <p>(ii) Sold to retail licensees;</p> <p>(iii) Furnished as samples to retail licensees as authorized by RCW 66.28.040, WAC 314-64-080, and 314-64-090 (does not include samples provided to distributors);</p> <p>(iv) Provided as donations to qualifying 501 (c)(3) <u>or</u> (6) nonprofit organizations per RCW 66.28.040 or to the Washington wine commission per RCW 66.12.180 and 66.24.210;</p> <p>(v) Received via an interplant transfer if used as outlined in above subsections (i), (ii), (iii), or (iv); ((or))</p> <p>(vi) Sold at farmers markets as authorized by RCW 66.24.170(5), 66.24.240(4) and/or 66.24.244(5); <u>or</u></p> <p><u>(vii) Wine that has been shipped out-of-state as nontax paid export and returned to Washington state if used as outlined in (b)(i), (ii), (iii), (iv), or (vi) of this subsection.</u></p> <p>(c) Domestic breweries, microbreweries, and domestic wineries do not pay tax on beer and/or wine that is:</p> <p>(i) Sold to distributors:</p>

Type of Licensee	Tax Payment Requirements
	<p>(ii) Shipped out of a particular location for an interplant transfer;</p> <p>(iii) Exported directly to a point outside the state of Washington, including sales to interstate common carriers;</p> <p>(iv) Sold to the Washington state liquor control board;</p> <p>(v) Sold to any military reservation in Washington state; or</p> <p>(vi) Provided as a tasting on the brewery or winery premises or at additional winery locations at no charge, as authorized by RCW 66.24.170(4). See WAC 314-19-010(3) for the definition of "tastings."</p>
(5) Domestic brewery--Brand owners	<p>(a) Domestic brewery-brand owners must file a report showing the quantity of all beer sold or delivered to each licensed beer distributor, or beer exported directly to a point outside the state of Washington, during the preceding month.</p> <p>(b) Domestic brewery-brand owners are not responsible for the tax on beer that is contract produced.</p>
(6) Out-of-state beer and/or wine certificate of approval holders	<p>(a) Certificate of approval holders must file a report showing the quantity of all beer and/or wine sold or delivered to each licensed beer or wine distributor or importer, including samples, during the preceding month.</p> <p>(b) Tax is due from the certificate of approval holder:</p> <p>(i) On samples shipped to licensed agents, and</p> <p>(ii) On donations to the Washington wine commission per RCW 66.12.180 and 66.24.210 or to 501 (c)(3) nonprofit charitable associations within Washington state per RCW 66.28.040.</p>
(7) Out-of-state United States beer and/or wine certificate of approval holders with a direct shipping to Washington retailer endorsement	<p>(a) Certificate of approval holders with this endorsement must file an addendum report showing the quantity of beer and/or wine sold or delivered to each licensed retailer, including samples, during the preceding month.</p> <p>(b) Tax is due from the certificate of approval holder on beer and/or wine sold or delivered to retail licensees and on sales to nonprofit charitable associations.</p>
(8) Out-of-state United States wine certificate of approval holders with a direct shipping to consumers endorsement	<p>(a) A certificate of approval holder with this endorsement must report the total quantity of wine sold to consumers in Washington state during the preceding month.</p> <p>(b) Tax is due from the certificate of approval holder on wine sold or delivered to Washington state residents.</p>
(9) Authorized representative certificate of approval holders-U.S. and/or foreign produced beer or wine	<p>(a) Authorized representative certificate of approval holders must file a report showing the quantity of all beer and/or wine sold or delivered to each licensed beer or wine distributor or importer, including samples. They must list the brewery and/or winery that they represent and that had shipments into Washington state during the preceding month.</p>

Type of Licensee	Tax Payment Requirements
	(b) Tax is due from the authorized representative beer and/or wine certificate of approval holders only on samples shipped to licensed agents, directly to retailers per WAC 314-64-080 and 314-64-090, donations to the Washington wine commission per RCW 66.12.180 and 66.24.210, or to 501 (c)(3) nonprofit charitable associations within Washington state per RCW 66.28.040.
(10) Public house licensees	Public house licensees must pay taxes on all sales of their own product during the preceding calendar month.
(11) Retailer with an endorsement allowing receipt of direct shipment of beer or wine from a United States brewery, microbrewery, or winery	A Washington retailer who receives shipments directly from a United States brewery, microbrewery, or winery, ((either inside or)) outside Washington, must file a report showing the quantity of beer and wine received by direct shipment from each licensed beer or wine producer, including samples, during the preceding month.
(12) Wine shipper permit holder	(a) An out-of-state winery must file a report showing the total quantity of wine sold or delivered to consumers during the preceding month. (b) Pay the tax due for sales of wine to Washington state residents.

AMENDATORY SECTION (Amending WSR 04-24-007, filed 11/19/04, effective 12/20/04)

WAC 314-19-035 Reduced tax rate for beer. (1) The additional beer taxes imposed under RCW 66.24.290 (3) (a) do not apply to the first sixty thousand barrels of beer sold by a brewery in Washington each fiscal year, if:

- (a) The beer is produced in the United States; and
- (b) The producing brewery or domestic brewery-brand owner meets the qualifications of 26 U.S.C. Sec. 5051 (a)(2).

(2) In order to qualify for this exemption, the Washington brewer or the out-of-state beer certificate of approval holder must provide the board a copy of an Alcohol and Tobacco Tax and Trade Bureau (TTB) acknowledged copy of their filing "Notice of Brewer to Pay Reduced Rate of Tax" for the calendar year as required under 27 C.F.R. Sec. 25.167; a variance for any year that waives annual submission to the TTB; or the Brewer's Notice which waives annual submission to the TTB.

(3) The tax exemption will not apply until the first day of the second month following the month the notice is received (for example, if the notice is received by the Board on January 10, the tax exemption will start on March 1).

(4) How will the distributor know what tax rate to pay for each brewery's products?

- (a) The board will provide distributors a list of breweries

that qualify for the reduced tax rate; and

(b) The qualifying brewery is responsible to inform the distributors when product sold to distributors exceeds the first sixty thousand barrels exempted from the additional tax.

(c) Once a qualifying brewery's sales to distributors exceeds sixty thousand barrels, the distributors must begin paying the full tax rate on their next monthly tax report.

(5) Per RCW 66.24.290, authorized representative certificate of approval holders do not qualify for the reduced rate in Washington state.

(6) The tax exemption will not apply to strong beer. Strong beer must be paid at the higher rate even when the brewery meets the qualifications for the reduced rate. Strong beer is any malt beverage that contains more than eight percent alcohol by weight.



AMENDATORY SECTION (Amending WSR 04-24-097, filed 12/1/04, effective 1/1/05)

WAC 314-20-001 Definitions. ~~((+))~~ Per RCW 66.04:010(2), an "authorized representative" means a person who:

~~((a))~~ (1) Is required to have a federal basic permit issued by the alcohol and tobacco tax and trade bureau;

~~((b))~~ (2) Has its business located in the United States outside of the state of Washington;

~~((c))~~ (3) Acquires ownership of beer that is produced anywhere outside Washington by a brewery ~~((which does not hold a certificate of approval issued by the board,))~~ who does not distribute those brands for transportation into and resale in the state of Washington~~((-))~~;

~~((d))~~ (4) Is appointed by the brewery referenced in ~~((c))~~ subsection (3) of this ~~((subsection))~~ section as its ~~((exclusive))~~ authorized representative for marketing and selling its products within the United States or within Washington state, in accordance with a written agreement between the authorized representative and the brewery. ~~((The board may waive the requirement for the written agreement of exclusivity in situations consistent with the normal marketing practices of certain products.))~~

AMENDATORY SECTION (Amending WSR 07-02-076, filed 12/29/06, effective 1/29/07)

WAC 314-20-050 Beer distributors--Importers--Brewers--Records--Preservation. (1) Breweries, microbreweries, beer certificate of approval holders, and beer distributors must keep beer accounts separate and independent from other accounts and maintain proper records in a form approved by the board, showing all transactions in beer.

(2) Breweries, microbreweries, beer distributors, and beer importers must in case of beer exported or beer sold, transferred or shipped to another distributor, preserve all bills of lading or other evidence of shipment for a period of ~~((two))~~ three years after such exportation, and must in the case of sales to retailers preserve all sales slips and keep the same on file in the office of the wholesaler for at least ~~((two))~~ three years after each sale.

(3) Each brewery, beer distributor, and beer importer may maintain microfilm records containing reproductions (including microfiche) of any record, document, or report if first approved by the board. Request for approval shall be directed to the financial

division of the Washington state liquor control board and must include the following information:

- (a) Records proposed to be reproduced.
- (b) Reproduction process.
- (c) Manner of preserving the reproduction.
- (d) Facilities provided for examining or viewing such reproduction.

If the request is approved, the licensee shall provide for the examining, viewing, and reproduction of such records the same as if they were the original records.

(4) If the brewery, beer distributor, or beer importer keeps records within an automated data processing (ADP) system, the system must include a method for producing legible records that will provide the same information required of that type of record within this section. The ADP system is acceptable if it complies with the following guidelines:

(a) Provides an audit trail so that details (invoices and vouchers) underlying the summary accounting data may be identified and made available upon request.

(b) Provides the opportunity to trace any transaction back to the original source or forward to a final total. If printouts of transactions are not made when they are processed, the system must have the ability to reconstruct these transactions.

(c) Has available a full description of the ADP portion of the accounting system. This should show the applications being performed, the procedures employed in each application, and the controls used to ensure accurate and reliable processing.

(5) The provisions contained in subsections (3) and (4) of this section do not eliminate the requirement to maintain source documents, but they do allow the source documents to be maintained in some other location.

AMENDATORY SECTION (Amending WSR 07-02-076, filed 12/29/06, effective 1/29/07)

WAC 314-20-100 Beer suppliers and distributors ((price postings)). RCW 66.28.180 requires beer distributors and suppliers to ~~((file price postings with the board))~~ maintain all current and prior price lists at its liquor licensed location.

(1) **Definitions--**For the purposes of this chapter:

(a) A ~~(("beer price posting" or "price posting"))~~ "price list" means a declaration of the prices ~~((of beer sold from a supplier to a distributor or from a distributor to a retailer, in effect as filed with the liquor control board either electronically or hard-copy, under the provisions of RCW 66.28.180 and Title 314 WAC))~~ at which any and all brands of beer and any and all packages within a brand are to be sold by the person maintaining the list. Distributors must maintain a price list showing all such prices for

sales to retailers. Each manufacturer functioning as a distributor must maintain a price list showing all such prices for sales to retailers as well as showing such prices for sales to distributors. The price list will contain the wholesale prices at which any and all brands of beer sold by the supplier or distributor shall be available to retailers within the state.

(b) A "beer supplier" means a microbrewery, domestic brewery, certificate of approval holder, beer importer, beer distributor acting as the first United States importer, or a distributor selling beer to another distributor.

(c) A "beer distributor" means a distributor selling to a retailer, a domestic brewery acting as a distributor, a microbrewery acting as a distributor, or a certificate of approval holder with a direct shipping to Washington retailer endorsement selling beer of its own production to a retailer.

(2) ~~((Filing deadlines.~~

(a) Beer supplier filing deadlines	(b) Beer distributor filing deadlines
All price postings, distributor appointments, written contracts, and memoranda of oral agreements must be received by the board not later than the twenty-fifth day of the month, and if approved will become effective on the first day of the second calendar month following the date of filing.	All price postings must be received by the board not later than the tenth day of the month, and if approved will become effective on the first day of the calendar month following the date of filing.

~~((c) The board will allow up to an additional five days for revisions of filings to correct errors and omissions filed during the current price posting period. The board may in individual cases, for good cause shown, extend the filing date.~~

~~(d) When a price posting has been deposited in the United States mail addressed to the board, it will be considered filed or received on the date shown by the United States post office cancellation mark on the envelope, or on the date it was mailed if it is established to the satisfaction of the board that the actual mailing occurred on an earlier date.~~

~~(3) **Filing date exceptions**--Whenever a filing deadline falls on Saturday, Sunday, or a legal holiday, a price posting may be filed not later than midnight the next business day.~~

~~(4) **No changes from previous month**--If a beer supplier or distributor makes no changes in any items or prices listed in the last filed and approved price posting, the prices will remain in effect for each succeeding posting period until a revised price posting is filed and approved.~~

~~(5) **Temporary)) Products and price ((reductions)) lists**--If a beer supplier or distributor ((files price postings that)) lists selected items on which prices are temporarily reduced ((for one~~

~~posting period only)), these prices ((postings)) must clearly reflect all items((7)) and the selling price((, and the posting period for which the price reductions will be in effect. At the expiration of the posting period during which the reductions were in effect, the special price posting will become void and the last regularly filed and effective price posting will again become effective)). All products must be made available to all retail licensees to the extent it is reasonably practical to do so and all retail licensees must be given reasonable notice of all prices and price changes.~~

~~((+6+))~~ **(3) Distributor changes--**

(a) The following guidelines apply when a beer supplier makes a distributor change outside of the regular distributor appointment timelines ~~((outlined in subsection (2) of this rule:~~

~~(i))~~. The supplier must notify the board in writing that he/she wishes to change his/her current distributor and appoint a new distributor to be effective immediately.

~~((ii) The new distributor must agree to take the currently posted prices of the old distributor until the new distributor is able to post his/her own prices during the next regular posting period.~~

~~(iii) If a beer supplier has a territory or brand agreement with a distributor and wants to change a distributor appointed to a certain brand(s) or territory(ies), the board may allow the new distributor to assume the prior distributor's price postings for the brand and/or territory in order to avoid disruption of the market.)~~

(b) A beer supplier must notify the board if any of the contracts or agreements listed in this rule are revised or terminated by either party. ~~((The board may immediately authorize a price posting if a beer distributor assumes the wholesale price postings from the previously appointed distributor.~~

~~(c) Prices and other conditions of price postings in effect at the time of the distributor change may not be changed until subsequent filings are submitted to the board and become effective.~~

~~(+7+))~~ **(4) Price ((postings)) lists for new distributors--**When the board issues a new beer distributor license, the licensee ~~((may file an initial price posting and request that the price posting be placed into effect immediately. The board may grant this immediate approval if the price posting is in compliance with this rule and with all other applicable laws and rules)) must have a price list available.~~

~~((+8+))~~ **(5) Accommodation sales--**The provisions of this rule do not apply~~((, and filings are not required,))~~ when a beer distributor makes an accommodation sale to another beer distributor and this sale is made at a selling price that does not exceed the laid-in cost of the beer being sold. Accommodation sales may only be made when the distributor purchasing the beer is an appointed distributor of the supplier, when the distributor is an authorized purchaser of the brand and product being sold, and when the supplying distributor is appointed by the supplier.

NEW SECTION

WAC 314-28-005 Definitions. The following definition applies to distilleries.

"Domestic distillery" means any distillery licensed under RCW 66.24.140 and located in the state of Washington.



AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-44-005 Agent's license required--Eligible employers defined--Certain classes limited--Bona fide entity defined--Prohibited practices. (1) No person shall canvass for, solicit, receive or take orders for the purchase or sale of any liquor, or act as the agent for the purchase or sale of liquor, nor contact any licensees of the board in goodwill activities, unless such person is holder of an agent's license as provided in RCW 66.24.310, and this regulation.

(2) An agent's license may be issued to the accredited representative of ~~((a person, firm, or corporation holding a certificate of approval issued pursuant to RCW 66.24.270 or 66.24.206, a beer distributor's license, a brewer's license, a beer importer's license, a domestic winery license, a wine importer's license, or a wine distributor's license within the state of Washington, or the accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor, or foreign produced beer or wine. A person, firm, or corporation so qualified, is herein defined to be an eligible employer. Such employer))~~ an industry member. An industry member shall apply to the board for ~~((such))~~ an agent's license for ~~((his))~~ its accredited representatives on application forms prescribed and furnished by the board.

(3) Every ~~((firm which))~~ industry member who applies for an agent's license under the provisions of this section shall furnish the board with satisfactory proof ~~((that such firm is))~~ they are in fact a bona fide business entity.

(4) Only the licensed agent of ~~((a distiller, manufacturer, importer, or distributor of spirituous liquor))~~ an industry member may contact retail licensees in goodwill activities when such contacts pertain to spirituous liquor products.

(5) No ~~((distiller, manufacturer, importer, distributor of liquor, or agent thereof,))~~ industry member shall solicit ~~((either in person, by mail or otherwise))~~ in any way, any liquor vendor or employee of the board, except the purchasing agent ~~((thereof))~~, for the purpose or with the intent of furthering the sale of a particular brand or brands of merchandise as against another brand or brands of merchandise.

(6) No ~~((distiller, manufacturer, importer, distributor of liquor, or agent thereof,))~~ industry member shall visit any state liquor store or agency for the purpose of exerting influence on employees for sales promotion or to secure information regarding inventory or any other matter relating to sales. They may deliver, or have delivered, and assemble where required, consumer offers and display material that have been approved by the board ~~((or its~~

designee)). Violation of this section will result in a penalty against all company items, which in appropriate cases could mean a partial or total delisting of those items.

(7) No (~~distiller, manufacturer, importer, or distributor of liquor, or agent thereof,~~) industry member shall give or offer to any employee of the board any entertainment, gratuity or other consideration for the purpose of inducing or promoting the sale of merchandise.

(8) No (~~distiller, manufacturer, importer, or distributor, or agent thereof,~~) industry member shall allow, pay or rebate, directly or indirectly, any cash or merchandise to any (~~retail licensee~~) retailer to induce or promote the sale of liquor, including the payment of tips to such (~~licensees~~) retailers or their employees and the purchasing of drinks "for the house." Such persons, firms and licensees must operate in conformity with WAC 314-12-140, RCW 66.28.010, 66.28.040, and other applicable laws and rules.

(9) Upon the infraction of any law or regulation by any (~~distiller, manufacturer, importer, distributor, or agent~~) industry member, the board may, in addition to imposing other penalties as prescribed by law, remove such firm's products from the sales list of the board, and/or prohibit the sale of any brand or brands of beer or wine involved as provided in RCW 66.28.030.

(10) Upon the termination of the employment of a licensed agent, his employer shall immediately notify the board and with such notice return to the board the agent's license issued to such person.

AMENDATORY SECTION (Amending WSR 94-14-023, filed 6/27/94, effective 7/28/94)

WAC 314-44-015 Agent license limited authority. (1) Agents licensed under the authority of RCW 66.24.310 may perform goodwill activities as authorized by the board.

(2) Agents licensed under RCW 66.24.310 are prohibited from using their agent's license as a means to represent their being an employee of the board for the purpose of:

(a) Obtaining admission to liquor licensed establishments (~~(7)~~);

(b) Misleading anyone into thinking they are a liquor enforcement officer; or

(c) Checking identification of patrons.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-52-080 Novelty advertising. (1) Novelty branded promotional advertising items (~~shall~~) which are of nominal value, singly or in the aggregate, may be provided to retailers by industry members. Singly or in the aggregate is per licensed location. Such items include, but (~~shall~~) are not (~~be~~) limited to(~~7~~): Trays, lighters, blotters, post cards, pencils, coasters, menu cards, meal checks, napkins, clocks, (~~wearing apparel~~) mugs, glasses, (~~knives, lamp shades, or similar items on which the logo, liquor brand name or name of a manufacturer of an alcoholic beverage has been imprinted.~~

~~(2) No liquor manufacturer, distributor, or importer, or employee thereof, shall provide without charge, directly or indirectly, any novelty advertising items to any retail licensee; nor shall any retail licensee, or employee thereof, accept without charge any liquor novelty advertising items directly or indirectly, from any manufacturer, distributor, or importer, or employee thereof.~~

~~(3) A manufacturer, distributor, or importer,)) bottle or can openers, corkscrews, matches, printed recipes, shirts, hats, visors, and other similar items. Branded promotional items:~~

~~(a) Must be used exclusively by the retailer or its employees in a manner consistent with its license;~~

~~(b) Must bear imprinted advertising matter of the industry member only;~~

~~(c) May only be provided by industry members to retailers and their employees;~~

~~(d) May not be provided by or through retailers or their employees to retail customers.~~

~~(2) An industry member is not obligated to provide any branded promotional items, and a retailer may not require an industry member to provide such branded promotional items as a condition for selling any alcohol to the retailer.~~

~~(3) Any industry member, retailer, or other person asserting the provision of branded promotional items has resulted or is more likely than not to result in undue influence or an adverse impact on public health and safety, or is otherwise inconsistent with the criteria in subsection (1) of this section, may file a complaint with the board.~~

~~Upon receipt of a complaint the board may conduct an investigation as it deems appropriate in the circumstances.~~

~~(a) The board may issue an administrative violation notice to the industry member, to the retailer, or both.~~

~~(b) The recipient of the administrative violation notice may request a hearing under chapter 34.05 RCW.~~

(4) An industry member or their employee ((thereof)), may sell, and a retail licensee may purchase, for use, resale, or distribution on the licensed premises any novelty advertising items. The price ((thereof)) shall be not less than the ((manufacturer's, importer's, or distributor's)) industry member's cost of acquisition. In no event shall credit be extended to any retail licensee. The purchase by retail licensees of such items shall be supported by invoices or signed vouchers which shall be preserved for ((two)) three years on the licensed premises and available for immediate inspection by board enforcement officers.

~~((4) A manufacturer, importer, or distributor))~~ (5) An industry member who sells novelty advertising items to retail licensees shall keep on file the original((s)) or ((copies)) copy of all sales slips, invoices, and other memoranda covering all purchases of novelty advertising items ((from)) by the ((supplier or manufacturer of such items)) industry member and shall also keep on file a copy of all invoices, sales slips, or memoranda reflecting the sales to retail licensees or other disbursement of all novelty advertising items. Such records shall be maintained in a manner satisfactory to the board and must be preserved in the office of the ((manufacturer, importer, or distributor)) industry member for a period of at least ((two)) three years after each purchase or sale. Any manufacturer which does not maintain a principal office within the state shall, when requested, furnish the above required records at a designated location within the state for review by the board.

AMENDATORY SECTION (Amending WSR 04-24-097, filed 12/1/04, effective 1/1/05)

WAC 314-24-001 Definitions. ~~((+))~~ Per RCW 66.04.010(2), an "authorized representative" means a person who:

~~((a))~~ (1) Is required to have a federal basic permit issued by the alcohol and tobacco tax and trade bureau;

~~((b))~~ (2) Has its business located in the United States outside of the state of Washington;

~~((c))~~ (3) Acquires ownership of wine that is produced anywhere outside Washington by a winery which does not ~~((hold a certificate of approval issued by the board,))~~ distribute those brands for transportation into and resale in the state of Washington~~((;))~~;

~~((d))~~ (4) Is appointed by the winery referenced in ~~((c))~~ subsection (3) of this ~~((subsection))~~ section as its ~~((exclusive))~~ authorized representative for marketing and selling its products within the United States or within Washington state, in accordance with a written agreement between the authorized representative and the winery. ~~((The board may waive the requirement for the written agreement of exclusivity in situations consistent with the normal marketing practices of certain products, such as classified growths.))~~

AMENDATORY SECTION (Amending Order 184, Resolution No. 193, filed 5/13/86)

WAC 314-24-070 Domestic wineries--Purchase and use of bulk wines, brandy or wine spirits--Import permit required--Records--Wine returned to Washington. (1) Domestic wineries may purchase and receive under federal bond from any holder of a domestic winery license, holder of the fruit and/or wine distillery license provided in section 23-D of the Washington State Liquor Act (RCW 66.24.140), or out-of-state holder of a federal winery or fruit distillery basic permit, bulk wine, brandy or bulk wine spirits manufactured or produced by such holder, and use the same in the manufacture or production of wines: Provided, That every domestic winery which imports wine, brandy or wine spirits manufactured outside the state of Washington for use as authorized in this section must first be in possession of a permit issued by the board, in accordance with RCW 66.20.010(5) of the Washington State Liquor Act. Applications for such permits must be submitted to the board in writing. Such permits expire at the end of the board's

fiscal year, and are subject to renewal at that time upon written request and remittance of said annual fee. Wine manufactured or produced from one kind of fruit or berry may not receive wine, brandy or wine spirits manufactured or produced from another kind of fruit or berry. Such brandy or wine spirits so purchased shall be used exclusively and only for the purpose of adding wine spirits to wines. In those cases where the holder of a domestic winery license shall also hold such fruit and/or wine distillery license, then, and in such cases, such domestic winery may use brandy or wine spirits manufactured or produced under such distillery license as a wine spirits addition in the manufacture or production of wine by such holder of the domestic winery license.

(2) Any domestic winery using wine, brandy or wine spirits as provided in subsection (1) of this section, shall make and file with the board, not later than the tenth day of each month upon forms prescribed and furnished by the board, a report showing all transactions of such domestic winery in the purchase and/or use of wine, brandy or wine spirits as provided in said subsection (1), and shall retain one copy of such report in its own files, and shall keep and preserve for a period of not less than two years any bills of lading or other documents supporting such report. One copy of the bill of lading covering such sale and shipment to a domestic winery is to be forwarded to the board by the shipping winery or fruit distillery, at the time of such shipment.

(3) A domestic winery may ship Washington wine out of and may return such wine to Washington state for ultimate sale. The following conditions apply:

(a) The wine is produced in Washington by a licensed winery.

(b) The export shall be from the licensed winery and returned to the same entity.

(c) The returned wine must not have been altered in any way, with the exception of sparkling wine.

(d) A domestic winery returning previously exported Washington wine must comply with tax collection and tracking requirements initiated by the liquor control board.

(e) A domestic winery must keep on file for audit purposes clear source records (shipping documents, etc.) with monthly reporting documents. Records need to indicate what wine was returned to the state that was previously reported as an export (including number of cases and gallons).

NEW SECTION

WAC 314-24-107 Winery warehouse license. (1) A licensee holding a domestic winery license under RCW 66.24.170 and acting as a distributor of its own products may apply for a winery warehouse license. There is no fee for this license.

(2) A winery warehouse is a premises located off the winery

premises that is used for the storage of bulk wine and the distribution of the winery's own products. Storage of bulk wine may require a federal registry number.

(3) No part of the production process may take place at the winery warehouse premises.

(4) There may be no retail sales from the winery warehouse premises.

(5) The winery warehouse must be approved by the board under RCW 66.24.010 and the number of warehouses off the winery premises may not exceed one.

AMENDATORY SECTION (Amending WSR 07-02-076, filed 12/29/06, effective 1/29/07)

WAC 314-24-150 Wine records--Preservation. (1) Every domestic winery, wine distributor, wine certificate of approval holder, wine shipper permit holder, and wine importer shall keep wine accounts separate from other accounts, and maintain proper records in a form approved by the board showing all transactions in wine.

(2) Every domestic winery, wine distributor, and wine importer, shall, in the case of sales of wine within the state, keep and preserve all invoices, bills of lading, sales slips, and other evidence of sale, in the office of the domestic winery, wine distributor or wine importer for at least (~~two~~) three years after each sale.

(3) Every domestic winery, wine distributor, and wine importer, shall, in the case of wine exported from the state, keep and preserve all bills of lading and other evidence of shipment in the office of the domestic winery, wine distributor, or wine importer for at least two years after each shipment.

(4) Both the shipping and receiving licensees and permittees, as the case may be, shall keep and preserve all invoices, bills of lading, sales slips, and other evidence of sale, transfer or shipment in their respective offices for at least (~~two~~) three years after each sale, transfer or shipment.

(5) Licensees and permittees may maintain microfilm records containing reproductions (including microfiche) of any record, document, or report if first approved by the board. Request for approval shall be directed to the financial division of the Washington state liquor control board and must include the following information:

(a) Records proposed to be reproduced.

(b) Reproduction process.

(c) Manner of preserving the reproduction.

(d) Facilities provided for examining or viewing such reproduction.

If the request is approved, the licensee or permittee shall

provide for the examining, viewing, and reproduction of such records the same as if they were the original records.

(6) If the licensee or permittee keeps records within an automated data processing (ADP) system, the system must include a method for producing legible records that will provide the same information required of that type of record within this section. The ADP system is acceptable if it complies with the following guidelines:

(a) Provides an audit trail so that details (invoices and vouchers) underlying the summary accounting data may be identified and made available upon request.

(b) Provides the opportunity to trace any transaction back to the original source or forward to a final total. If printouts of transactions are not made when they are processed, the system must have the ability to reconstruct these transactions.

(c) Has available a full description of the ADP portion of the accounting system. This should show the applications being performed, the procedures employed in each application, and the controls used to ensure accurate and reliable processing.

(7) The provisions contained in subsections (5) and (6) of this section do not eliminate the requirement to maintain source documents, but they do allow the source documents to be maintained in some other location.

AMENDATORY SECTION (Amending WSR 07-02-076, filed 12/29/06, effective 1/29/07)

WAC 314-24-190 Wine suppliers and distributors ((price postings)). RCW 66.28.180 requires wine distributors and suppliers to ((file price postings with the board)) maintain all current and prior price lists at its liquor licensed location.

(1) **Definitions--**For the purposes of this chapter:

(a) A (("wine price posting" or "price posting")) "price list" means a declaration of the prices ((of wine sold from a supplier to a distributor or from a distributor to a retailer, in effect as filed with the liquor control board either electronically or hard copy, under the provisions of RCW 66.28.180 and Title 314 WAC)) at which any and all brands of wine and any and all packages within a brand are to be sold by the person maintaining the list. Distributors must maintain a price list showing all such prices for sales to retailers. Each supplier functioning as a distributor must maintain a price list showing all such prices for sales to retailers as well as showing such prices for sales to distributors. The price list will contain the wholesale prices at which any and all brands of wine sold by the supplier or distributor shall be available to retailers within the state.

(b) A "wine supplier" means a domestic winery, certificate of approval holder, wine importer, wine distributor acting as the

first United States importer, or a distributor selling wine to another distributor.

(c) A "wine distributor" means a distributor selling to a retailer, a domestic winery acting as a distributor, or a certificate of approval holder with a direct shipping to Washington retailer endorsement selling wine of its own production to a retailer.

(2) ~~((Filing deadlines.~~

(a) Wine supplier filing deadlines	(b) Wine distributor filing deadlines
All price postings, distributor appointments, written contracts, and memoranda of oral agreements must be received by the board not later than the twenty-fifth day of the month, and if approved will become effective on the first day of the second calendar month following the date of filing.	All price postings must be received by the board not later than the tenth day of the month, and if approved will become effective on the first day of the calendar month following the date of filing.

~~(c) The board will allow up to an additional five days for revisions of filings to correct errors and omissions filed during the current posting period. The board may in individual cases, for good cause shown, extend the filing date.~~

~~(d) When a price posting has been deposited in the United States mail addressed to the board, it will be considered filed or received on the date shown by the United States post office cancellation mark on the envelope, or on the date it was mailed if it is established to the satisfaction of the board that the actual mailing occurred on an earlier date.~~

~~(3) **Filing date exception**--Whenever a filing deadline falls on Saturday, Sunday, or a legal holiday, a price posting may be filed not later than the close of business the next business day.~~

~~(4) **No changes from previous month**--If a wine supplier or distributor makes no changes in any items or prices listed in the last filed and approved price posting, the prices will remain in effect for each succeeding posting period until a revised price posting is filed and approved.~~

~~(5) **Temporary) Products and price ((reductions)) lists**--If a wine supplier or distributor ((files price postings that)) lists selected items on which prices are temporarily reduced ((for one posting period only)), ((these)) the prices ((postings)) must clearly reflect all items((7)) and the selling price((, and the posting period for which the price reductions will be in effect. At the expiration of the posting period during which the reductions were in effect, the special price posting will become void and the last regularly filed and effective price posting will again become effective)). All products must be made available to all retail licensees to the extent it is reasonably practical to do so and all~~

retail licensees must be given reasonable notice of all prices and price changes.

~~((6))~~ **(3) Distributor changes--**

(a) The following guidelines apply when a wine supplier makes a distributor change outside of the regular distributor appointment timelines ~~((outlined in subsection (2) of this rule:~~

~~(i))~~. The supplier must notify the board in writing that he/she wishes to change his/her current distributor and appoint a new distributor to be effective immediately.

~~((ii) The new distributor must agree to take the currently posted prices of the old distributor until the new distributor is able to post his/her own prices during the next regular posting period.~~

~~(iii) If a wine supplier has a territory or brand agreement with a distributor and wants to change a distributor appointed to a certain brand(s) or territory(ies), the board may allow the new distributor to assume the prior distributor's price postings for the brand and/or territory in order to avoid disruption of the market.)~~

(b) A wine supplier must notify the board if any of the contracts or agreements listed in this rule are revised or terminated by either party. ~~((The board may immediately authorize a price posting if a wine distributor assumes the wholesale price postings from the previously appointed distributor.~~

~~(c) Prices and other conditions of price postings in effect at the time of the distributor change may not be changed until subsequent filings are submitted to the board and become effective.~~

~~(7))~~ **(4) Price ((postings)) lists for new distributors--**When the board issues a new wine distributor license, the licensee ~~((may file an initial price posting and request that the price posting be placed into effect immediately. The board may grant this immediate approval if the price posting is in compliance with this rule and with all other applicable laws and rules))~~ must have a price list available.

~~((8))~~ **(5) Accommodation sales--**The provisions of this rule do not apply ~~((, and filings are not required,))~~ when a wine distributor makes an accommodation sale to another wine distributor and this sale is made at a selling price that does not exceed the laid-in cost of the wine being sold. Accommodation sales may only be made when the distributor purchasing the wine is an appointed distributor of the supplier, when the distributor is an authorized purchaser of the brand and product being sold, and when the supplying distributor is appointed by the supplier.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-24-210 Return of wine by retailer--Replacement--Conditions. No wine shall be returned by any retail licensee to any wine distributor except as herein provided.

(1) Wine which is not in a salable condition may be returned by a retail licensee to the wine distributor from whom purchased, provided it is immediately replaced by the wine distributor with an identical quantity, type and brand of wine: Provided, That if the brand of wine is not presently in the wine distributor's stock and is not available to the distributor in the immediate future, a cash refund may be made to the retail licensee upon the approval of the board first being obtained.

(a) Every wine distributor shall maintain on the licensed premises for a period of (~~two~~) three years complete records of all refunds and exchanges made under this section including an inventory of unsalable wine returned to such distributor by any retail licensee.

(b) Such unsalable wine which requires reconditioning or destruction shall be returned by the wine distributor to the domestic winery which manufactured or produced the same, or to the importer who imported such wine. When wine which has been returned to a domestic winery by any person for reconditioning or destruction has been assembled at the winery, a complete inventory in duplicate of unsalable wine shall be filed with the board by the winery with a request that inspection be made of the returned wine before the reconditioning process or destruction is started. When wine has been returned by the distributor to the importer who imported such wine, a complete inventory of said wine shall be filed in duplicate with the board by the importer with a request that inspection be made of the returned wine before the wine is destroyed or returned to the out-of-state manufacturer.

(c) Wine which is not in a salable condition and has been returned to a domestic winery or importer by a distributor may be replaced by the supplier with an identical quantity, type, and brand of wine: Provided, That if the brand of wine is not presently in the winery or importer's stock and is not available to the supplier in the immediate future, a cash refund or credit may be made to the distributor by the supplier. Credit extended for the return of product should be noted on a separate document from the original invoice. Except as provided herein, no other adjustment, by way of a cash refund or otherwise, shall be made by the winery or wine distributor.

(2) Wine may be returned by a retail licensee or by a governmental agency who has seized the same to the wine distributor selling such wine in the event the retailer goes out of the business of selling wine at retail or has their license changed to a wine restricted license, and in such case a cash refund may be made upon return of the wine, provided that consent of the board is first had and obtained.

(3) Wine different from that ordered which has been delivered

in error to a retail licensee may be returned to a wine distributor and either replaced with that wine which was ordered or a cash refund may be made upon the approval of the board first being obtained: Provided, That the error in delivery shall be discovered and corrected within eight days of the date the delivery was made.

(4) A distributor may return salable wine to a Washington winery provided the winery reimburses the distributor for the cost of the wine plus the wine tax which was paid by the distributor. The winery will then put any wine returned from a distributor into their tax paid area at the winery.

AMENDATORY SECTION (Amending WSR 01-06-015, filed 2/26/01, effective 3/29/01)

WAC 314-13-015 What method of payment can a retailer use to purchase beer or wine from (~~a manufacturer or distributor~~) an industry member? Per RCW 66.28.010(1), a retail licensee must pay cash for beer and wine prior to or at the time of delivery by (~~a distributor, brewery, or winery~~) an industry member. The board will recognize the following forms of payment as cash payment for the purposes of this title, under the conditions outlined in this rule and in WAC 314-13-020.

(1) **Checks**, under the provisions of WAC 314-13-020.

(2) **Credit/debit cards**, under the following provisions:

(a) The credit or debit card transaction agreement must be voluntary on the part of both the retailer and the (~~manufacturer, importer, or distributor~~) industry member, and there must be no discrimination for nonparticipation in credit or debit card transactions.

(b) A sale must be initiated by an irrevocable invoice or sale order before or at the time of delivery.

(c) Both parties must bear their respective banking costs or other costs associated with the credit or debit card service.

(d) Both parties must maintain records of transactions and have the records readily available for board review.

(e) The credit or debit card charge must be initiated by the (~~manufacturer, importer, or distributor~~) industry member no later than the first business day following delivery.

(3) **Electronic funds transfer (EFT)**, under the following provisions:

(a) The EFT agreement must be voluntary on the part of both the retailer and the (~~manufacturer, importer, or distributor~~) industry member, and there must be no discrimination for nonparticipation in EFT.

(b) Prior to any EFT transaction, the retail licensee must enter into a written agreement with the (~~manufacturer, importer, or distributor~~) industry member specifying the terms and conditions for EFT as payment for alcohol or nonalcohol beverages.

(c) A sale must be initiated by an irrevocable invoice or sale order before or at the time of delivery.

(d) Both parties must bear their respective banking costs or other costs associated with EFT service.

(e) Both parties must maintain records of transactions and have the records readily available for board review.

(f) The electronic funds transfer must be initiated by the (~~manufacturer, importer, or distributor~~) retailer or industry member no later than the first business day following delivery and must be paid as promptly as is reasonably practical, and in no

event later than five business days following delivery. Any attempt by a retailer to delay payment on EFT transactions for any period of time beyond the minimum as is reasonably practical will be considered an unlawful attempt to purchase products on credit.

(4) **Prepaid accounts.** Both parties must keep accurate accounting records of prepaid accounts to ensure a cash deposit is not overextended, which is considered an extension of credit.

AMENDATORY SECTION (Amending WSR 01-06-015, filed 2/26/01, effective 3/29/01)

WAC 314-13-020 What if a check, EFT transaction, or credit/debit card transaction is reported as having nonsufficient funds (NSF)? Any transaction reported as having nonsufficient funds (NSF) will be considered an extension of credit, in violation of RCW 66.28.010(1). If a transaction is reported as NSF:

(1) The retailer must pay the full amount of the transaction to the ((~~manufacturer, importer, or distributor~~)) industry member by 3 p.m. on the first business day following receipt of the NSF report.

(2) If the retailer does not make payment by this time, the ((~~manufacturer, importer, or distributor~~)) industry member must report the NSF transaction to the their local board enforcement office by 5 p.m. the next business day following receipt of the NSF report.

(3) The local board enforcement office will contact the retailer, who will have until 3 p.m. the next business day to pay the NSF transaction. If the retailer does not pay the ((~~manufacturer, importer, or distributor~~)) industry member by this time, the board will issue an administrative violation notice to the retailer.

(4) Until the NSF transaction is paid:

(a) The ((~~manufacturer, importer, or distributor~~)) industry member who received the NSF transaction will not deliver any beer or wine to the retailer; and

(b) It is the responsibility of the retailer to not receive any beer or wine from any ((~~manufacturer, importer, or distributor~~)) industry member.

AMENDATORY SECTION (Amending WSR 01-06-015, filed 2/26/01, effective 3/29/01)

WAC 314-13-025 How do retail licensees purchase spirituous liquor at a discount from the board? (1) In order to acquire

spirituous liquor for resale, the following licensees must purchase spirituous liquor from the board at a fifteen percent discount:

- (a) Spirits, beer, and wine restaurants;
- (b) Spirits, beer, and wine private clubs; (~~and~~)
- (c) Spirits, beer, and wine nightclubs; and
- (d) Sports/entertainment facilities.

(2) When purchasing spirituous liquor, the licensee must present the tear-off portion of the business' master license that shows its liquor endorsement.

(3) This discounted spirituous liquor may only be used for resale on the licensed premises (see WAC 314-70-010 for instructions on when a business discontinues).

(a) Possession of discounted liquor off of the licensed premises will be *prima facie* evidence of a violation of this rule, unless:

(i) The liquor is en route from the point of purchase to the licensed premises(~~7~~)1 or

(ii) The liquor is en route from the licensed premises of a beer and/or wine restaurant or a spirits, beer, and wine restaurant with a caterer's endorsement to an approved event being catered by the licensee.

(b) Any spirituous liquor on the licensed premises must be liquor purchased at a discount from the board, except:

(i) Under the authority of a banquet permit, see chapter 314-18 WAC; or

(ii) Liquor bottles if they are used as part of the decor, and any bottles containing liquor are locked in a display case and are not for sale.





**Washington State
Liquor Control Board**

Date: November 4, 2009

To: Sharon Foster, Board Chair
Ruthann Kurose, Board Member

From: Karen McCall, Agency Rules Coordinator

Copy: Pat Kohler, Administrative Director
Rick Garza, Deputy Administrator
Pat Parmer, Chief, Enforcement and Education

Subject: **Approval for filing proposed rules (CR 102) to implement 2009 legislation regarding cigarette and tobacco license administration**

At the Board meeting on November 4, 2009, the rules coordinator requests that the Liquor Control Board approve the filing of notice of proposed rule making (CR 102) regarding the implementation SHB 1435, passed in the 2009 legislative session. An issue paper on the proposed rules is attached.

Process

The Rules Coordinator requests approval to file the notice of proposed rulemaking (CR 102) for the rule making described above. If approved for filing, the tentative timeline for the rule making process is outlined below:

November 4, 2009	Board is asked to approve filing the proposed rule making (CR 102 filing). LCB sends notice to rules distribution list.
November 18, 2009	Code Reviser publishes notice,
December 9, 2009	Public hearing held
December 9, 2009	End of written comment period
December 16, 2009	Board is asked to adopt rules
December 16, 2009	Agency sends notice to those who commented both at the public hearing and in writing.
December 16, 2009	Agency files adopted rules with the Code Reviser
January 17, 2010	Rules are effective.

_____ Approve

_____ Disapprove

Sharon Foster, Chair

Date

_____ Approve

_____ Disapprove

Ruthann Kurose, Board Member Date

Attachment: Issue Paper

Washington State Liquor Control Board

Issue Paper

Rule Making to Implement Legislation for Cigarette and Tobacco Licensing

Date: November 4, 2009

Presented by: Karen McCall, Agency Rules Coordinator

Description of the Issue

The purpose of this issue paper is to request approval from the Board to file proposed rules (CR 102) to implement SHB 1435 – **Cigarette and Tobacco Licensing**.

Why is rule making necessary?

SHB 1435 passed in the 2009 legislative session, gives the Liquor Control Board the administrative authority to approve, deny, suspend, or revoke retail, wholesale, or distributor cigarette and tobacco products licenses. Rules are needed to further clarify the application process and requirements.

What changes are being proposed?

New Chapter 314-33 Cigarette and Tobacco Products License Process

New Section 314-33-001 Cigarette and tobacco products license qualifications and application process. Explains the requirement of a criminal history background check and explains the application process to obtain a cigarette or tobacco products license.

New Section 314-33-005 Reasons the board may deny a cigarette or tobacco products license application. Lists the reasons the board may deny the license.

New Section 314-33-020 What criminal history might prevent an applicant from receiving or keeping a cigarette or tobacco products license? Includes a matrix that includes a point value for different types of criminal convictions. Explains the board's scoring of criminal convictions and how a decision is made when criminal history is involved.

New Section 314-33-025 What liquor and cigarette and tobacco products law or rule violation history might prevent an applicant from receiving a cigarette or tobacco products license? Explains how the board uses violation history in determining licensure.

New Section 314-33-030 What is the process if the board denies a cigarette or tobacco products license application? Explains the options for the applicant if their application is denied.

New Chapter 314-34 Cigarette and Tobacco Products Violations

New Section 314-34-001 Purpose of chapter. Explains what is covered in this chapter.

New Section 314-34-003 Authority—Suspension or revocation of wholesale and retail cigarette and tobacco products licenses. Explains the board's authority to suspend or revoke a wholesale or retail cigarette and tobacco products license.

New Section 314-34-005 What are the procedure for notifying a licensee of an alleged violation of a cigarette or tobacco products statute or regulation? Explains the process the enforcement officer follows in the case of an alleged violation.

New Section 314-34-010 What options does a licensee have once they receive a notice of administrative violation? Explains the process the licensee follows if they want to request a settlement conference or an administrative hearing.

New Section 314-34-015 What are the penalties if a cigarette and/or tobacco products license holder violates a cigarette or tobacco products law or rule? Lists the penalties for the first, second, third and consecutive offenses.

New Section 314-34-020 Information about cigarette and/or tobacco products license suspensions. Explains the process followed for license suspensions.

New Section 314-23-030 Cigarette and other tobacco products violations. Lists the violation types for cigarette and other tobacco products.

Attachments: Proposed Rules

Chapter 314-33 WAC

CIGARETTE AND TOBACCO PRODUCTS LICENSE PROCESS

NEW SECTION

WAC 314-33-001 Cigarette and tobacco products license qualifications and application process. (1) Each cigarette and tobacco products license application is unique and investigated individually. The board may inquire and request documents regarding matters in connection with the cigarette and tobacco products license application. Following is a general outline of the cigarette and tobacco products license application process:

(a) The board may require proof concerning the applicant's identity.

(b) The board may conduct an investigation of the applicants' criminal history and administrative violation history, per RCW 82.24.510 and 82.26.150.

(2) Failure to respond to the board's requests for information within the timeline provided may cause the application to be denied.

NEW SECTION

WAC 314-33-005 Reasons the board may deny a cigarette or tobacco products license application. The following is a list of reasons the board may deny a cigarette or tobacco products license application:

(1) Failure to meet qualifications or requirements for the specific cigarette or tobacco products license, as outlined in this chapter and chapters 82.24 and 82.26 RCW.

(2) Failure to submit information or documentation requested by the board.

(3) Misrepresentation of fact by any applicant.

(4) Willfully withholding information.

(5) Submitting false or misleading information.

(6) The applicant has failed to submit payments of the taxes imposed under chapter 82.24 or 82.26 RCW along with reports and returns to the department of revenue as required.

(7) If the applicant is a corporation and the corporation is not currently registered with the secretary of state.

(8) The applicant is currently the subject of an outstanding felony arrest warrant.

(9) The existence of disqualifying criminal history standards outlined in WAC 314-33-020.

(10) The existence of disqualifying liquor and cigarette and tobacco products law or rule violation history standards outlined in WAC 314-33-025.

NEW SECTION

WAC 314-33-020 What criminal history might prevent an applicant from receiving or keeping a cigarette or tobacco products license?

(1) For the purpose of reviewing an application for a license and for considering the denial, suspension, or revocation of any such license, the board may consider any prior criminal conduct of the applicant and criminal history record within the previous five years.

(2) When the board processes a criminal history check on an applicant, it uses a point system to determine a person's qualification for a license. The board will not normally issue a cigarette and tobacco products license to an applicant who has accumulated eight or more points as indicated below:

Description	Time period during which points will be assigned from date of conviction	Points assigned
Felony conviction	Five years	12 points
Gross misdemeanor conviction for violation of chapters 82.24 and 82.26 RCW	Five years	12 points
Other gross misdemeanor conviction	Three years	5 points
Misdemeanor conviction	Three years	4 points
Nondisclosure of any of the above	n/a	4 points each

(3) If a case is pending for an alleged offense that would earn eight or more points, the board will hold the application for the disposition of the case. If the disposition is not settled

within ninety days, the board may administratively close the application.

NEW SECTION

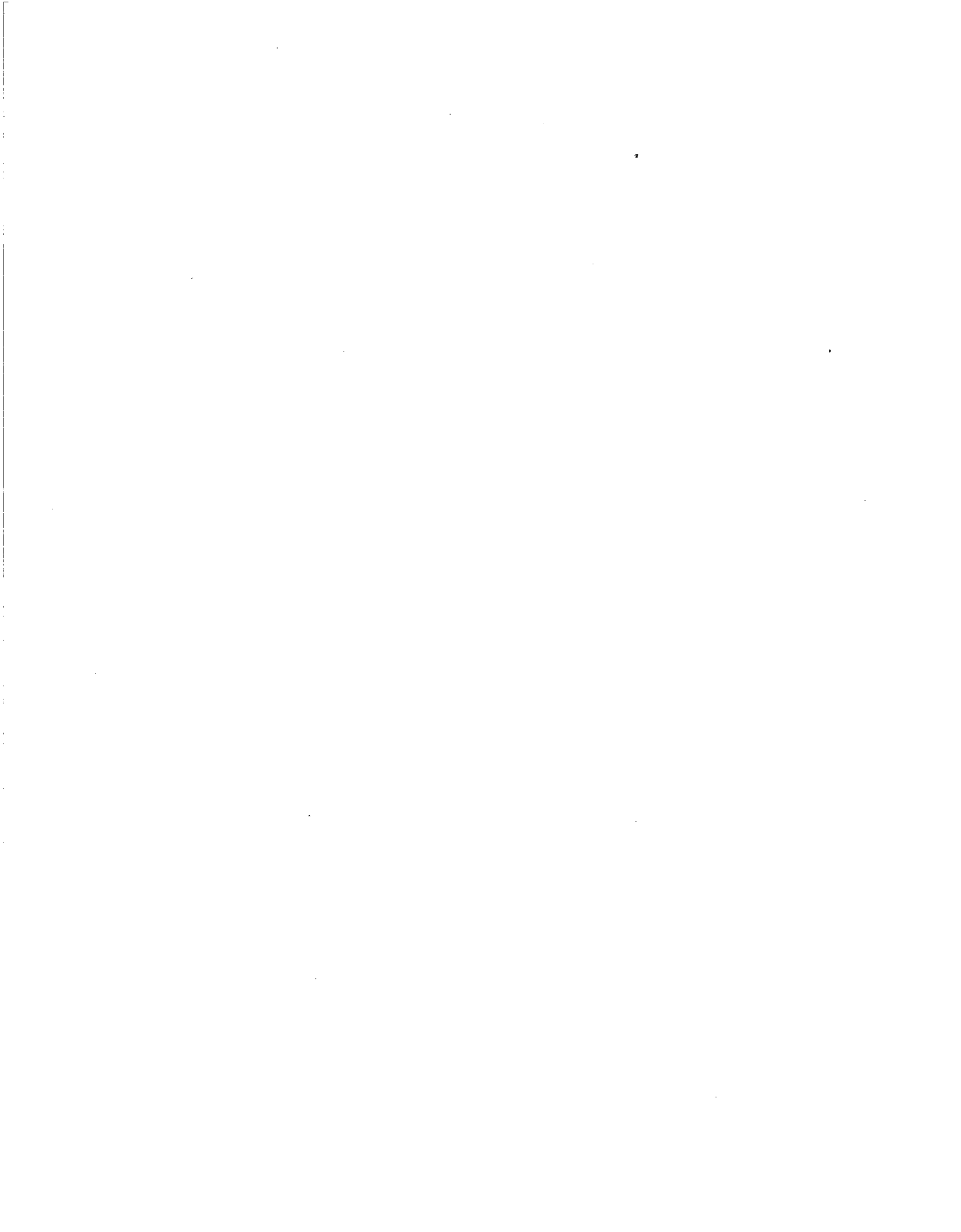
WAC 314-33-025 What liquor and cigarette and tobacco products law or rule violation history might prevent an applicant from receiving a cigarette or tobacco products license? The board will conduct an investigation of all applicants' liquor and cigarette and tobacco products law and/or rule administrative violation history. The board will not normally issue a cigarette and tobacco products license to a person, or to an entity that has the following violation history or to any person that has demonstrated a pattern of disregard for laws or rules: Four or more violations within the last two years of the date the application is received by the board.

NEW SECTION

WAC 314-33-030 What is the process if the board denies a cigarette or tobacco products license application? If the board denies a cigarette or tobacco products license application, the applicant may:

(1) Request an administrative hearing per chapter 34.05 RCW;
or

(2) Reapply for the license no sooner than one year from the original denial date.



Chapter 314-34 WAC

CIGARETTE AND TOBACCO PRODUCTS VIOLATIONS

NEW SECTION

WAC 314-34-001 Purpose of chapter. The purpose of this chapter is to outline what a cigarette and/or tobacco products licensee can expect if a licensee receives an administrative violation notice alleging a violation of a statute under chapters 82.24 and 82.26 RCW, or under chapter 314-33 WAC.

NEW SECTION

WAC 314-34-003 Authority--Suspension or revocation of wholesale and retail cigarette and tobacco products licenses. (1) The board has full power and authority to suspend or revoke the license of any cigarette wholesale or retail licensee and tobacco products distributor or retail licensee upon sufficient showing that the license holder has violated the provisions of chapters 82.24 and 82.26 RCW or chapter 314-33 WAC.

(2) Any person possessing both a cigarette license and a tobacco products license is subject to suspension and revocation of both licenses for violation of either chapter 82.24 or 82.26 RCW or this chapter. For example, if a person has both a cigarette license and a tobacco products license, revocation of the tobacco products license will also result in revocation of the cigarette license.

(3) A person whose license has been suspended or revoked must not sell or permit the sale of tobacco products or cigarettes during the period of the suspension or revocation.

(4) For the purposes of this rule, "cigarettes" has the same meaning as in RCW 82.24.010 and "tobacco products" has the same meaning as in RCW 82.26.010.

(5) Any person whose license has been revoked must wait one year following the date of revocation before requesting a hearing for reinstatement. Reinstatement hearings are held pursuant to chapter 34.05 RCW.

NEW SECTION

WAC 314-34-005 What are the procedures for notifying a licensee of an alleged violation of a cigarette or tobacco products statute or regulation? When an enforcement officer believes that a cigarette and/or tobacco products licensee has violated a board statute or regulation, the officer may prepare an administrative violation notice (AVN) and mail or deliver the notice to the licensee or the licensee's agent. The AVN will include:

- (1) A brief narrative description of the violation(s) the officer is charging;
- (2) The date(s) of the violation(s);
- (3) A copy of the law(s) and/or regulation(s) allegedly violated;
- (4) An outline of the licensee's options as outlined in WAC 314-34-010; and
- (5) The penalty.

NEW SECTION

WAC 314-34-010 What options does a licensee have once they receive a notice of administrative violation? (1) A licensee has twenty days from receipt of the notice to:

- (a) Accept the recommended penalty; or
- (b) Request a settlement conference in writing; or
- (c) Request an administrative hearing in writing. A response must be submitted on a form provided by the board.

(2) **What happens if a licensee does not respond to the administrative violation notice within twenty days?** If a licensee does not respond to the administrative violation notice within twenty days, the recommended penalty will go into effect.

(3) **What are the procedures when a licensee requests a settlement conference?**

(a) If the licensee requests a settlement conference, the hearing examiner or captain will contact the licensee or permit holder to discuss the violation.

(b) Both the licensee and the hearing examiner or captain will discuss the circumstances surrounding the charge, the recommended penalty, and any aggravating or mitigating factors.

(c) If a compromise is reached, the hearing examiner or captain will prepare a compromise settlement agreement. The hearing examiner or captain will forward the compromise settlement agreement, authorized by both parties, to the board for approval.

(i) If the board approves the compromise, a copy of the signed settlement agreement will be sent to the licensee and will become part of the licensing history.

(ii) If the board does not approve the compromise, the licensee will be notified of the decision. The licensee will be

given the option to renegotiate with the hearings examiner or captain, of accepting the originally recommended penalty, or of requesting an administrative hearing on the charges.

(d) If the licensee and the hearing examiner or captain cannot reach agreement on a settlement proposal, the licensee may accept the originally recommended penalty, or the hearing examiner or captain will forward a request for an administrative hearing to the board's hearings coordinator.

NEW SECTION

WAC 314-34-015 What are the penalties if a cigarette and/or tobacco products license holder violates a cigarette or tobacco products law or rule? For the purposes of chapter 314-33 WAC, a two-year window for violations is measured from the date one violation occurred to the date a subsequent violation occurred.

(1) 1st offense - License suspension for not less than thirty consecutive business days.

(2) 2nd offense - License suspension for not less than ninety days - or more than twelve months.

(3) 3rd and consecutive offenses - Subject to revocation.

NEW SECTION

WAC 314-34-020 Information about cigarette and/or tobacco products license suspensions. (1) On the date a cigarette and/or tobacco products license suspension goes into effect, a liquor enforcement officer will post a suspension notice in a conspicuous place on or about the licensed premises. This notice will state that the license has been suspended by order of the liquor control board due to a violation of a cigarette or tobacco products law or rule.

(2) During the period of cigarette and/or tobacco products license suspension, the licensee and employees:

(a) Are required to maintain compliance with all applicable cigarette and tobacco products laws and rules;

(b) May not remove, alter, or cover the posted suspension notice, and may not permit another person to do so;

(c) May not place or permit the placement of any statement on the licensed premises indicating that the premises have been closed for any reason other than as stated in the suspension notice;

(d) May not advertise by any means that the licensed premises is closed for any reason other than as stated in the liquor control board's suspension notice.

(3) During the period of cigarette and tobacco products license suspension:

(a) A retail cigarette and/or tobacco products licensee may operate his/her business provided there is no sale, delivery, removal, or receipt of cigarette and tobacco products.

(b) A cigarette wholesaler and tobacco products distributor licensee may operate his/her business provided there is no sale, delivery, removal, or receipt of cigarette and tobacco products.

NEW SECTION

WAC 314-34-030 Cigarette and other tobacco products violations. (1) The following is a list of cigarette violations:

(a) Taxes - failure to pay taxes as required;

(b) Stamps - tax stamp violations to include:

(i) Failure to affix stamps;

(ii) Forgery/counterfeit; or

(iii) Possession of unstamped cigarettes.

(c) Retailer obtaining cigarettes from an unauthorized source;

(d) Records - improper recordkeeping or failure to submit reports as required;

(e) Failure to allow inspections of any of the following:

(i) Premises;

(ii) Stamps;

(iii) Vehicles;

(iv) Cigarettes;

(v) Books; or

(vi) Records.

(f) Transporting violations to include failure to notify and improper records;

(g) Operating outside the capacity of the license and failure to secure the proper license; and

(h) License suspension violations.

(2) The following is a list of other tobacco product violations:

(a) Taxes - failure to pay taxes as required;

(b) Records - improper recordkeeping or failure to submit reports as required;

(c) Failure to allow inspections of any of the following:

(i) Premises;

(ii) Vehicles;

(iii) Tobacco products;

(iv) Books; or

(v) Records.

(d) Transporting violations to include failure to notify and improper records;

(e) Operating outside of the capacity of the license or failure to secure the proper license;

- (f) Retailer not licensed as a distributor and obtaining tobacco products from an unlicensed distributor;
- (g) Manufacturer representative's violation; and
- (h) License suspension violations.

