



Notice of Rule Change – Explanatory Statement WAC 314-28 Distilleries

This explanatory statement concerns the **Washington State Liquor Control Board's adoption of changes to rules regarding Distilleries.**

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. This statement must be provided to anyone who gave comment about the proposed rule making.

Once persons who gave comment during this rule making have had a chance to receive this document, the Liquor Control Board will file the amended rules with the Office of the Code Reviser. These rule changes will become effective 31 days after filing (approximately October 16, 2010).

The Liquor Control Board appreciates your involvement in this rule making process. If you have any questions, please contact Karen McCall, Rules Coordinator, at (360) 664-1631 or e-mail at rules@liq.wa.gov.

What are the agency's reasons for revising these rules?

As part of the Board's ongoing regulatory improvement efforts, this chapter of rules is being reviewed for relevance, clarity, and accuracy. Rules are also needed to implement **SSB 6485** which passed in the 2010 Legislative Session.

What changes are being made?

The Board adopted these rule changes September 15, 2010. The rules will be filed on September 15, 2010 and will be effective on October 16, 2010.

Summary of all public comments received on this rule proposal.

No public comment was received.

Testimony at Public Hearing – September 8, 2010 Olympia, WA

None

WAC Changes

AMENDATORY SECTION (Amending WSR 09-02-011, filed 12/29/08, effective 1/29/09)

WAC 314-28-010 Records. (1) All distilleries licensed under RCW 66.24.140 and 66.24.145, including craft, fruit, and laboratory distillers:

(a) Must keep records concerning any spirits, whether produced or purchased, for ~~((two))~~ three years after each sale. ~~((These records must be kept separate from any other records.))~~

A distiller may be required to report on forms approved by the board;

(b) Must, in case of spirits exported or sold, preserve all bills of lading and other evidence of shipment; and

(c) Must submit duplicate copies of transcripts, notices, or other data that are required by the federal government to the board if requested, within thirty days of the notice of such request. A distiller shall also furnish copies of the bills of lading, covering all shipments of the products of the licensee, to the board within thirty days of notice of such request.

(2) In addition to the above, a craft distiller must:

(a) Preserve all sales records, in the case of retail sales to consumers (~~(, in addition to the records listed in subsection (1)(b) of this section)~~); and

(b) Submit duplicate copies of its monthly returns to the board upon request (~~(, in addition to the duplicate copies listed in subsection (1)(c) of this section. The same conditions apply as in subsection (1)(c) of this section)~~).

[Statutory Authority: RCW 66.08.030, 66.24.145. 09-02-011, § 314-28-010, filed 12/29/08, effective 1/29/09. Statutory Authority: RCW 66.08.030. 86-07-022 (Order 172, Resolution No. 181), § 314-28-010, filed 3/13/86; Order 14, § 314-28-010, filed 12/1/70, effective 1/1/71; Rule 84, filed 6/13/63.]

AMENDATORY SECTION (Amending WSR 09-02-011, filed 12/29/08, effective 1/29/09)

WAC 314-28-050 What does a craft distillery license allow?

(1) A craft distillery license allows a licensee to:

(a) Produce (~~(twenty)~~) sixty thousand proof gallons or less of (~~(its own)~~) spirits per calendar year. A "proof gallon" is one liquid gallon of spirits that is fifty percent alcohol at sixty degrees Fahrenheit;

(b) Sell spirits of its own production directly to a customer for off-premises consumption, provided that the sale

occurs when the customer is physically present on the licensed premises. A licensee may sell no more than two liters per customer per day. A craft distiller may not sell liquor products of someone else's production;

(c) Sell spirits of its own production to the board provided that the product is "listed" by the board, or is special-ordered by an individual Washington state liquor store;

(d) Sell to out-of-state entities;

(e) Provide, free of charge, samples of spirits of its own production to persons on the distillery premises. Each sample must be one-half ounce or less, with no more than two ounces of samples provided per person per day. Samples must be unaltered, and anyone involved in the serving of such samples must have a valid Class 12 alcohol server permit. Samples must be in compliance with RCW 66.28.040 (~~and all applicable WACs, and are subject to taxes under WAC 314-28-070~~); ~~((and))~~

(f) Provide, free of charge, samples of spirits of its own production to retailers. Samples must be unaltered, and in compliance with RCW 66.28.040, 66.24.310 and ~~((all applicable WACs, including WAC 314-44-005 and))~~ WAC 314-64-08001. Samples are considered sales and are subject to taxes ~~((under WAC 314-28-070))~~; i

(g) Contract produced spirits for holders of a distiller or manufacturer license.

(2) A craft distillery licensee may not sell directly to in-state retailers or in-state distributors ~~((, but only to on-premises customers, to the board, and to out-of-state entities,~~

~~as stipulated in subsections (1) (b), (c) and (d) of this section).~~

[Statutory Authority: RCW 66.08.030, 66.24.145. 09-02-011, § 314-28-050, filed 12/29/08, effective 1/29/09.]

NEW SECTION

WAC 314-28-055 What are the requirements for contract production by craft distilleries? (1) This section clarifies the language for contract production found in RCW 66.24.145. For the purposes of this section, contract production is when one craft distillery, referred to as the "contractor," produces distilled spirits for a distillery licensed under RCW 66.24.140, manufacturers licensed under RCW 66.24.150, wine growers licensed under RCW 66.24.520, referred to as "contractee," and for export from the state. This distilled spirit is referred to as the "product."

(a) The contractee is the product owner. The contractee may handle the product under its license as RCW and WAC allow.

(b) The contractor is required to physically transport all contracted product to the contractee. The contractor is not allowed to distribute or retail the product.

(2) The contractor must submit a copy of the contract to the board prior to production. Any changes in the contract must

also be submitted to the board prior to subsequent production. The board may require additional information.

(3) The contractor and contractee are required to obtain any federal approvals.

(4) Maintaining qualification as a craft distillery. Each craft distillery, whether in the capacity of a contractor or contractee, is allowed to produce sixty thousand gallons or less of total product per year. Total product, in this instance, includes:

(a) Product owned and produced by the craft distillery;

(b) Product owned and produced by the craft distillery for export from the state;

(c) Product owned by the craft distillery but produced by another craft distillery;

(d) Product produced by the craft distillery on behalf of another craft distillery;

(e) Product produced by the craft distillery under contract for another distillery, manufacturer, or grower.

(5) Reporting and recordkeeping.

(a) The contractor must include all product produced including contract production when it reports its monthly production to the board.

(b) The contractee must include the product contract produced by another craft distillery when the contractee reports its monthly production to the board.

(c) The contractor's and the contractee's recordkeeping documents must include the product information for each contract. The information must show the quantities produced.

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AMENDATORY SECTION (Amending WSR 09-02-011, filed 12/29/08, effective 1/29/09)

WAC 314-28-060 What are the general requirements for a craft distillery license? Per RCW 66.24.140 and 66.24.145, a craft distillery licensee is required to:

(1) Submit copies of all permits required by the federal government;

(2) Submit other licensing documents as determined by the board (~~(. Other documents may include, but are not limited to, a personal criminal history statement, a financial statement, the right to the real property, and the tied house statement)~~);

(3) Ensure a minimum of fifty percent of all raw materials (including any neutral grain spirits and the raw materials that go into making mash, wort or wash) used in the (~~monthly~~) production of the spirits product are grown in the state of Washington. Water is not considered a raw material grown in the state of Washington;

(4) Purchase any spirits sold at the distillery premises for off-premises consumption from the board, at the price set by the board;

(5) Purchase any spirits used for sampling at the distillery premises from the board; and

(6) Purchase any spirits used for samples provided to retailers from the board(~~;~~ ~~and~~

~~(7) Meet any other applicable requirements stated in RCW and WAC).~~

[Statutory Authority: RCW 66.08.030, 66.24.145. 09-02-011, § 314-28-060, filed 12/29/08, effective 1/29/09.]

AMENDATORY SECTION (Amending WSR 09-02-011, filed 12/29/08, effective 1/29/09)

WAC 314-28-070 What are the monthly reporting and payment requirements for a craft distillery license? (1) A craft distiller must submit monthly reports and payments to the board.

~~((1) Monthly reports.))~~ The required monthly 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 payment due;

(c) Submitted, with payment 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 20th.) 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 liquor license held.

(2) For reporting purposes, production is the distillation of spirits from mash, wort, wash or any other distilling material. After the production process is completed, a production gauge shall be made to establish the quantity and proof of the spirits produced. The designation as to the kind of spirits shall also be made at the time of the production gauge. A record of the production gauge shall be maintained by the distiller. The completion of the production process is when the product is packaged for distribution. Production quantities are reportable within thirty days of the completion of the production process.

(3) Payments to the board. A distillery must pay the difference between the cost of the alcohol purchased by the board and the sale of alcohol at the established retail price, less the established commission rate during the preceding calendar month, including samples at no charge (~~((see WAC 314-64-08001 for more information))~~).

(a) Any on-premises sale or sample provided to a ((consumer)) customer is considered a sale reportable to the board.

(b) Samples provided to retailers are considered sales reportable to the board.

(c) Payments must be submitted, with monthly reports, to the board on or before the twentieth day of each month, for the previous month. (For example, payment for a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, payment must be postmarked by the U.S. postal service no later than the next postal business day.

[Statutory Authority: RCW 66.08.030, 66.24.145. 09-02-011, § 314-28-070, filed 12/29/08, effective 1/29/09.]

AMENDATORY SECTION (Amending WSR 09-02-011, filed 12/29/08, effective 1/29/09)

WAC 314-28-090 Craft distilleries--Selling in-state, retail pricing and product listing--Selling out-of-state-- Special orders. (1) What steps must a craft distillery licensee take to sell a spirits product in the state of Washington?

~~(a) (~~Selling a spirits product at a state liquor store.~~)~~

There are two ways to sell a spirits product at a state liquor store(~~(. One way is)~~):

(i) Through the special order process(~~(, which is explained in subsection (3) of this section ("How to special order a product.")~~). ~~The second way is~~); and

(ii) Through product listing (~~(explained in this subsection)~~).

(b) If a craft distillery licensee wants the board to regularly stock its product on the shelf at a state liquor store, a licensee must request the board to list its product. If the board agrees to list the product, a licensee must then sell its product to the board and transport its product to the board's distribution center.

~~((b) Selling a spirits product at a craft distillery premises.)~~ (c) Before a craft distillery licensee may sell its

product to a customer (~~(i.e., any individual who is)~~ twenty-one years old or older) at its distillery premises, a licensee must ~~(first)~~);

(i) Obtain a retail price from the board(~~(τ)~~);

(ii) Sell its product to the board(~~(τ)~~); and ~~(then)~~

(iii) Purchase its product back from the board. Product that a licensee produces and sells at its distillery premises is not transported to the board's distribution center.

~~((e))~~ (d) Listing a product. A craft distillery licensee must submit a formal request to the board to have the board

regularly stock its product at a state liquor store. The board's purchasing division administers the listing process.

(i) A licensee must submit the following documents and information: A completed standard price quotation form, a listing request profile, bottle dimensions, an electronic color photograph of the product, a copy of the federal certificate of label approval, and a signed "tied house" statement.

(ii) The purchasing division shall apply the same consideration to all listing requests.

(iii) A craft distillery licensee is not required to submit a formal request for product listing if a licensee sells its product in-state only by special order (see (~~subsection (3) of this section, "How to special order a product."~~) chapter 314-74 WAC).

~~((d))~~ (e) *Obtaining a retail price.* A craft distillery licensee must submit a pricing quote to the board forty-five days prior to the first day of the effective pricing month. A pricing quote submittal includes a completed standard price quotation form, and the product's federal certificate of label approval. The board will then set the retail price.

(i) Pricing may not be changed within a calendar month.

(ii) A craft distillery licensee is required to sell to its on-premises customers at the same retail price as set by the board. If and when the board offers a temporary price reduction for a period of time, a licensee may also sell its product at the reduced price, but only during that same period of time.

(2) What are the requirements for a craft distillery licensee to sell its spirits product outside the state of Washington?

(a) A craft distillery licensee shall include, in its monthly report to the board, information on the product it produces in-state and sells out-of-state. Information includes, but is not limited to, the amount of proof gallons sold, and the composition of raw materials used in production of the product (~~((see WAC 314-28-070))~~).

(b) Product produced in-state and sold out-of-state counts toward a licensee's (~~(twenty)~~) sixty thousand proof gallons per calendar year production limit (see WAC 314-28-050).

(c) Product produced in-state and sold out-of-state is subject to the fifty percent Washington grown raw materials requirement (~~((see WAC 314-28-060))~~).

(d) Product sold out-of-state is not subject to retail pricing by the board.

(e) A craft distillery licensee is not subject to Washington state liquor taxes on any product the licensee sells out-of-state.

~~((3) **How to special order a product.**~~

~~(a) If a customer, such as an individual person or a restaurant licensee, wants to purchase a spirits product that is not carried on the shelf at a state liquor store, then the following steps may be taken to special order the product:~~

~~(i) The customer must place a special order request with a state liquor store;~~

~~(ii) The store forwards the special order request to the board's purchasing division;~~

~~(iii) The purchasing division orders the product from the craft distillery licensee. To receive an order, the craft distillery licensee must have a product listing or a product retail price, as described in subsection (1) (c) and (d) of this section;~~

~~(iv) The craft distillery licensee sends the product to the board's distribution center; and~~

~~(v) The distribution center ships the product to the state liquor store that originally took the customer's special order request (see (a) (ii) of this subsection).~~

~~(b) For additional information regarding special order requests, refer to chapter 314-76 WAC.)~~

[Statutory Authority: RCW 66.08.030, 66.24.145. 09-02-011, S 314-28-090, filed 12/29/08, effective 1/29/09.]