



Notice of Rule Change – Explanatory Statement Non-Retail Liquor Licenses

This explanatory statement concerns the **Washington State Liquor Control Board's adoption of rules regarding Non-Retail Liquor Licenses.**

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 January 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?

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

What changes are being made?

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.

Summary of all public comments received on this rule proposal.

No public comment was received at the public hearing held December 9, 2009. The following comments were submitted regarding the proposed rules to implement 2009 legislation relating to manufacturers, distributors, importers, and retailers:

Michael Transue – Washington Restaurant Association

Comments:

WAC 314-52-080 – “I have a couple of ideas to shorten the first two sentences if you’d like. The proposed rules look good to me.”

LCB Response: We are satisfied with the first two sentences of 314-52-080.

Jesse D. Lyon – Law Office of Davis Wright Tremain LLP

Comments:

WAC 314-12-027 – “The proposed rules would incorrectly limit financial interests to stock ownership.” The examples given only address stock transactions. The proposed rule impermissibly re-defines a term that the legislature has already given an ambiguous statutory definition. Financial interest is broadly defined and is not limited to stock transactions.”

LCB Response: The law states an “industry member may wholly own or hold a financial interest in a separate legal entity licensed as a retailer, but may not have such a license issued in its name”. To wholly own a license is clearly stated in RCW so no specific rules or examples were given for this ownership. The rules and examples were written to clarify what constitutes “financial interest” and when a separate legal entity would be required (if more than 10 percent stock ownership).

WAC 314-12-140 – “As proposed, this rule would incorrectly prohibit lending transactions as “money’s worth”.”

LCB Response: Lending transactions are “money’s worth” and are not allowed. EHB 2040 did not change the prohibition against “money or money’s worth”. This rule was revised for clarification only.

Family Wineries of Washington State (FWWS)

Comments:

WAC 314-12-027 – Financial interest and ownership. “The proposed rules should describe “safe harbors” wherein a winery or other tier interest would be able to act and contract without fear that the transaction would later be deemed improper. Suggest changes that provide specific language recognizing the obvious ordinary economic transactions surrounding business investments, such as:

- the advancement of money or money’s worth including but not limited to cash, or equity interests in real estate, equipment, inventory or facilities;
- provide specific exemptions from the blanket prohibition on advancing money or ordinary business disbursements and distributions;
- provide “safe harbors” describing typical business activities, transactions, and arrangements conducted and likely to be conducted that will not violate the statute.”

LCB Response: EHB 2040 does not allow for the “ordinary economic transactions” between the tiers. The allowance is only for financial interest/ownership between the tiers. The transactions listed above are considered “money or money’s worth” and are still not allowed.

WAC 314-12-027 - Assertions of undue influence in inter-tier interests. “FWWS finds the form of RCW 66.28.300 unsettling. The section provides that “any industry member or retailer or any other person” may request that the Board investigate whether an inter-tier 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.” FWWS has advocated consistently that the venue for

adjudicating claims of undue influence should, as with any other such anti-trust allegations, be in a court of law. We are concerned that without rules specifically identifying the range of ordinary business practices that may occur between inter-tier entities, the law as written will have a severe chilling effect on any prudent investor's desire to enter into such business arrangements."

LCB Response: The proposed rule language is taken from RCW 66.28.300 and clarifies the process the board will follow when a request for determination is received from an industry member, retailer, or other person. The law can only be changed through legislation.

WAC 314-52-080 – Gifts of branded promotional items. "In liberalizing the restriction on producers and distributors providing branded promotional items to retailers, the legislature provided in RCW that such items may be provided by industry members only to retailers and their employees and may not be provided by or through retailers or their employees to retail customers. Does the prohibition against retailers or their employees giving these items to retail customers extend to self distributed wineries acting in their capacity as "retailers"? We believe the proposed rules should clarify that wineries acting in their capacity as "retailers" are exempt from this prohibition."

LCB Response: This law has no prohibition against a winery or brewery giving their own branded promotional items to their customers at the winery or brewery, or at the retail licensed operation on the winery premises. Wineries and breweries are allowed to do this now. A retailer can currently purchase branded promotional items from an industry member and give them to their customers also. Neither of these allowances has changed with the new law. RCW 66.28.310 (1)(a) allows industry members to provide branded promotional items of nominal value to retailers.

WAC 314-24-070 – Purchase of bulk wine and spirits. "This rule fails to take into account advances in wine technology resulting in current practices such as restriction of alcohol and other wine faults by specialized filtration or distillation technologies often unavailable in Washington State."

Response: The revision to this rule is to implement Interim Board Policy #03-2009. The interim policy specifically addresses bottled wine being exported from the state and returned to the producing winery for sale. Bulk wine is currently allowed to be exported out of Washington. To import bulk wine back to the producing winery a class 5 permit is required under RCW 66.20.010(5).

David Wojnar – Distilled Spirits Council of the United States (DISCUS)

Comments:

WAC 314-52-080 (1) – Novelty Advertising. "We urge the WSLCB to expand the list of branded promotional items set forth in EHB 2040 by adding novelty items commonly utilized in the modern marketplace that are similar in nature and value to the listed items."

LCB Response: The proposed rule states "such items include, but are not limited to". We feel it is unnecessary to add additional items to the language when they are covered under the current proposed rule.

WAC 314-52-080 (1)(d) – Novelty Advertising. “We urge the board to clarify expressly in the new rule that, where a retailer provides novelty advertising items to his/her customers, in violation of the prohibition in EHB 2040, an industry member will not be held accountable for these actions.”

LCB Response: A retailer is allowed to give customers branded promotional items if they purchased the items from the industry member. The prohibition on a retailer giving branded promotional items to their customers only applies to those items given to the retailer by the industry member. If a retailer gives their customers branded promotional items that the industry member provided to them, the retailer is the only party that is in violation. The proposed rule language is clear on this subject.

WAC 314-52-080 (4)(5) – Novelty Advertising. “We urge the board to revise these sections to allow industry members to rely upon their ordinary commercial records to satisfy the recordkeeping requirements in these sections. As presently drafted, the recordkeeping requirements are unduly burdensome (e.g., invoices, sales slips, etc.) for items that are of nominal value.”

LCB Response: These two sections were not changed other than to clarify “industry members” rather than manufacturer, importer, or distributor”. LCB access to these records if there is a complaint is imperative to determine if the items provided meet the requirements of the rule. The rule does not impose additional requirements from what is in current rule. Invoices, signed vouchers, or sales slips should already be commercial records generated in the ordinary course of business. Nothing in the rule prohibits computerized records.

WAC 314-11-095 – What records am I required to keep regarding my licensed premises? “The board proposes to expand this rule by imposing recordkeeping requirements on all industry members (the current rule applies only to licensees, which does not include, for example, out-of-state-suppliers of distilled spirits). We urge the board not to extend the current recordkeeping requirements to distilled spirits suppliers given that the board is their exclusive customer. It should be made clear that records need not be maintained for items, such as branded promotional advertising items, which are furnished to a retailer without charge. Distilled spirits suppliers are not required to maintain a “premises in the state of Washington. The proposed rule requires industry members to maintain records on their licensed premises is inapplicable to distilled spirits.”

LCB Response: The only changes to this rule was adding “industry member” and changing the requirement for recordkeeping from two years to three years to match federal guidelines. Out-of-state suppliers of distilled spirits have always been considered a “manufacturer”, which is now considered an “industry member” as defined in RCW 66.28.285. The requirement for manufacturers to keep records of all items, services, and money’s worth purchased by a retailer is in current rule. The only change is the requirement for manufacturers to keep records of all items provided to a retailer. These records are necessary if the board needs to investigate a complaint. The requirement for out-of-state suppliers to keep their records on their premises is not new.

There is no prohibition for records to be kept electronically or off-site as long as they are made available when requested by the board.

WAC 314-11-095(3) - "We recommend adding a subsection (3) stating that failure to maintain the required records will not result in a violation of State laws or rules if an industry member or retailer is otherwise able to establish compliance with those laws or rules."

LCB Response: This change will not be adopted by the rulemaking group. The industry member may think they are able to establish compliance by not following the recordkeeping requirements and find out later their methods were ineffective. A violation could be issued if requested records are not provided.

WAC Changes

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.

[Statutory Authority: RCW 66.08.030, 66.12.160, 66.44.010, 66.44.200, 66.44.240, 66.44.270, 66.24.291 [66.44.291], 66.44.310. 04-15-162, § 314-11-015, filed 7/21/04, effective 8/21/04. Statutory Authority: RCW 66.08.030, 66.28.100, 66.28.040, 66.28.090, 66.44.010, 66.44.070, 66.44.200, 66.44.270, 66.44.291, 66.44.292, 66.44.310, 66.44.316, 66.44.318, 66.44.340, and 66.44.350. 02-11-054, § 314-11-015, filed 5/9/02, effective 6/9/02. Statutory Authority: RCW 66.08.030, 66.28.100, 66.28.040, 66.28.090, 66.44.010, 66.44.070, 66.44.200, 66.44.270, 66.44.291, 66.44.292, 66.44.310, 66.44.316, 66.44.318, 66.44.340, 66.44.350, and chapter 66.44 RCW. 01-06-014, § 314-11-015, filed 2/26/01, effective 3/29/01.]

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).

[Statutory Authority: RCW 66.08.030, 66.28.100, 66.28.040, 66.28.090, 66.44.010, 66.44.070, 66.44.200, 66.44.270, 66.44.291, 66.44.292, 66.44.310, 66.44.316, 66.44.318, 66.44.340, and 66.44.350. 02-11-054, § 314-11-095, filed 5/9/02, effective 6/9/02. Statutory Authority: RCW 66.08.030, 66.28.100, 66.28.040, 66.28.090, 66.44.010, 66.44.070, 66.44.200, 66.44.270, 66.44.291, 66.44.292, 66.44.310, 66.44.316, 66.44.318, 66.44.340, 66.44.350, and chapter 66.44 RCW. 01-06-014, § 314-11-095, filed 2/26/01, effective 3/29/01.]

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.

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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~~((τ))~~;

(b) Discounts~~((τ))~~;

(c) Loans of money~~((τ))~~;

(d) Premiums~~((τ))~~;

(e) Rebates~~((τ))~~;

(f) Free liquor of any kind~~((τ))~~; or

(g) Treats or services of any nature whatsoever~~((; 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.

~~((e))~~ (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~~((τ))~~;

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

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

[Statutory Authority: RCW 66.08.030, 66.08.010, 66.16.040. 01-06-015, § 314-12-140, filed 2/26/01, effective 3/29/01.

Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050,

66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310,
66.44.190, 66.44.310, 66.98.060 and 82.08.150. 98-18-097, §
314-12-140, filed 9/2/98, effective 10/3/98. Statutory
Authority: RCW 66.08.030. 95-17-005, § 314-12-140, filed
8/3/95, effective 9/3/95; 93-10-070, § 314-12-140, filed 5/3/93,
effective 6/3/93. Statutory Authority: RCW 66.08.030(2). 92-
02-014, § 314-12-140, filed 12/23/91, effective 1/23/92.
Statutory Authority: RCW 66.28.010. 87-04-018 (Order 211,
Resolution No. 220), § 314-12-140, filed 1/27/87. Statutory
Authority: RCW 66.28.010 and 66.08.030 (2)(1). 86-09-019
(Order 181, Resolution No. 190), § 314-12-140, filed 4/9/86.
Statutory Authority: RCW 66.08.030. 86-04-003 (Order 167,
Resolution No. 176), § 314-12-140, filed 1/23/86. Statutory
Authority: RCW 66.08.030 and 66.98.070. 84-22-060 (Order 150,
Resolution No. 159), § 314-12-140, filed 11/7/84; Order 46, §
314-12-140, Rule 13, filed 6/9/76; Rule 13, filed 6/13/63.]

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.

[Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060 and 82.08.150. 98-18-097, § 314-12-141, filed 9/2/98, effective 10/3/98. Statutory Authority: RCW 66.08.030. 91-19-071, § 314-12-141, filed 9/16/91, effective 10/17/91.]

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> <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) or (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); ((#))</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> <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	(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. (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.
(8) Out-of-state United States wine certificate of approval holders with a direct shipping to consumers endorsement	(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. (b) Tax is due from the certificate of approval holder on wine sold or delivered to Washington state residents.
(9) Authorized representative certificate of approval holders-U.S. and/or foreign produced beer or wine	(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. (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.

[Statutory Authority: RCW 66.08.030, 66.20.360 through [66.20].380, 66.20.390, 66.24.170, 66.24.206, 66.24.210, 66.24.240, 66.24.244, 66.24.270, 66.24.290, 66.28.170, 66.28.180, and 42.56.270. 07-02-076, § 314-19-015, filed

12/29/06, effective 1/29/07. Statutory Authority: RCW
66.08.030, 66.24.206, 66.24.210, 66.24.230, 66.24.290,
66.24.305, 66.24.215, and 66.24.580. 04-24-007, § 314-19-015,
filed 11/19/04, effective 12/20/04. Statutory Authority: RCW
66.08.030, 66.24.210, 66.24.230, 66.24.290, 66.24.305,
66.24.270, 66.24.215, 66.24.580, 66.24.206. 00-17-065, § 314-
19-015, filed 8/9/00, effective 9/9/00.]

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.

[Statutory Authority: RCW 66.08.030, 66.24.206, 66.24.210, 66.24.230, 66.24.290, 66.24.305, 66.24.215, and 66.24.580. 04-24-007, § 314-19-035, filed 11/19/04, effective 12/20/04.
Statutory Authority: RCW 66.08.030, 66.24.210, 66.24.230, 66.24.290, 66.24.305, 66.24.270, 66.24.215, 66.24.580, 66.24.206. 00-17-065, § 314-19-035, filed 8/9/00, effective 9/9/00.]

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

WAC 314-20-001 Definitions. ~~((1))~~ **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 ~~((e))~~ 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.))~~

[Statutory Authority: RCW 66.08.030, 2004 c 160. 04-24-097, § 314-20-001, filed 12/1/04, effective 1/1/05.]

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.

[Statutory Authority: RCW 66.08.030, 66.20.360 through [66.20].380, 66.20.390, 66.24.170, 66.24.206, 66.24.210, 66.24.240, 66.24.244, 66.24.270, 66.24.290, 66.28.170, 66.28.180, and 42.56.270. 07-02-076, § 314-20-050, filed 12/29/06, effective 1/29/07. Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060 and 82.08.150. 98-18-097, § 314-20-050, filed 9/2/98, effective 10/3/98. Statutory Authority: RCW 66.08.030. 87-20-013 (Order 229, Resolution No. 238), § 314-20-050, filed 9/29/87; Rule 44, filed 6/13/63.]

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 must clearly reflect all items((τ)) 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.

[Statutory Authority: RCW 66.08.030, 66.20.360 through [66.20].380, 66.20.390, 66.24.170, 66.24.206, 66.24.210, 66.24.240, 66.24.244, 66.24.270, 66.24.290, 66.28.170, 66.28.180, and 42.56.270. 07-02-076, § 314-20-100, filed 12/29/06, effective 1/29/07. Statutory Authority: RCW

66.08.030, 66.28.180, and 2004 c 160. 04-19-155, § 314-20-100, filed 9/22/04, effective 10/23/04. Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060 and 82.08.150. 98-18-097, § 314-20-100, filed 9/2/98, effective 10/3/98. Statutory Authority: RCW 66.08.030, 66.98.070 and 66.08.060. 86-16-060 (Order 173, Resolution No. 182), § 314-20-100, filed 8/5/86. Statutory Authority: RCW 66.08.030. 85-21-020 (Order 166, Resolution No. 175), § 314-20-100, filed 10/9/85, effective 12/10/85; 82-16-069 (Order 91, Resolution No. 100), § 314-20-100, filed 8/2/82. Statutory Authority: RCW 66.08.030, 66.08.060 and 66.98.070. 78-02-056 (Order 62), § 314-20-100, filed 1/20/78, effective 7/1/78; Order 54, § 314-20-100, filed 5/24/77, effective 7/1/77; Order 51, § 314-20-100, filed 12/15/76; Order 18, § 314-20-100, filed 1/13/72, effective 2/14/72; Order 15, § 314-20-100, filed 5/13/71, effective 7/1/71; Rule 49, filed 6/13/63.]

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.

[Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060 and 82.08.150. 98-18-097, § 314-44-005, filed 9/2/98, effective 10/3/98. Statutory Authority: RCW 66.08.030. 89-01-004 (Order 271, Resolution No. 280), § 314-44-005, filed 12/8/88. Statutory Authority: RCW 66.08.030 and 66.98.070. 82-04-029 (Order 93, Resolution No. 102), § 314-44-005, filed 1/27/82; Order 46, § 314-44-005, Rule 111, filed 6/9/76. Formerly WAC 314-44-010 and 314-44-020.]

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((τ));

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

(c) Checking identification of patrons.

[Statutory Authority: RCW 66.08.030. 94-14-023, § 314-44-015, filed 6/27/94, effective 7/28/94.]

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(): 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.

[Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400,

66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455,
66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050,
66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310,
66.44.190, 66.44.310, 66.98.060 and 82.08.150. 98-18-097, §
314-52-080, filed 9/2/98, effective 10/3/98. Statutory
Authority: RCW 66.08.030. 93-11-028, § 314-52-080, filed
5/10/93, effective 6/10/93. Statutory Authority: RCW 66.08.030
and 66.98.070. 82-17-031 (Order 108, Resolution No. 117), §
314-52-080, filed 8/11/82. Statutory Authority: RCW 66.08.030,
66.08.060 and 66.98.070. 81-04-011 (Order 76, Resolution No.
85), § 314-52-080, filed 1/28/81; 80-09-078 (Order 73,
Resolution No. 82), § 314-52-080, filed 7/18/80; 78-02-056
(Order 62), § 314-52-080, filed 1/20/78; Order 46, § 314-52-080,
Rule 123, filed 6/9/76; Order 10, § 314-52-080, filed 10/27/70,
effective 11/27/70; Rule 123, filed 6/13/63.]

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

WAC 314-24-001 Definitions. (~~((1))~~) **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 ~~((e))~~ 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.))~~

[Statutory Authority: RCW 66.08.030, 2004 c 160. 04-24-097, § 314-24-001, filed 12/1/04, effective 1/1/05.]

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).

[Statutory Authority: RCW 66.08.030. 86-11-014 (Order 184, Resolution No. 193), § 314-24-070, filed 5/13/86; Order 14, § 314-24-070, filed 12/1/70, effective 1/1/71; Order 5, § 314-24-070, filed 8/7/69, effective 9/8/69; Rule 65, filed 6/13/63.]

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.

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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~~) three 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.

[Statutory Authority: RCW 66.08.030, 66.20.360 through [66.20].380, 66.20.390, 66.24.170, 66.24.206, 66.24.210, 66.24.240, 66.24.244, 66.24.270, 66.24.290, 66.28.170, 66.28.180, and 42.56.270. 07-02-076, § 314-24-150, filed 12/29/06, effective 1/29/07. Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180,

66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150,
66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210,
66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375,
66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425,
66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540,
66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180,
66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060
and 82.08.150. 98-18-097, § 314-24-150, filed 9/2/98, effective
10/3/98. Statutory Authority: RCW 66.08.030. 87-20-013 (Order
229, Resolution No. 238), § 314-24-150, filed 9/29/87; Order 5,
§ 314-24-150, filed 8/7/69, effective 9/8/69; Rule 75, filed
6/13/63.]

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
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<p>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.</p>	<p>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.</p>
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~~(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((,)) 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 filing 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.

[Statutory Authority: RCW 66.08.030, 66.20.360 through [66.20].380, 66.20.390, 66.24.170, 66.24.206, 66.24.210, 66.24.240, 66.24.244, 66.24.270, 66.24.290, 66.28.170, 66.28.180, and 42.56.270. 07-02-076, § 314-24-190, filed 12/29/06, effective 1/29/07. Statutory Authority: RCW 66.08.030, 66.28.180, and 2004 c 160. 04-19-155, § 314-24-190, filed 9/22/04, effective 10/23/04. Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060 and 82.08.150. 98-18-097, § 314-24-190, filed 9/2/98, effective 10/3/98. Statutory Authority: RCW 66.08.030. 87-15-111 (Order 222, Resolution No. 231), § 314-24-190, filed 7/22/87. Statutory Authority: RCW 66.08.030, 66.98.070 and 66.08.060. 86-16-060 (Order 173, Resolution No. 182), § 314-24-190, filed

8/5/86. Statutory Authority: RCW 66.08.030. 82-16-069 (Order 91, Resolution No. 100), § 314-24-190, filed 8/2/82. Statutory Authority: RCW 66.08.030 and 66.98.070. 81-22-026 (Order 85, Resolution No. 94), § 314-24-190, filed 10/28/81. Statutory Authority: RCW 66.08.030, 66.08.060 and 66.98.070. 78-02-056 (Order 62), § 314-24-190, filed 1/20/78, effective 7/1/78; Order 54, § 314-24-190, filed 5/24/77, effective 7/1/77; Order 51, § 314-24-190, filed 12/15/76; Order 26, § 314-24-190, filed 8/14/73; Order 18, § 314-24-190, filed 1/13/72, effective 2/14/72; Order 15, § 314-24-190, filed 5/13/71, effective 7/1/71; Order 5, § 314-24-190, filed 8/7/69, effective 9/8/69; Rule 81, filed 6/13/63.]

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.

[Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060 and 82.08.150. 98-18-097, § 314-24-210, filed 9/2/98, effective 10/3/98. Statutory Authority: RCW 66.08.030. 87-16-003 (Order 227, Resolution No. 236), § 314-24-210, filed 7/23/87; 86-24-029 (Order 204, Resolution No. 213), § 314-24-210, filed 11/25/86. Statutory Authority: RCW 66.08.030 and 66.98.070. 82-17-022 (Order 109,

Resolution No. 118), § 314-24-210, filed 8/9/82; Order 5, § 314-24-210, filed 8/7/69, effective 9/8/69; Rule 83, filed 6/13/63.]

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.

[Statutory Authority: RCW 66.08.030, 66.08.010, 66.16.040. 01-06-015, § 314-13-015, filed 2/26/01, effective 3/29/01.]

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.

[Statutory Authority: RCW 66.08.030, 66.08.010, 66.16.040. 01-06-015, § 314-13-020, filed 2/26/01, effective 3/29/01.]

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(~~(τ)~~)i 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.

[Statutory Authority: RCW 66.08.030, 66.08.010, 66.16.040. 01-06-015, § 314-13-025, filed 2/26/01, effective 3/29/01.]