

## **Issue Paper**

### **Spirits Distributor License Fees**

Date: August 7, 2019

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#### **Description of the Issue**

The purpose of this Issue Paper is to request approval from the board to file the CR 102 with proposed revisions regarding spirits distributor license fees.

The proposed revisions:

- Clarify who is required to pay spirits distributor license fees as a result of an August 8, 2017 Court of Appeals Decision, Washington Restaurant Association, et.al., v. WSLCB, 200 Wn.App. 119, 401 P.3d 428 (2017).
- Include technical and clarifying changes, and repeal WAC 314-23-025 regarding collection of shortfall of spirits distributor license fees which expired March 31, 2013.

#### **Why is rule making necessary?**

Rulemaking was initiated as a result of the above-reference Court of Appeals Decision. The decision stated in part that spirits distributor license fees cannot be collected from licensed distillers, craft distillers, or certificate of approval holders. WAC 314-28-070, 314-23-030, 314-23-041, and 314-23-042 were revised to remove the fee requirement.

The decision also stated that retailers selling spirits for resale must pay the distributor license fee when no other distributor license fee has been paid. WAC 314-02-106 was revised to implement this requirement.

WAC 314-23-001, 314-23-005, 314-23-021, and 314-23-022 were revised to clarify fee requirements and ensure rules language met requirements outlined in statute.

Additional technical and clarifying changes were made.

WAC 314-23-025 was repealed because the provisions of the rule expired on March 31, 2013.

#### **Background**

Rules revisions were necessary because of the August 8, 2017 Court of Appeals Decision, Washington Restaurant Association, et.al., v. WSLCB, 200 Wn.App. 119, 401 P.3d 428 (2017). Additional changes were necessary to ensure relevance, clarity, and accuracy.

#### **What changes are being made?**

**Amended Sections:**

WAC 314-02-106 What is a spirits retailer license?

WAC 314-23-001 What does a spirits distributor license allow?

WAC 314-23-005 What are the fees for a spirits distributor license?

WAC 314-23-021 What are the monthly reporting and payment requirements for a spirits distributor license?

WAC 314-23-022 What if a distributor licensee fails to report or pay, or reports or pays late?

WAC 314-23-030 What does a spirits certificate of approval license allow?

WAC 314-23-041 What are the monthly reporting requirements for a spirits certificate of approval licensee?

WAC 314-23-042 What if a spirits certificate of approval licensee fails to report or reports late?

WAC 314-28-070 Monthly reporting and payment requirements for a distiller and craft distiller.

**Repealed Sections:** WAC 314-23-025 Collection of shortfall of spirits distributor license fees from spirits distributor license holders. This section expired on March 31, 2013.

AMENDATORY SECTION (Amending WSR 17-12-030, filed 5/31/17, effective 7/1/17)

**WAC 314-02-106 What is a spirits retailer license?** (1) (~~A spirits retailer licensee may not sell spirits under this license until June 1, 2012. A spirits retailer is a retail license.~~) The holder of a spirits retailer license is allowed to:

(a) Sell spirits in original containers to consumers for off-premises consumption;

(b) Sell spirits in original containers to permit holders (see chapter 66.20 RCW);

(c) Sell spirits in original containers to on-premises liquor retailers, for resale at their licensed premises, although no single sale may exceed twenty-four liters; and

(d) Export spirits in original containers.

(2) A spirits retailer licensee that intends to sell to another retailer must possess a basic permit under the Federal Alcohol Administration Act. This permit must provide for purchasing distilled spirits for resale at wholesale. A copy of the federal basic permit must be submitted to the board. A federal basic permit is required for

each location from which the spirits retailer licensee plans to sell to another retailer.

(3) A sale by a spirits retailer licensee is a retail sale only if not for resale to an on-premises spirits retailer. On-premises retail licensees that purchase spirits from a spirits retail licensee must abide by RCW 66.24.630.

(4) A spirits retail licensee must pay to the board seventeen percent of all spirits sales. (~~The first payment is due to the board October 1, 2012, for sales from June 1, 2012, to June 30, 2012 (see WAC 314-02-109 for quarterly reporting requirements).~~)

~~Reporting of spirits sales and payment of fees must be submitted on forms provided by the board.)~~

(5) Per RCW 66.24.055, a spirits retail licensee selling for resale must pay to the board a ten percent distributor license fee for the first twenty-seven months of licensure, and a five percent distributor license fee for month twenty-eight and each month thereafter. The fee is required on sales of spirits which the licensee selling to another licensee for resale is the first to have received:

(a) Spirits manufactured in the state, from the distiller; or

(b) Spirits manufactured outside of the state from an authorized out-of-state supplier; and

(c) No other distributor license fee has been paid.

(6) Reporting of spirits sales and payment of fees must be submitted electronically or on forms provided by the board. Reporting requirements are outlined in WAC 314-02-109.

(7) A spirits retail licensee may apply for a spirits sampling endorsement to conduct spirits sampling if they meet the following criteria:

(a) Be a participant in the responsible vendor program;

(b) Advertising:

(i) For spirits retail licensees that also hold a grocery store license, signs advertising spirits samplings may not be placed in the windows or outside of the premises that can be viewed from the public right of way;

(ii) For spirits retail licensees that also hold a beer/wine specialty store license, advertising of spirits sampling may be advertised but not state that sampling is free of charge.

(c) Spirits samplings are to be conducted in the following manner:

(i) Spirits samplings service area and facilities must be located within the licensees' fully enclosed retail area and must be of a size

and design that the licensee can observe and control persons in the area.

(ii) The licensee must provide a sketch of the sampling area.

Fixed or (~~moveable~~) movable barriers are required around the sampling area to ensure that persons under twenty-one years of age and apparently intoxicated persons cannot possess or consume alcohol. The sketch is to be included with the application for the spirits sampling endorsement.

(iii) Each sample may be no more than one-half ounce of spirits, and no more than a total of one and one-half ounces of spirits samples per person during any one visit to the premises. Spirits samples may be altered with mixers, water, and/or ice.

(iv) The licensee must have food available for the sampling participants.

(v) Customers must remain in the service area while consuming samples.

(vi) All employees serving spirits during sampling events must hold a class 12 server permit.

(vii) There must be at least two employees on duty when conducting spirits sampling events.

(viii) Spirits sampling activities are subject to RCW 66.28.305 and 66.28.040.

(d) Licensees are required to send a list of scheduled spirits samplings to their regional enforcement office at the beginning of each month. The date and time for each sampling must be included.

~~((6))~~ (8) The annual fee for a spirits retail license is one hundred sixty-six dollars.

[Statutory Authority: RCW 66.08.030. WSR 17-12-030, § 314-02-106, filed 5/31/17, effective 7/1/17. Statutory Authority: RCW 66.24.670 and 66.08.030. WSR 15-07-036, § 314-02-106, filed 3/11/15, effective 4/11/15. Statutory Authority: RCW 66.24.363, 66.24.660 and 66.08.030. WSR 14-02-001, § 314-02-106, filed 12/18/13, effective 1/18/14. Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, and 66.24.640. WSR 12-12-065, § 314-02-106, filed 6/5/12, effective 7/6/12.]

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

**WAC 314-23-001 What does a spirits distributor license allow?**

(1) (~~(A spirits distributor licensee may not commence sales until March 1, 2012.)~~) A spirits distributor licensee is allowed to:

(a) Sell spirits purchased from manufacturers, distillers, importers, or spirits certificate of approval holders;

(b) Sell spirits to any liquor licensee allowed to sell spirits;

(c) Sell spirits to other spirits distributors; (~~and~~)

(d) Sell spirits to bona fide full-time employees per RCW

66.28.185 under the following conditions:

(i) No spirits may be sold unless they are in such condition that they cannot reasonably be sold in the normal course of business, such as damage to the label on an individual bottle;

(ii) No spirits may be sold for less than the spirits distributor licensee's cost of acquisition; and

(iii) No spirits may be sold to a person who has been employed by the spirits distributor licensee for less than ninety days at the time of the sale or who is under the age of twenty-one.



(e) Export spirits from the state of Washington.

(2) The price of spirits sold to retailers may not be below acquisition cost.

[Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, and 66.24.640. WSR 12-12-065, § 314-23-001, filed 6/5/12, effective 7/6/12.]

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

**WAC 314-23-005 What are the fees for a spirits distributor**

**license?** (1) The holder of a spirits distributor license must pay to the board a monthly license fee (~~(as follows)~~). The license fee is:

(a) Ten percent of the total revenue from all sales of spirits to employees and retail licensees made during the month for which the fee is due for the first (~~(two years)~~) twenty-seven months of licensure; (~~and~~) or

(b) Five percent of the total revenue from all sales of spirits to employees and retail licensees made during the month for which the fee is due for the (~~(third year)~~) twenty-eighth month of licensure and (~~(every year)~~) each month thereafter(~~(-)~~); and

(c) (~~The license fee is only calculated~~) Required on sales of (~~items~~) spirits which the licensee was the first spirits distributor in the state to have received:

(i) (~~In the case of~~) Spirits manufactured in the state, from the distiller; or

(ii) (~~In the case of~~) Spirits manufactured outside of the state, from (~~a spirits certificate of approval holder.~~

~~d~~) an authorized out-of-state supplier.

(2) For sales to employees under RCW 66.28.185 and 66.24.630, the holder of a spirits distributor license must pay a license fee of seventeen percent of the total revenue from sales of spirits to employees made during the month for which the fee is due.

(3) Reporting of sales and payment of fees must be submitted electronically or on forms provided by the board.

~~(2)~~ (4) The annual fee for a spirits distributor license is one thousand three hundred twenty dollars for each licensed location.

[Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, and 66.24.640. WSR 12-12-065, § 314-23-005, filed 6/5/12, effective 7/6/12.]

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

**WAC 314-23-021 What are the monthly reporting and payment requirements for a spirits distributor license?** (1) A spirits distributor must submit monthly sales reports and payments to the board.

(2) The required monthly sales reports must be:

(a) Filed electronically or on a form furnished by the board;

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

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

(d) Filed separately for each liquor license held.

(3) Electronic payments will be considered received on the date they post in the WSLCB receiving account.

[Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, and 66.24.640. WSR 12-12-065, § 314-23-021, filed 6/5/12, effective 7/6/12.]

AMENDATORY SECTION (Amending WSR 14-12-101, filed 6/4/14, effective 7/5/14)

**WAC 314-23-022 What if a distributor licensee fails to report or pay, or reports or pays late?** (1) Failure of a spirits distributor licensee to submit (~~its~~) monthly reports and payment to the board as required in WAC 314-23-021(1) will be sufficient grounds for the board to suspend or revoke the liquor license.

(2) A penalty of two percent per month will be assessed on any payments postmarked or posted in the WSLCB receiving account if paying electronically after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the (~~filing~~) report and payment must be postmarked (~~by the U.S. Postal Service~~) or posted in the WSLCB receiving account if paying electronically no later than the next postal business day.

Absent a postmark, and if not paying electronically, the date received at the (~~Washington state liquor control board, or designee,~~) WSLCB will be used to determine if penalties are to be assessed.

(3) Electronic payments will be considered received on the date they post in the WSLCB receiving account.

[Statutory Authority: RCW 66.08.030. WSR 14-12-101, § 314-23-022, filed 6/4/14, effective 7/5/14. Statutory Authority: RCW 66.24.630, 66.24.055, 66.24.145 and 66.08.030. WSR 13-07-085, § 314-23-022, filed 3/20/13, effective 4/20/13. Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, and 66.24.640. WSR 12-12-065, § 314-23-022, filed 6/5/12, effective 7/6/12.]

AMENDATORY SECTION (Amending WSR 13-07-009, filed 3/7/13, effective 4/7/13)

**WAC 314-23-030 What does a spirits certificate of approval license allow?** (1) (~~(A spirits certificate of approval licensee may not commence sales until March 1, 2012.)~~) A spirits certificate of approval license may be issued to spirits manufacturers located outside of the state of Washington but within the United States.

(2) There are three separate spirits certificate of approval licenses as follows:

(a) A holder of a spirits certificate of approval may act as a distributor of spirits they are entitled to import into the state by selling directly to spirits distributors or spirits importers licensed in Washington state. The fee for a certificate of approval is two hundred dollars per year.

(b) A holder of an authorized representative out-of-state spirits importer or brand owner for spirits produced in the United States but outside of Washington state may obtain a spirits authorized representative domestic certificate of approval license which entitles the holder to import spirits into the state by selling directly to spirits distributors, or spirits importers licensed in Washington state. The fee for an authorized representative certificate of approval for spirits is two hundred dollars per year.

(c) A holder of an authorized representative out-of-state spirits importer or brand owner for spirits produced outside of the United States obtains a spirits authorized representative foreign certificate of approval which entitles the holder to import spirits into the state by selling directly to spirits distributors, or spirits importers licensed in Washington state. The fee for an authorized representative

certificate of approval for foreign spirits is two hundred dollars per year.

(3) A spirits certificate of approval holder, a spirits authorized representative domestic certificate of approval holder, and/or a spirits authorized representative foreign certificate of approval holder must obtain an endorsement to the certificate of approval that allows the shipment of spirits the holder is entitled to import into the state directly to licensed liquor retailers. The fee for this endorsement is one hundred dollars per year and is in addition to the fee for the certificate of approval license.

(4) The holder of a certificate of approval license that sells directly to licensed liquor retailers must(~~(-~~

~~(a))~~ report to the board monthly, electronically or on forms provided by the board, the amount of all sales of spirits to licensed spirits retailers(~~(-~~

~~(b) Pay to the board a fee of ten percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the first two years of licensure.~~

~~(c) Pay to the board five percent of the total revenue from all sales of spirits to retail licensees made during the month for which~~

~~the fee is due for the third year of licensure and every year thereafter~~) and spirits distributors.

[Statutory Authority: RCW 66.24.640, 66.08.030. WSR 13-07-009, § 314-23-030, filed 3/7/13, effective 4/7/13. Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, and 66.24.640. WSR 12-12-065, § 314-23-030, filed 6/5/12, effective 7/6/12.]

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

**WAC 314-23-041 What are the monthly reporting (~~and payment~~) requirements for a spirits certificate of approval licensee?** (1) A spirits certificate of approval licensee must submit monthly reports (~~and payments~~) to the board.

(2) The required monthly reports must be:

(a) Filed electronically or on a form furnished by the board;

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

(c) Submitted(~~, with payment due, to the board~~) on or before the twentieth day of each month, for the previous month(~~-~~) (for example, a report listing transactions for the month of January is due



by February 20th(~~(-)~~). When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

(3) Absent a postmark, the date received at the WSLCB will be used to determine timeliness.

[Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, and 66.24.640. WSR 12-12-065, § 314-23-041, filed 6/5/12, effective 7/6/12.]

AMENDATORY SECTION (Amending WSR 14-12-101, filed 6/4/14, effective 7/5/14)

**WAC 314-23-042 What if a spirits certificate of approval licensee fails to report (~~(or pay)~~) or reports (~~(or pays)~~) late?**

~~((1) If a spirits certificate of approval licensee does not submit its monthly reports and payment to the board as required by this subsection (1), the licensee is subject to penalties.~~

~~(2) A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the~~

~~month of sale. 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.~~

~~Absent a postmark, the date received at the Washington state liquor control board, or designee, will be used to determine if penalties are to be assessed.)~~) The board may revoke or suspend a certificate of approval license for failure to submit monthly reports or for submitting reports after the monthly due date.

[Statutory Authority: RCW 66.08.030. WSR 14-12-101, § 314-23-042, filed 6/4/14, effective 7/5/14. Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, and 66.24.640. WSR 12-12-065, § 314-23-042, filed 6/5/12, effective 7/6/12.]

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 314-23-025

Collection of shortfall of spirits distributor license fees from spirits distributor license holders.

AMENDATORY SECTION (Amending WSR 18-02-006, filed 12/20/17, effective 1/20/18)

**WAC 314-28-070** (~~(What are the)~~) Monthly reporting and payment requirements for a (~~(distillery)~~) distiller and craft (~~(distillery license?)~~) distiller. (1) A distiller or craft distiller must submit monthly production and sales reports and payment(~~(s)~~) to the board.

(2) The required monthly reports must be:

(a) Filed electronically or mailed on a form furnished by the board;

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

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

(d) Filed separately for each liquor license held.

~~((2))~~ (3) For reporting purposes, production is the distillation of spirits from mash, wort, wash, or any other distilling material. After the production process is ~~((completed))~~ complete, a production gauge ~~((shall))~~ must be made to establish the quantity and proof of the spirits produced. ~~((The))~~ Designation ~~((as to))~~ of the kind of spirits ~~((shall also))~~ must be made at the time of the production gauge. The distiller must maintain a record of the production gauge ~~((shall be maintained by the distiller))~~. The ~~((completion of the))~~ production process is complete when the product is packaged for distribution. Production quantities are reportable within thirty days of the completion of the production process.

~~((3) A distillery or craft distillery must pay ten percent of their gross spirits revenue to the board on sales to a licensee allowed to sell spirits for on- or off-premises consumption during the first twenty-seven months of licensure and five percent of their gross spirits revenues to the board in the twenty-eighth month and thereafter.~~

~~((a) A distillery))~~ (4) A distiller must pay seventeen percent of their gross spirits revenue to the board on sales to customers for off-premises consumption.

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

(b) Electronic payments will be considered received on the date they post in the WSLCB receiving account.

[Statutory Authority: RCW 66.24.170, 66.24.640, 66.24.695, and 66.08.030. WSR 18-02-006, § 314-28-070, filed 12/20/17, effective 1/20/18. Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, and 66.24.640. WSR 12-12-065, § 314-28-070, filed 6/5/12, effective 7/6/12. Statutory Authority: RCW 66.24.145 and 66.08.030. WSR 10-19-066, § 314-28-070, filed 9/15/10, effective 10/16/10; WSR 09-02-011, § 314-28-070, filed 12/29/08, effective 1/29/09.]