



Washington State
Liquor and Cannabis Board

Date: March 27, 2020

To: Jane Rushford, Board Chair
Ollie Garrett, Board Member
Russ Hauge, Board Member

From: Kathy Hoffman, Agency Policy and Rules Coordinator

Copy: Rick Garza, Agency Director
Megan Duffy, Deputy Director
Justin Nordhorn, Chief of Enforcement
Becky Smith, Licensing Director
Jim Morgan, Chief Financial Officer

Subject: **Approval to adopt an emergency rule (CR 103E) regarding WAC 314-19-020 – Failure to Report or Pay Taxes Due, Late Reporting, or Late Payment**

Establishments licensed by the Washington State Liquor and Cannabis Board (Board) are required to timely remit various taxes and fees by a date certain, or a mandatory late payment penalty will be imposed. As a result of the global novel coronavirus (COVID-19) pandemic, many of these establishments are suffering significant economic hardships and in some cases, their financial resources are becoming severely limited. While the Board possesses authority to waive penalties for late payment of taxes by specific types of establishments it licenses, it lacks the authority to provide the same relief to microbreweries, domestic breweries, and beer distributors licensed under RCW 66.24.290, and wineries and wine distributors licensed under RCW 66.24.210.

Governor's Proclamation 20-26 found that strict compliance with the statutory obligations or limitations provided in RCW 66.24.210 and RCW 66.24.290 will prevent, hinder, or delay action in providing relief to the businesses impacted by these statutes. Such relief is necessary for coping with the COVID-19 State of Emergency under Governor's Proclamation 20-05.

This emergency rule accomplishes the following:

- Waives late filing penalty provisions, retroactive to February 29, 2020, for microbreweries, domestic breweries, and beer distributors licensed under RCW

66.24.290, and wineries and wine distributors licensed under RCW 66.24.210 while Governor's Proclamation 20-13 and 20-26 are in effect;

- Supports the ability of businesses to adjust to the COVID-19 outbreak; and
- Reduces economic hardships suffered by businesses during the temporary suspension of business consistent with Governor's Proclamation 20-13.

This rule does **not** relieve any WSLCB licensee from its statutory obligations to remit taxes to the WSLCB.

Process

The Agency Policy and Rules Coordinator requests that the Board adopt the emergency rule as presented, and requests approval to file this emergency rule with the Washington State Office of the Code Reviser. A CR 103E Memorandum on this rule was presented at the Board meeting on March 27, 2020, and is attached to this order.

If adopted, the timeline for the rule making process is outlined below:

March 27, 2020	Board is asked to adopt the emergency rulemaking order (CR 103E) as described above.
March 27, 2020	Emergency rule becomes effective.

_____ Approve _____ Disapprove _____
Jane Rushford, Chair Date

_____ Approve _____ Disapprove _____
Ollie Garrett, Board Member Date

_____ Approve _____ Disapprove _____
Russ Hauge, Board Member Date

Attachment: CR 103E Memorandum



CR 103E Memorandum

WAC 314-19-020 – Failure to Report or Pay Taxes Due, Late Reporting, or Late Payment

Date: March 27, 2020
Presented by: Kathy Hoffman, Agency Policy and Rules
Coordinator

Issue:

Establishments licensed by the Washington State Liquor and Cannabis Board (Board) are required to timely remit various taxes and fees by a date certain, or a mandatory late payment penalty will be imposed. As a result of the global novel coronavirus (COVID-19) pandemic, many of these establishments are suffering significant economic hardships and in some cases, their financial resources are becoming severely limited. While the Board possesses authority to waive penalties for late payment of taxes by specific types of establishments it licenses, it lacks the authority to provide the same relief to microbreweries, domestic breweries, and beer distributors licensed under RCW 66.24.290, and wineries and wine distributors licensed under RCW 66.24.210.

Governor's Proclamation 20-26 found that strict compliance with the statutory obligations or limitations provided in RCW 66.24.210 and RCW 66.24.290 will prevent, hinder, or delay action in providing relief to the businesses impacted by these statutes. Such relief is necessary for coping with the COVID-19 State of Emergency under Governor's Proclamation 20-05.

Background:

The Board administers licensing, enforcement and education services for establishments that sell alcohol for on and off premises consumption. Consistent with statute, regulation and administrative provisions, licensees under the administration of the Board are subject to various taxes and fees dependent on product and license type. Licensees are required to timely report and remit those

taxes and fees to the Board. If the Board determines that a licensee is delinquent in reporting or remitting any of the required taxes and fees, including any penalties on required taxes, the Board may suspend, or deny renewal or issuance of a license

On February 29, 2020, Governor Inslee issued Proclamation 20-05 that confirmed the person-to-person spread of the novel coronavirus (COVID-19) in Washington State, and proclaimed a State of Emergency for all counties throughout the state of Washington based on the COVID-19 outbreak in the United States.

On March 16, 2020, Governor Inslee issued Proclamation 20-13 that imposed statewide limits on food and beverage services, and areas of congregation to limit opportunities for disease exposure and transmission in the state. Proclamation 20-13 was based on a number of findings, including but not limited to:

- Guidance from the United States Center for Disease Control and Prevention to reduce the size of gatherings from 250 persons to 50 persons; and
- The necessity to prohibit any number of people from congregating in public venues for the purposes of entertainment, recreation, food and beverage service, theater, bowling or other similar activities.

On March 24, 2020, Governor Inslee issued Proclamation 20-26 prohibiting the Board from enforcing RCW 66.24.210(1)(b) and RCW 66.24.290(1)(b) until midnight on April 22, 2020.

Reasons why rules are needed:

This emergency rule accomplishes the following:

- Waives late filing penalty provisions, retroactive to February 29, 2020, for microbreweries, domestic breweries, and beer distributors licensed under RCW 66.24.290, and wineries and wine distributors licensed under RCW 66.24.210 while Governor's Proclamation 20-13 and 20-26 are in effect;
- Supports the ability of businesses to adjust to the COVID-19 outbreak; and
- Reduces economic hardships suffered by businesses during the temporary suspension of business consistent with Governor's Proclamation 20-13.

This rule does **not** relieve any WSLCB licensee from its statutory obligation to remit taxes to the WSLCB.

Process

Consistent with RCW 34.05.350, any agency may find that the immediate adoption, amendment, or repeal of a rule is necessary for the preservation of public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. This rule change is exempt from the filing of a CR101, analytical, and public hearing requirements.

An emergency rule adopted under RCW 34.05.350 takes effect upon filing with the code reviser, unless a later date is specified in the order of adoption, and may not remain in effect for longer than one hundred twenty days after filing.

Notice will be sent to all who have indicated that they want to receive notice of rule activity, and posted to the Board's website.



RULE-MAKING ORDER

EMERGENCY RULE ONLY

CR-103E (December 2017)
(Implements RCW 34.05.350
and 34.05.360)

Agency: Washington State Liquor and Cannabis Board

Effective date of rule:

Emergency Rules

- ☒ Immediately upon filing.
☐ Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- ☐ Yes ☒ No If Yes, explain:

Purpose: WAC 314-19-020 – What if a licensee doesn't report or pay the taxes due, or report or pays late? The Washington State Liquor and Cannabis Board (Board) has adopted an emergency rule to amend WAC 314-19-020 that provides a retroactive waiver of late filing penalty provisions for taxes that become due under RCW 66.24.210 and RCW 66.24.290 while Proclamation 20-26 is in effect.

Citation of rules affected by this order:

New:
 Repealed:
 Amended: WAC 314-19-020
 Suspended:

Statutory authority for adoption: RCW 66.24.210; RCW 66.24.290; RCW 66.08.0501

Other authority: Governor's Proclamation 20-26, dated March 24, 2020

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- ☒ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

On February 29, 2020, Governor Inslee issued Proclamation 20-05 that confirmed the person-to-person spread of the novel coronavirus (COVID-19) in Washington State, and proclaimed a State of Emergency for all counties throughout the state of Washington based on the COVID-19 outbreak in the United States.

On March 16, 2020, Governor Inslee issued Proclamation 20-13 that imposed statewide limits on food and beverage services, and areas of congregation to limit opportunities for disease exposure and transmission in the State. Proclamation 20-13 was based on both guidance from the United States Center for Disease Control and Prevention to reduce the size of gatherings from 250 persons to 50 persons, and the necessity to prohibit any number of people from congregating in public venues for the purposes of entertainment, recreation, food or beverage service, theater, bowling or other similar activities.

Establishments licensed by the Board and subject to the restrictions of Proclamation 20-13 are required to timely remit various taxes and fees by a date certain, or a mandatory late payment penalty will be imposed. As a result of the COVID-19 pandemic, many of these establishments are suffering significant economic hardships and in some cases, their financial resources are becoming severely limited. While the Board possesses authority to waive penalties for late payment of taxes by specific types of establishments it licenses, it lacked the authority to provide the same relief to microbreweries, domestic breweries, and beer distributors licensed under RCW 66.24.290, and wineries and wine distributors licensed under RCW 66.24.210.

Governor's Proclamation 20-26 found that strict compliance with the statutory obligations or limitations provided in RCW 66.24.210 and RCW 66.24.290 will prevent, hinder, or delay action in providing relief to the businesses impacted by these statutes. Such relief is necessary for coping with the COVID-19 State of Emergency under Proclamation 20-05.

This emergency rule accomplishes the following:

- Waives late filing penalty provisions, retroactive to February 29, 2020, for microbreweries, domestic breweries, and beer distributors licensed under RCW 66.24.290, and wineries and wine distributors licensed under RCW 66.24.210 while Governor's Proclamation 20-13 and 20-26 are in effect;
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This rule does **not** relieve any WSLCB licensee from its statutory obligation to remit taxes to the WSLCB.

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted on the agency's own initiative:

New	_____	Amended	<u>1</u>	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	<u>1</u>	Repealed	_____

Date Adopted: March 27, 2020

Name: Jane Rushford

Title: Board Chair

Signature:

Place signature here

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

WAC 314-19-020 What if a licensee doesn't report or pay the taxes due, or reports or pays late? The board may take the following actions against a licensee or permit holder in order to collect any of the reports or taxes due that are outlined in this title.

(1) Suspension or revocation of license	<p>(a) Failure to make a report and/or pay the taxes in the manner and dates outlined in this chapter will be sufficient ground for the board to suspend or revoke a liquor license, wine shipper permit, or certificate of approval (per RCW 66.08.150, 66.24.010, 66.24.120, 66.24.206, 66.20.370, 66.20.380, and 66.24.270).</p> <p>(b) The suspension will remain in effect until all missing reports and/or taxes have been filed with the board (see WAC 314-19-010(1) for the definition of "missing").</p>
(2) Penalties	<p>A penalty of two percent per month will be assessed on any tax payments postmarked after the twentieth day of the month following the reporting period of the transactions (per the reporting requirements outlined in WAC 314-19-015, RCW 66.24.290, and 66.24.210). 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.</p> <p>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.</p>
(3) Surety bond requirements	<p>(a) What is a surety bond? A "surety bond" is a type of insurance policy that guarantees beer and/or wine tax payment to the state. The surety bond must be:</p> <p>(i) Executed by a surety company authorized to do business in the state of Washington;</p> <p>(ii) On a form and in an amount acceptable to the board;</p> <p>(iii) Payable to the Washington state liquor control board; and</p> <p>(iv) Conditioned that the licensee will pay the taxes and penalties levied by RCW 66.24.210 and/or 66.24.290.</p>

(v) As an option to obtaining a surety bond, a licensee may create an assignment of savings account for the board in the same amount as required for a surety bond. Requests for this option must be submitted in writing to the board's financial division.

(b) When will the board require a surety bond? The board may require a surety bond from a Washington beer and/or wine distributor, domestic microbrewery, domestic brewery, public house, domestic winery, wine shipper, or a beer or wine certificate of approval holder that has a direct shipment privilege. If any of the following occur, the board may require the licensee or permit holder to obtain a surety bond or assignment of savings account, within twenty-one days after an administrative violation notice is issued:

(i) A report or tax payment is missing, as defined in WAC 314-19-010, for two or more consecutive months; or

(ii) A report or tax payment is missing, as defined in WAC 314-19-010, two or more times within a two year period.

(c) What will happen if the licensee does not acquire the surety bond or savings account? Failure to meet the bonding or savings account requirements outlined in subsections (a) and (b) of this rule may result in immediate suspension of license privileges until all missing reports are filed and late taxes have been paid and the surety bond is acquired or the savings account is established.

(d) In what amount and for how long will the board require a surety bond? The amount of a surety bond or savings account required by this chapter must be either \$3,000, or the total of the highest four months' worth of tax liability for the previous twelve month period, whichever is greater.

(i) The licensee or permit holder must maintain the bond for at least two years. After the two year period the licensee or permit holder may request an exemption as outlined in subsection (f) of this rule.

(ii) Surety bond and savings account amounts may be reviewed annually and compared to the last twelve months' tax liability of the licensee. If the current bond or savings account amount does not meet the requirements outlined in this section, the licensee or permit holder will be required to increase the bond amount or amount on deposit within twenty-one days.

(e) What action will the board take when a licensee or permit holder holds a surety bond and does not pay taxes due or pays late? If a licensee or permit holder holds a surety bond or savings account, the board will immediately start the process to collect overdue taxes from the surety company or assigned account. If the exact amount of taxes due is not known due to missing reports, the board will estimate the taxes due based on previous production, receipts, and/or sales.

	<p>(f) Can a licensee or permit holder request an exemption to the surety bond or savings account requirement? A licensee or permit holder may make a written request to the board's financial division for an exemption from the surety bond or assignment of savings account requirements. The board will grant an exemption once the following criteria are met:</p> <p>(i) The licensee or permit holder has filed reports and paid applicable taxes to the board for at least two years immediately prior to the exemption request; and</p> <p>(ii) There have been no late or missing reports or tax payments during the previous two years.</p> <p>(iii) In order to remain exempt from the surety bond or assignment of savings account requirements, the licensee must continue to meet the tax reporting and payment requirements outlined in this title (outlined in WAC 314-19-015, RCW 66.24.206, 66.24.210, 66.24.270, 66.24.290, and 66.24.580).</p>
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(4) Subsections (1) and (2) of the section are waived, retroactive to February 29, 2020, while Governor's Proclamation 20-13 is in effect.

[Statutory Authority: RCW 66.08.030. WSR 14-12-101, § 314-19-020, filed 6/4/14, effective 7/5/14; WSR 12-24-091, § 314-19-020, filed 12/5/12, effective 1/5/13. 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. WSR 07-02-076, § 314-19-020, 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. WSR 04-24-007, § 314-19-020, 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. WSR 00-17-065,
§ 314-19-020, filed 8/9/00, effective 9/9/00.]