



Washington State
Liquor and Cannabis Board

August 4, 2021

Office of the Code Reviser:

Consistent with RCW 34.05.335 and WAC 1-21-060, the Liquor and Cannabis Board is withdrawing its preproposal statement of inquiry (CR-101), filed on November 13, 2019 as WSR 19-23-044, regarding alternating proprietorship requirements for distilleries and craft distilleries.

[INSERT SIGNATURE]

David Postman
Chair



Washington State Liquor and Cannabis Board

To: David Postman, Board Chair
Ollie Garrett, Board Member
Russ Hauge, Board Member

From: Audrey Vasek, Policy and Rules Coordinator

Date: August 4, 2021

Copy: Rick Garza, Agency Director
Toni Hood, Deputy Director
Justin Nordhorn, Director of Policy and External Affairs
Chandra Brady, Director of Enforcement and Education
Becky Smith, Licensing Director

Subject: Request for approval to withdraw the CR 101 filed as WSR 19-23-044 on November 13, 2019, regarding alternating proprietorship requirements for distilleries and craft distilleries.

On November 13, 2019, the Board filed a CR 101 preproposal statement of inquiry to consider revisions to chapter 314-28 WAC (Distillers) to add alternating proprietorship requirements for distilleries and craft distilleries.¹ On the same date, the Board adopted BIP-16-2019 clarifying requirements for distilleries and craft distilleries regarding alternating proprietorships.²

During the CR 101 public comment period from November 13, 2019, through January 4, 2020, no comments were received. However, two comments in opposition to the CR 101 were received after the CR 101 public comment period closed. These comments are included in the attached public comment table.³

BIP-16-2019 states, in part, "Alternating proprietorships must be approved by the board through an application and approval process and must meet TTB requirements." During the period that BIP 16-2019 has been in place, from November 13, 2019 to present, no distillery or craft distillery licensees have applied for approval of an alternating proprietorship.

As a result, the CR 101 is no longer necessary. If the Board approves withdrawal of the CR 101, the agency will file a withdrawal of WSR 19-23-044 with the Office of the Code Reviser. Notice will be sent to stakeholders through GovDelivery and posted on the agency website.

¹ See Attachment A: CR 101 Filed as WSR 19-23-044 on November 13, 2019.

² See Attachment B: BIP-16-2019 "Alternating Proprietorships for Distilleries and Craft Distilleries (chapter 314-28 WAC)," Effective November 13, 2019.

³ See Attachment C: CR 101 Public Comment Table.

The Board approves/disapproves of the withdrawal of the CR 101 filed as WSR 19-23-044, regarding alternating proprietorship requirements for distilleries and craft distilleries.

_____ Approve _____ Disapprove _____
David Postman, Chair _____
Date

_____ Approve _____ Disapprove _____
Ollie Garrett, Board Member _____
Date

_____ Approve _____ Disapprove _____
Russ Hauge, Board Member _____
Date

Attachments:

- Attachment A: CR 101 Filed as WSR 19-23-044 on November 13, 2019.
- Attachment B: BIP-16-2019 “Alternating Proprietorships for Distilleries and Craft Distilleries (chapter 314-28 WAC),” Effective November 13, 2019.
- Attachment C: CR 101 Public Comment Table (WSR 19-23-044).

**PREPROPOSAL STATEMENT
OF INQUIRY**



**CR-101 (October 2017)
(Implements RCW 34.05.310)**

Do **NOT** use for expedited rule making

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: November 13, 2019

TIME: 11:41 AM

WSR 19-23-044

Agency: Washington State Liquor and Cannabis Board

Subject of possible rule making: Chapter 314-28 WAC – Distillers. The Washington State Liquor and Cannabis Board (Board) is considering revisions to chapter 314-28 WAC to add alternating proprietorship requirements for distilleries and craft distilleries.

Statutes authorizing the agency to adopt rules on this subject: RCW 66.08.030, RCW 66.24.140, RCW 66.24.145

Reasons why rules on this subject may be needed and what they might accomplish: Revisions to chapter 314-28 WAC are needed to add alternating proprietorship requirements for distilleries and craft distilleries. The Board will consider adding a new section to the chapter and amending existing sections.

Additional technical and clarifying changes will also be considered.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe) Collaborative Rulemaking

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

Name: Janette Benham
Address: PO Box 43080, Olympia, WA 98504
Phone: 360-664-1760
Fax: 360-664-9689
TTY:
Email: rules@lcb.wa.gov
Web site: www.lcb.wa.gov
Other:

(If necessary)

Name:
Address:
Phone:
Fax:
TTY:
Email:
Web site:
Other:

Additional comments:

Date: November 13, 2019

Name: Jane Rushford

Title: Chair

Signature:



Liquor and Cannabis Board Interim Policy BIP-16-2019

Subject: Alternating Proprietorships for Distilleries and Craft Distilleries (chapter 314-28 WAC)

Effective Date: November 13, 2019

Ending Date: Upon the effective date of rules implementing this policy or board action rescinding this policy

Approved:



Jane Rushford, Chair



Ollie Garrett, Board Member



Russ Hauge, Board Member

Purpose:

The purpose of this interim policy is to clarify the requirements for distilleries and craft distilleries regarding alternating proprietorships.

Policy Statement

An alternating proprietorship is an arrangement consisting of two entities taking turns using the same space and equipment for production.

A distillery may enter into an alternating proprietorship with another distillery and a craft distillery may enter into an alternating proprietorship with another craft distillery under the following conditions:

- All production must be done on the premises of the distillery or craft distillery.
- No more than two distilleries or craft distilleries may share the same space and equipment on a distillery or craft distillery premises.
- Monthly reporting and payment must be done per the requirements outlined in WAC 314-28-070.
- Each distillery or craft distillery must maintain separate records that document production and transactions.
- Alternating proprietorships must be approved by the board through an application and approval process and must meet TTB requirements.
- The distillery or craft distillery premises may not be used or shared until the application has been approved.

- Floor plans must be submitted to the board at the time of application. Any changes to the floor plan must be preapproved in writing by the board.
- Entities involved in alternating proprietorships must have designated areas that are physically separated for the storage of their product. Product cannot be intermingled.
- Any samples of spirits offered on the distillery or craft distillery premises must be done according to the provisions outlined in WAC 314-28-030 or WAC 314-28-050. If more than one distillery or craft distillery is offering samples on the premises, the total amount of alcohol offered per person per day may not exceed two ounces.
- Tasting areas may not be shared, must be operated by each entity independently, and must be operated in separate areas of the distillery or craft distillery premises.
- A spirits, beer, and wine restaurant license may not be shared and may only be operated by one entity at a distillery or craft distillery premises.

Attachment C

CR 101 Public Feedback Table—Alternating Proprietorships for Distilleries and Craft Distilleries

Feedback received on the CR-101 Filed as WSR 19-23-044 from November 13, 2019 to present [August 4, 2021].


#	Name	Date Received	Feedback
1	Paul Beveridge, Family Wineries of Washington State	02/25/2020	<p><u>Email received February 25, 2020—Direct quotation included below:</u></p> <p>“ Hi Janette, Thank you for bringing these draft rules to our attention early in their development. I think one reason you may not have received any participation from distilleries is that they are struggling even more than wineries and do not have the time or resources to monitor these sorts of developments. The LCB should be trying to help these struggling craft producers, not weighing them down with yet more regulation.</p> <p>Our comments on alternating proprietorships for distilleries are the same as our comments on alternating proprietorships for wineries that were proposed by the LCB previously. These are regulations in search of a problem. Wineries have been alternating for years with no public safety or other issues. There are no problems in the real world that need to be addressed. The federal rules on alternating proprietorships are more than adequate to protect the public. The LCB could accomplish all of its intended purpose by simply adopting the federal rules verbatim. Adding an additional layer of state regulation only magnifies the already enormous regulatory and paperwork burden on small businesses that seek to market these fine Washington State agricultural products to adults. Such excess regulation creates a competitive disadvantage for small Washington State producers who have to compete with producers in other states and countries that are not burdened by similar restrictions. Large corporate producers can afford to hire regulatory specialists to navigate these complex rules, small producers cannot.</p> <p>The only reason these regulations are "necessary" is because of the LCB's illegal "whatever is not permitted is prohibited" unwritten policy. Nothing in the existing statute or regulations prohibits alternation by wineries or distilleries. Rather than propose these regulations, the LCB could have simply allowed wineries and distilleries to alternate under the federal rules. Instead the LCB has suddenly decided that wineries and distilleries need express "permission" to alternate. As long as the LCB continues to think it should (and can) permit everything that a winery or distillery needs to do to run its business, the regulations and statute will continue to get longer and longer and longer. What will the LCB decide needs permission next? This policy grants enormous power to the LCB to arbitrarily decide what needs "permission" and is not a rational way to regulate an industry that provides billions to the state economy.</p>

		<p>With the above said, the fact remains that alternating proprietorships are critical to small wineries and distilleries. Sharing spaces and expenses helps small businesses get started and gives them economies of scale to compete with larger producers. We will forward some additional comments from one of our members that started their business in two different alternating proprietorships. These comments illustrate the importance of allowing start up businesses to work together to achieve mutual success.</p> <p>Therefore, if the LCB insists that alternating proprietorships need "permission," we will not stand in the way as alternating proprietorships are critical to small businesses in our industry.</p> <p>In terms of specific comments on the current draft of the regulations, we suggest the following changes:</p> <p>Revise paragraph (1) to state two "or more" entities. There is no good reason to limit alternation to two entities. It will unnecessarily limit economic growth and opportunity.</p> <p>Revise paragraph (2) to "permit" distilleries to alternate with wineries and breweries. The only real difference between a winery and a brandy distillery is a boiler and a condenser. Similarly, the only difference between a brewery and a whiskey distillery is a boiler and a condenser. In many respects, making the wine or beer is more important to making a fine spirit than the final distilling process itself. Alternation between all craft producers should be encouraged so that more small businesses can succeed and produce more products that make Washington State proud.</p> <p>Paragraph (3) after the first sentence is too restrictive. There is no compelling need for the restrictions. Small businesses need flexibility to meet competitive demands, not burdensome regulation that has nothing to do with public safety. Having to obtain LCB approval every time a layout is adjusted is not practical or necessary. There is no problem to be addressed. Physical separation is similarly unnecessary in this age of electronic inventory control. Alternating distilleries and wineries should be able to share space, for instance, to age their products in the same temperature controlled area. Labels are more than adequate to identify what product belongs to which producer. Physical separation is a leftover from Prohibition and should be eliminated.</p>
--	--	---

		<p>Subparagraph (3)(d) makes the rest of the proposed regulation unnecessary as the federal regulations are more than adequate. Rather than create new rules, the LCB should simply state that the TTB rules apply and that the LCB can enforce the TTB rules. This would allow the LCB to delete hundreds of lines of unnecessary regulations. It would make Washington law consistent with federal law and not put Washington producers at a competitive disadvantage. Everytime the LCB writes a law that is redundant with federal law or more restrictive than federal law, it creates an additional unnecessary level of complicated regulation that hurts Washington producers and helps foreign competitors. The LCB has not identified any compelling reasons to be more restrictive than federal law.</p> <p>Paragraph (4) is an obvious point and does not belong in this section of the regulations. It is a general prohibition and has nothing to do with alternation.</p> <p>Paragraph (5) is an arbitrary and capricious limitation that should be deleted. For the reasons stated above, there is no good reason to limit alternation to two producers. The LCB should be encouraging craft producers to work together to create great products, not making it more difficult or impossible.</p> <p>Paragraph (6) is redundant with other regulation and is unnecessary in this section of the regulations.</p> <p>Paragraph (7) is obvious and already required by federal law. Alternation is related to production, so the reference to transactions should be deleted.</p> <p>The first sentence of Paragraph (8) is redundant with other regulation and is unnecessary in this section of the regulations. Alternation relates to sharing production equipment and is not relevant to sharing tasting space. Nothing in the existing statute prohibits wineries or distilleries from sharing tasting spaces and special "permission" should not be required. Subparagraph (8)(a) puts alternating proprietors at a competitive disadvantage compared to wineries and distilleries that can afford to rent or buy separate facilities right next to each other. It's already illegal to over serve a customer. Subparagraph (8)(b) should be deleted. First it has nothing to do with sharing production facilities. Second, it defeats the purpose of letting producers work together and share costs. If each producer has to have separate staff, separate cash registers, and separate locations, there is no benefit to sharing a space. Finally, if the tasting areas can't be shared, then the limitation in (8)(a) is not appropriate.</p>
--	--	---

			<p>Paragraph (9) is completely unnecessary and unreasonably limits economic growth. Like paragraph (8) it confuses retail operations with alternation of production operations. It is a leftover from tied house restrictions that have been eliminated by the legislature. The LCB cannot identify any compelling legitimate need for this prohibition.</p> <p>In summary, we hope you will reconsider the proposed regulations as unnecessary or replace them with a reference to federal law. Please let us know if you have any questions. Thanks.”</p>
2	Scott Greenberg (forwarded from Paul Beveridge of Family Wineries of Washington State)	02/25/2020	<p><u>Email received February 25, 2020—Direct quotation included below:</u></p> <p>“ Hi Janette, Attached are some comments by one of our members:</p> <p>I was in an alternating proprietorship in Woodinville for our first 8 years. The first AP was 4 wineries, the second AP was 3 wineries. My comments on the attached draft are based on my experience in these APs.</p> <p>What is the problem they are trying to solve? The TTB strictly regulates APs. Wouldn't these new WAC rules be redundant?</p> <p>Thank you, Scott Greenberg Owner/Winemaker Convergence Zone Cellars”</p> <p><u>Attachment:</u></p>

NEW SECTION

WAC 314-28-056 Alternating proprietorships. (1) 


alternating proprietorship is an arrangement consisting of two entities taking turns using the same space and equipment for production.

(2) A distillery may enter into an alternating proprietorship with another distillery and a craft distillery may enter into an alternating proprietorship with another craft distillery.




(3) Alternating proprietorships must be approved by the board through an application and approval process.

(a) The distillery or craft distillery premises may not be used or shared until the application has been approved.

(b) Floor plans must be submitted to the board at the time of application. Any changes to the floor plan must be preapproved in writing by the board.

(c) Each distillery or craft distillery must have designated  areas that are physically separated for the storage of their product. Product cannot be intermingled.

(d) Alternating proprietorships must meet TTB requirements.

			<p> 1</p> <p>(4) All production must be done on the premises of the distillery or craft distillery.</p> <p>(5) No more than two distilleries or craft distilleries may share the same space and equipment on a distillery or craft distillery premises.</p> <p>(6) Monthly reporting and payment must be done per the requirements outlined in WAC 314-28-070.</p> <p>(7) Each distillery or craft distillery must maintain separate records that document production and transactions.</p> <p>(8) Any samples of spirits offered on the distillery or craft distillery premises must be done according to the provisions outlined in WAC 314-28-030 or WAC 314-28-050.</p> <p> 2</p> <p>(a) If more than one distillery or craft distillery is offering samples on the premises, the total amount of alcohol offered per person per day may not exceed two ounces.</p> <p> 3</p> <p>(b) Tasting areas may not be shared, must be operated by each entity independently, and must be operated in separate areas of the distillery or craft distillery premises.</p>
--	--	--	---

(9) A spirits, beer, and wine restaurant license may not be shared and may only be operated by one entity at a distillery or craft distillery premises.

Summary of Comments on Scott G comments.pdf

Page: 1

- Number: 1 Author: Scott Greenberg Date: 2/21/2020 5:12:00 AM -08'00'
Why only two? This could restrict incubators (like the one in Walla Walla) where more than two share space to reduce startup costs.
- Number: 2 Author: Scott Greenberg Date: 2/21/2020 5:18:00 AM -08'00'
How is this defined? The TTB allowed us to use a piece of tape on the floor and I think 18" of separation between our areas.

Page: 2

- Number: 1 Author: Scott Greenberg Date: 2/21/2020 5:20:00 AM -08'00'
If production must be done on each distillery's premises, how can another distillery share that space (#5 below)?
- Number: 2 Author: Scott Greenberg Date: 2/21/2020 5:24:00 AM -08'00'
But I can walk next door to another distillery and have tastes? I'm thinking of Woodinville's Warehouse District or Hollywood District where multiple wineries exist as separate entities in the same building or complex.
- Number: 3 Author: Scott Greenberg Date: 2/21/2020 5:26:00 AM -08'00'
Why? We had three wineries with separate tasting bars in the same room operating independently without any issues.