



Washington State Liquor and Cannabis Board

On-Premises Liquor Licensees Enforcement Bulletin 19-04

Date: August 28, 2019
To: On-Premises Liquor Licensees
From: Washington State Liquor and Cannabis Board
Regarding: **Retail liquor licensed industry has asked about ability to infuse spirits to create cocktails at their retail locations**

The Liquor and Cannabis Board (LCB) has received numerous requests to allow Beer/Wine/Spirits Retail licensees to infuse spirits-based cocktails with fruits, sugars or other flavor additives to create flavorful cocktails. There is a fine line to this request that begs the question — would the retail licensees be considered manufacturers of alcohol by adding these fruits, sugars or flavor additives? Or, is this just a spirits drink with flavor additives to make a flavorful mixed cocktail?

RCW 66.04.010 (27) defines Manufacturer as a “person engaged in the preparation of liquor for sale, in any form whatsoever.” Liquor is defined under the same RCW as “the four varieties of liquor herein defined (alcohol, spirits, wine, and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof.”

These definitions speak to production of alcohol, such as vodka, bourbon, whiskey and the like, not the mixing of a spirituous cocktail.

RCW 66.24.400 states, “(1) There shall be a retailer's license, to be known and designated as a spirits, beer, and wine restaurant license, to sell spirituous liquor by the individual glass, beer, and wine, at retail, for consumption on the premises, including mixed drinks and cocktails compounded or mixed on the premises only.”

AAG opinion advises the mixing of alcohol and a flavorful additive or fruit to make a cocktail does not meet the definition of manufacturing and is allowed under the Spirits/Beer/Wine retail license. The issue is when the retail licensee wishes to add sugar to alcohol over time to allow fermentation to alter the spirituous liquor to another form of alcohol, this would be considered manufacturing and not allowed on a retail license premises.

There are two other important pieces to consider when discussing mixing or infusing cocktails at the licensed premises.

One factor is time and the other is containers in which the mixed spirits cocktail can be either poured immediately or stored overnight at the licensed premises to be used for the next day's business. The law speaks to consumption on the premises in a timely manner and by the individual glass. Bartenders regularly use containers to mix a cocktail, therefor allowing a mixed

infused cocktail to sit in a container to be used repeatedly throughout the day or next day. This would not rise to the definition of manufacturing per the legal definition nor the RCW definition.

The federal Alcohol and Tobacco Tax and Trade Bureau (TTB) offered the following newsletter information addressing infusing of tax paid spirits:

TTB Newsletter Excerpt, May 18, 2012

TTB Opinion on Alcohol Infusions

At TTB, we are aware of the increasing trend of bars and restaurants infusing distilled spirits with fruits, herbs, and other nonalcoholic ingredients in order to make "infusions," which are served on premises in cocktails. The National Alcohol Beverage Control Association (NABCA) recently asked us for a statement of TTB's position on the issue in order to assist NABCA's state government members when developing their own policies regarding infusions. We provided NABCA with the following response, which reflects our analysis of the application of certain federal laws to the making of infusions using tax paid spirits. In addition, we provided NABCA with our current enforcement policy regarding these activities, so that States could take that into consideration when applying their respective alcohol beverage laws and regulations. We remind you that TTB is not precluded from taking enforcement action for any conduct that may jeopardize the revenue.

"Under the Federal Alcohol Administration Act (FAA Act), rectifying or blending distilled spirits may only be lawfully done by a person with a TTB permit. (See 27 U.S.C. 203(b)). Additionally, under the Internal Revenue Code of 1986 (IRC), processing distilled spirits (including mixing) may be conducted only on the bonded premises of a distilled spirits plant by a person who maintains a registration as a distilled spirits plant proprietor. The mixing of tax paid spirits for immediate consumption is not considered processing. (See 26 U.S.C. 5002(a)(5) and 5002(a)(6)(B)).

We understand that infusions are generally not for immediate consumption at the time the ingredients are mixed and would, accordingly, be subject to the IRC requirements. However, since tax paid spirits are used in the process, TTB believes there is little risk to the Federal excise tax revenue. Additionally, because infusions are served on premises as or in cocktails, we do not foresee FAA Act packaging and labeling concerns. Under these circumstances, TTB exercises its enforcement discretion not to take enforcement action solely on the basis of violations with regard to a retail liquor dealer that mixes tax paid spirits to produce infusions for on-premise consumption. This position does not apply to and TTB will continue to enforce prohibitions on processing with non-tax paid spirits, bottling spirits, aging spirits in barrels, heating spirits, refilling of liquor bottles by retail liquor dealers, and with respect to any other conduct that may jeopardize the revenue."

The TTB also indicates any changes to the class or type of a distilled spirit would be considered a processing operation; this would also include aging or altering the spirits in any way be it in a barrel or container which includes aging different spirits in a barrel over time. This process would be required to obtain federal licensing and manufacturing or distillery licenses by the state and not allowed on the retail license premises.

The last issue to discuss is the regulation WAC 314-11-080 which speaks to the tampering, diluting, or fortifying of any bottle of spirituous liquor. Infusing involves pouring the spirituous liquor into a container and adding a fruit or flavorful additive to make a mixed cocktail on the licensed premises – it is not diluting, fortifying or tampering with the bottle of spirituous liquor and would appear not to be applicable to the regulation.

Based on Washington State liquor laws and regulations and the opinion of the TTB and AAG, the retail licensee may use spirituous alcohol in which flavorful additives or fruits have been added/infused to a mix spirits cocktail to be poured from a container to be served by the glass and consumed on the licensed premises is allowed.

Any process the retail licensee wishes uses to alter the spirituous liquor by fermentation or adding of sugars over time would be considered manufacturing and not allowed.

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