



Notice of Rule Change – Explanatory Statement Breweries and Microbreweries

This explanatory statement concerns the **Washington State Liquor Control Board's adoption of changes to the rules necessary to implement legislation regarding breweries and microbreweries.**

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 rule with the Office of the Code Reviser. This rule change will become effective 31 days after filing (approximately January 30, 2009).

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?

Two legislative bills pertaining to breweries and microbreweries were adopted in 2008. The Washington State Liquor Control Board is updating its rules to reflect the changes made by these bills.

Legislative.

SSB 6572 (2008) and SSB 6770 (2008) permit three new activities.

1. A brewery or microbrewery may have up to two retail licenses, either on or off the brewery or microbrewery premises, to operate a tavern, a beer and/or wine restaurant, or a spirits, beer, and wine restaurant (SSB 6770). Previously, they were allowed one retail license on, and one retail license off, the brewery or microbrewery premises, but only for a beer and/or wine restaurant, or a spirits, beer, and wine restaurant (not for tavern).

2. A microbrewery that operates as a distributor may have one off-premises warehouse (SSB 6572). Before the bill, a microbrewery was limited to storing on the licensed premises.
3. A licensed microbrewery may contract-produce beer for another microbrewer (SSB 6770). Previously, a microbrewery was limited to producing its own beer.

What changes are being made?

New Section 314-20-017 – Brewery and microbrewery retail liquor licenses – Selling kegs and containers.

A licensed brewery or microbrewery may hold up to two retail liquor licenses for a tavern, a beer and/or wine restaurant, or a spirits, beer, and wine restaurant. The retail locations may be either on or off the premises. Kegs and containers of beer or malt liquor may be sold from the brewery/microbrewery premises, or from the retail locations.

New Section 314-20-055 – Microbrewery warehouse license.

A microbrewery may have one off-premises warehouse from which to store and distribute beer of its own production (and no one else's).

New Section 314-20-095 – What are the requirements for contract production between microbreweries?

"Contract production", which is undefined in statute, is clarified. Elements addressed include product ownership, labels, state taxes, who may sell and distribute the product, how total production is calculated (< 60,000 gallons for a microbrewery), and reporting and record-keeping requirements.

Rule Adoption

The Board adopted these rule changes on December 17, 2008. The rule was filed on December 29, 2008 and will be effective January 30, 2009.

Summary of all public comments received on this rule proposal.

The WSLCB filed Pre-proposal (CR 101) on July 15, 2008 and proposed rules (CR 102) were filed on October 17, 2008. A public hearing was held on December 3, 2008, in Olympia, Washington, at WSLCB headquarters. No written comment was received. No one testified at the December 3rd public hearing.

Text of Rules (Estimated effective date is January 30, 2009)

NEW SECTION

WAC 314-20-017 Brewery and microbrewery retail liquor licenses--Selling kegs and containers. A brewery or microbrewery licensed under RCW 66.24.240 or 66.24.244 may hold up to two retail liquor licenses to operate a spirits, beer, and wine restaurant, a tavern, a beer and/or wine restaurant, or any combination thereof.

(1) Definitions.

(a) For the purposes of this section, a "container" is a sealable receptacle, such as a carton, jug, growler or keg, and has no minimum holding requirement. A "keg" is a container holding four gallons or more.

(b) "Malt liquor" is a specific type of "beer" (as explained in RCW 66.04.010).

(c) "Beer" includes malt liquor and flavored malt beverages (as explained in RCW 66.04.010).

(2) Applicable to retail licenses for spirits, beer, and wine restaurants, beer and/or wine restaurants, and taverns.

(a) A retail license is separate from a brewery or microbrewery license.

(b) All containers of beer must be sold from the retail premises.

(c) A retail location may be located on or off the brewery or microbrewery premises.

(3) A brewery-operated or microbrewery-operated spirits, beer, and wine restaurant may sell containers of beer of its own production without a kegs-to-go endorsement provided that it sells this beer for off-premises consumption only. A brewery or microbrewery may supply the container or use a container brought to the premises by a customer.

(4) A brewery-operated or microbrewery-operated spirits, beer, and wine restaurant may sell kegs of malt liquor of another brewery's or microbrewery's production provided that it:

(a) Sells this malt liquor for off-premises consumption only;

(b) Has a kegs-to-go endorsement; and

(c) Supplies the kegs.

(5) A tavern or beer and/or wine restaurant that is operated by a brewery or microbrewery and has an off-premises beer and wine retailer's privilege may:

(a) Sell kegs of malt liquor for either on-premises or off-premises consumption. The malt liquor may be of the licensee's own production or the production of another brewery or microbrewery; and

(b) Sell containers of beer for either on-premises or off-premises consumption provided that the customer supplies the container. The beer may be of the licensee's own production or the production of another brewery or microbrewery.

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NEW SECTION

WAC 314-20-055 Microbrewery warehouse license. (1) A licensee holding a microbrewery license under RCW 66.24.244 and acting as a distributor of its own products may apply for a microbrewery warehouse license. There is no fee for this license.

(2) A microbrewery warehouse is a premises located off the microbrewery premises that is used for the storage and distribution of the microbrewery's own products.

(3) There may be no retail sales from the microbrewery warehouse.

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NEW SECTION

WAC 314-20-095 What are the requirements for contract production between microbreweries? This section clarifies the language for contract production found in RCW 66.24.244. For the purposes of this section, contract production is when one microbrewer, referred to as the "contractor," produces and packages beer for another microbrewer, referred to as the "contractee." This beer is referred to as the "product."

(1) The contractee is the product owner. As such, the contractee may distribute and retail the product.

(2) The contractor is required to physically transport all contracted product to the contractee. The contractor is not allowed to distribute or retail the product.

(3) The contractor must submit a copy of the contract to the board prior to production. Any changes in the contract must also be submitted to the board prior to subsequent production. The board may require additional information.

(4) The contractor is required to obtain federal label approval, and the contractee is required to obtain state label approval.

(5) State taxes listed under RCW 66.24.290.

(a) The contractor is not responsible for the taxes.

(b) The contractee is responsible for the taxes when the contractee is acting as its own distributor or retailer for the product.

(c) When the contractee uses a distributor to distribute the product, then the distributor is responsible for the taxes.

(6) Maintaining qualification as a microbrewery. Each microbrewery, whether in the capacity of a contractor or contractee, is allowed to produce under sixty thousand barrels of total product per year. Total product, in this instance, includes product (a) owned and produced by the microbrewery; (b) owned by the microbrewery but produced by another microbrewery; and (c) produced by the microbrewery on behalf of another microbrewery.

(7) Reporting and recordkeeping.

(a) The contractor must include the product produced when it reports its monthly production to the board.

(b) The contractee must include the sale of the product when it submits its monthly sales report to the board. The board may also require the contractee to include the product when the contractee reports its monthly production to the board.

(c) The contractor's and the contractee's recordkeeping documents must include the product information for each contract. The information must show the quantities produced.

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