



Notice of Rule Change – Explanatory Statement Craft Distilleries

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

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?

A legislative bill pertaining to craft distilleries was adopted in 2008. The Washington State Liquor Control Board is updating its rules to reflect the changes made by this bill.

Legislative.

SHB 2959 (2008) created a new license for craft distilleries and stipulated the associated allowances and requirements.

1. Craft distillers may produce 20,000 gallons or less of spirits per year.
2. At least half of the raw materials used in the production must be grown in the state of Washington. (This requirement does not apply to distillers under the \$2000 license.)
3. The license fee is \$100 per year.
4. A craft distillery may sell up to two liters of spirits of its own production per person per day for off-premises consumption. Previously, distilleries were allowed to sell only to the WSLCB or to out-of-state entities.

5. A craft distillery may provide free samples of its own spirits to customers at the distillery premises. All servers must have a class 12 alcohol server permit.

What changes are being made?

Amendatory Chapter Title – 314-28 WAC – Distillers.

The title of Chapter 314-28 WAC is changed from "Fruit distillers" to "Distillers".

Amendatory Section 314-28-010 – Records.

The record requirements for all distillery types are stipulated. Requirements include which records must be retained, how long they must be retained, and which copies of records the WSLCB requires or may request. Additional requirements that apply only to craft distilleries are also stipulated (e.g. sales records, monthly returns).

New Section 314-28-050 – What does a craft distillery license allow?

A craft distillery is allowed to produce up to 20,000 proof gallons of its own spirits per year. It is also allowed to sell spirits directly to customers at the licensed premises (for off-premises consumption), and to provide free samples of its own production to customers on the distillery premises, and to retailers.

New Section 314-28-060 – What are the general requirements for a craft distillery license?

General requirements include submitting licensing documents, as well as permits required by the federal government; ensuring that at least 50% of all raw materials are produced in Washington; and purchasing and pricing as directed by the WSLCB.

New Section 314-28-070 – What are the monthly reporting and payment requirements for a craft distillery license?

A craft distillery must submit monthly reports and payments to the WSLCB. Production and the production process are defined, and how production is quantified is explained.

New Section 314-28-080 – What if a craft distillery license fails to report or pay, or reports or pays late?

The WSLCB assesses a penalty of 2% per month, and may require a surety bond or dedicated savings account if (1) a licensee reports or pays more than 30 days late two or more times within a 2-year period, (2) a licensee reports or pays more than 30 days late two months in a row, or (3) a payment is returned for insufficient funds.

New Section 314-28-090 – Craft distilleries—Retail pricing—Selling to customers and to the board.

If a craft distillery sells its product within the state, it must obtain retail pricing from the WSLCB, and use the retail prices as set by the WSLCB. If a licensee wants to have its products sold at state liquor stores, then the licensee must send a request for product listing.

New Section 314-28-200 – Adoption of federal laws.

A craft distillery licensee must meet all laws, rules and regulations of the federal government.

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 one testified at the December 3rd public hearing. No written comment was received.

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

AMENDATORY SECTION (Amending Order 172, Resolution No. 181, filed 3/13/86)

WAC 314-28-010 Records. (~~All fruit distillers, whether operating under the general distiller's license or under the two hundred dollar license, provided in section 23-D of the Washington State Liquor Act (RCW 66.24.140), and who manufacture brandy or wine spirits intended for use by domestic wineries for brandy or wine spirits addition in the manufacture of wine, must keep separate records concerning such brandy or wine spirits on forms approved by the board, and such records must be kept separate and apart from any other records kept or required to be kept and maintained.~~) (1) All distilleries licensed under RCW 66.24.140 and 66.24.145, including craft, fruit, and laboratory distillers:

(a) Must keep records concerning any spirits, whether produced or purchased, for two years after each sale. These records must be kept separate from any other records. A distiller may be required to report on forms approved by the board;

(b) Must, in case of spirits exported or sold, preserve all bills of lading and other evidence of shipment; and

(c) Must submit duplicate copies of transcripts, notices, or other data that are required by the federal government to the board if requested, within thirty days of the notice of such request. A distiller shall also furnish copies of the bills of

lading, covering all shipments of the products of the licensee, to the board within thirty days of notice of such request.

(2) A craft distiller must:

(a) Preserve all sales records, in the case of retail sales to consumers, in addition to the records listed in subsection (1)(b) of this section; and

(b) Submit duplicate copies of its monthly returns to the board upon request, in addition to the duplicate copies listed in subsection (1)(c) of this section. The same conditions apply as in subsection (1)(c) of this section.

[Statutory Authority: RCW 66.08.030. 86-07-022 (Order 172, Resolution No. 181), § 314-28-010, filed 3/13/86; Order 14, § 314-28-010, filed 12/1/70, effective 1/1/71; Rule 84, filed 6/13/63.]

NEW SECTION

WAC 314-28-050 What does a craft distillery license allow?

(1) A craft distillery license allows a licensee to:

(a) Produce twenty thousand proof gallons or less of its own spirits per calendar year. A "proof gallon" is one liquid gallon of spirits that is fifty percent alcohol at sixty degrees Fahrenheit;

(b) Sell spirits of its own production directly to a customer for off-premises consumption, provided that the sale occurs when the customer is physically present on the licensed premises. A licensee may sell no more than two liters per customer per day. A craft distiller may not sell liquor products of someone else's production;

(c) Sell spirits of its own production to the board provided that the product is "listed" by the board, or is special-ordered by an individual Washington state liquor store;

(d) Sell to out-of-state entities;

(e) Provide, free of charge, samples of spirits of its own production to persons on the distillery premises. Each sample must be one-half ounce or less, with no more than two ounces of samples provided per person per day. Samples must be unaltered, and anyone involved in the serving of such samples must have a valid Class 12 alcohol server permit. Samples must be in compliance with RCW 66.28.040 and all applicable WACs, and are subject to taxes under WAC 314-28-070; and

(f) Provide, free of charge, samples of spirits of its own production to retailers. Samples must be unaltered, and in compliance with RCW 66.28.040 and all applicable WACs, including WAC 314-44-005 and 314-64-08001. Samples are considered sales and are subject to taxes under WAC 314-28-070.

(2) A craft distillery licensee may not sell directly to in-state retailers or in-state distributors, but only to on-premises customers, to the board, and to out-of-state entities,

as stipulated in subsections (1)(b), (c) and (d) of this section.

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NEW SECTION

WAC 314-28-060 What are the general requirements for a craft distillery license? Per RCW 66.24.140 and 66.24.145, a craft distillery licensee is required to:

(1) Submit copies of all permits required by the federal government;

(2) Submit other licensing documents as determined by the board. Other documents may include, but are not limited to, a personal criminal history statement, a financial statement, the right to the real property, and the tied house statement;

(3) Ensure a minimum of fifty percent of all raw materials (including any neutral grain spirits and the raw materials that go into making mash, wort or wash) used in the monthly production of the spirits product are grown in the state of Washington. Water is not considered a raw material grown in the state of Washington;

(4) Purchase any spirits sold at the distillery premises for off-premises consumption from the board, at the price set by the board;

(5) Purchase any spirits used for sampling at the distillery premises from the board;

(6) Purchase any spirits used for samples provided to retailers from the board; and

(7) Meet any other applicable requirements stated in RCW and WAC.

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NEW SECTION

WAC 314-28-070 What are the monthly reporting and payment requirements for a craft distillery license? A craft distiller must submit monthly reports and payments to the board.

(1) Monthly reports. The required monthly reports must be:

(a) On a form furnished by the board or in a format approved 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.

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

(3) Payments to the board. A distillery must pay the difference between the cost of the alcohol purchased by the board and the sale of alcohol at the established retail price, less the established commission rate during the preceding calendar month, including samples at no charge (see WAC 314-64-08001 for more information).

(a) Any on-premises sale or sample provided to a consumer is considered a sale reportable to the board.

(b) Samples provided to retailers are considered sales reportable to the board.

(c) Payments must be submitted, with monthly reports, to the board on or before the twentieth day of each month, for the previous month. (For example, payment for 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, payment must be postmarked by the U.S. postal service no later than the next postal business day.

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NEW SECTION

WAC 314-28-080 What if a craft distillery licensee fails to report or pay, or reports or pays late? If a craft distiller fails to submit its monthly reports or payment to the board, or submits late, then the licensee is subject to penalties and surety bonds.

(1) Penalties. 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.

(2) Surety bonds. A "surety bond" is a type of insurance policy that guarantees payment to the state, and is executed by a surety company authorized to do business in the state of Washington. Surety bond requirements are as follows:

(a) Must be on a surety bond form and in an amount acceptable to the board;

(b) Payable to the "Washington state liquor control board";
and

(c) Conditioned that the licensee will pay the taxes and penalties levied by RCW 66.28.040 and by all applicable WACs.

(3) The board may require a craft distillery to obtain a surety bond or assignment of savings account, within twenty-one days after a notification by mail, if any of the following occur:

(a) A report or payment is missing more than thirty days past the required filing date, for two or more consecutive months;

(b) A report or payment is missing more than thirty days past the required filing date, for two or more times within a two-year period; or

(c) Return of payment for nonsufficient funds.

(4) 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.

(5) The amount of a surety bond or savings account required by this chapter must be either three thousand dollars, or the total of the highest four months' worth of liability for the previous twelve month period, whichever is greater. The licensee must maintain the bond for at least two years.

(6) 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 will be required to increase the bond amount or amount on deposit within twenty-one days.

(7) If a licensee holds a surety bond or savings account, the board will immediately start the process to collect overdue payments from the surety company or assigned account. If the exact amount of payment due is not known because of missing reports, the board will estimate the payment due based on previous production, receipts, and/or sales.

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NEW SECTION

WAC 314-28-090 Craft distilleries--Selling in-state, retail pricing and product listing--Selling out-of-state--Special orders. (1) What steps must a craft distillery licensee take to sell a spirits product in the state of Washington?

(a) *Selling a spirits product at a state liquor store.* There are two ways to sell a spirits product at a state liquor store. One way is through the special order process, which is explained in subsection (3) of this section ("How to special

order a product."). The second way is through product listing (explained in this subsection). If a craft distillery licensee wants the board to regularly stock its product on the shelf at a state liquor store, a licensee must request the board to list its product. If the board agrees to list the product, a licensee must then sell its product to the board and transport its product to the board's distribution center.

(b) *Selling a spirits product at a craft distillery premises.* Before a craft distillery licensee may sell its product to a customer (i.e., any individual who is twenty-one years old or older) at its distillery premises, a licensee must first obtain a retail price from the board, sell its product to the board, and then purchase its product back from the board. Product that a licensee produces and sells at its distillery premises is not transported to the board's distribution center.

(c) *Listing a product.* A craft distillery licensee must submit a formal request to the board to have the board regularly stock its product at a state liquor store. The board's purchasing division administers the listing process.

(i) A licensee must submit the following documents and information: A completed standard price quotation form, a listing request profile, bottle dimensions, an electronic color photograph of the product, a copy of the federal certificate of label approval, and a signed "tied house" statement.

(ii) The purchasing division shall apply the same consideration to all listing requests.

(iii) A craft distillery licensee is not required to submit a formal request for product listing if a licensee sells its product in-state only by special order (see subsection (3) of this section, "How to special order a product.").

(d) *Obtaining a retail price.* A craft distillery licensee must submit a pricing quote to the board forty-five days prior to the first day of the effective pricing month. A pricing quote submittal includes a completed standard price quotation form, and the product's federal certificate of label approval. The board will then set the retail price.

(i) Pricing may not be changed within a calendar month.

(ii) A craft distillery licensee is required to sell to its on-premises customers at the same retail price as set by the board. If and when the board offers a temporary price reduction for a period of time, a licensee may also sell its product at the reduced price, but only during that same period of time.

(2) What are the requirements for a craft distillery licensee to sell its spirits product outside the state of Washington?

(a) A craft distillery licensee shall include, in its monthly report to the board, information on the product it produces in-state and sells out-of-state. Information includes, but is not limited to, the amount of proof gallons sold, and the composition of raw materials used in production of the product (see WAC 314-28-070).

(b) Product produced in-state and sold out-of-state counts toward a licensee's twenty thousand proof gallons per calendar year production limit (see WAC 314-28-050).

(c) Product produced in-state and sold out-of-state is subject to the fifty percent Washington grown raw materials requirement (see WAC 314-28-060).

(d) Product sold out-of-state is not subject to retail pricing by the board.

(e) A craft distillery licensee is not subject to Washington state liquor taxes on any product the licensee sells out-of-state.

(3) How to special order a product.

(a) If a customer, such as an individual person or a restaurant licensee, wants to purchase a spirits product that is not carried on the shelf at a state liquor store, then the following steps may be taken to special order the product:

(i) The customer must place a special order request with a state liquor store;

(ii) The store forwards the special order request to the board's purchasing division;

(iii) The purchasing division orders the product from the craft distillery licensee. To receive an order, the craft distillery licensee must have a product listing or a product retail price, as described in subsection (1)(c) and (d) of this section;

(iv) The craft distillery licensee sends the product to the board's distribution center; and

(v) The distribution center ships the product to the state liquor store that originally took the customer's special order request (see (a)(ii) of this subsection).

(b) For additional information regarding special order requests, refer to chapter 314-76 WAC.

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NEW SECTION

WAC 314-28-200 Adoption of federal laws. All laws, rules and regulations of the federal government, or any subsequent modification thereof, applicable to the distillation of spirits, wines, cordials, liquors, etc., are by reference hereby adopted and promulgated as the rules and regulations of this board, unless the board implements different procedures by rule or policy.

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