



Notice of Permanent Rules for Chapters 314-20, 314-24, and 314-28 WAC

This explanatory statement concerns the Washington State Liquor and Cannabis Board's adoption of rules for Chapters 314-20, 314-24, and 314-28 WAC

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 rulemaking.

Once persons who gave comment during this rulemaking have had a chance to receive this document, the Liquor and Cannabis Board will file the amended rules with the Office of the Code Reviser. These rule changes will become effective 31 days after filing (approximately January 21, 2018).

The Liquor and Cannabis 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@lcb.wa.gov.

What are the agency's reasons for adopting these rules?

As part of the Liquor and Cannabis Board's on-going rules review process, rules in these WAC Chapters were reviewed for relevance, clarity, and accuracy.

Summary of all public comments received on this rule proposal.

Five stakeholders provided comment at the public hearing held November 29, 2017.

Comments:

3 comments: There shouldn't be production requirements for wineries.

LCB response: The production requirement for wineries was removed.

4 comments: The language for alternating proprietorships for both breweries and wineries needs to be revised.

LCB response: The alternating proprietorship language for both breweries and wineries was removed and will be addressed in a later rulemaking.

2 comments: Bulk transfers of wine need to be addressed.

LCB response: Bulk transfers of wine have been addressed after meeting with stakeholders.



1 comment: Custom crush definition needs clarification.

LCB response: This issue will be addressed in a future rulemaking.

1 comment: Federal law is adequate, the state doesn't need to add additional regulations for wineries. There is no longer tied house in Washington State. There is not a single sentence that benefits small wineries.

LCB response: Tied house is still part of Washington State's liquor statutes. There have been many exceptions to tied house, including changes with privatization, but tied house laws are still part of statute.

CR 102 filed October 18, 2017 WSR 17-21 -111. The following written comments were received:

Wendy Turk – Fintech/Director of Regulatory Affairs

Comment: WAC 314-20-090 states beer distributors shall not deliver beer to any retailer except for cash paid at the time of delivery. WAC 314-13-015 cites an array of payment methods and guidelines for payments from retailers. Beer distributors should be allowed to accept any form of payment listed in WAC 314-13-015.

LCB response: The payment types listed in WAC 314-13-015 apply to payments for all types of alcohol. The rules do not allow credit between distributors and retailers. There are several forms of payment that are all considered "cash" payment.

John Guadnola – Executive Director of the Association of Washington Spirits & Wine Distributors

Comment: The rules on return of beer, wine, and spirits address the return of the product to a distributor. The rules don't address the return of product to a brewery, winery, or distillery who sold the product directly to a retailer. We believe these rules should clarify who the product can be returned to.

LCB response: The language in the rules will be revised to include this language when the rules are reopened.

Annie McGrath – Washington Brewers Guild

Comment: Support the rule revisions for breweries except for the new section on microbrewery alternating proprietorships, WAC 314-20-092. We have concerns with the language.

LCB response: The new section to the rules, WAC 314-20-092 was removed from the rulemaking and will be addressed in a future rulemaking.

Vickie Stone

Comment: The new rule on winery alternating proprietorships is not consistent with the TTB. I would suggest the WSLCB follow the TTB guidelines for winery alternating proprietorships.

LCB response: The alternating proprietorship language for both breweries and wineries was removed and will be addressed in a later rulemaking.



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Jason Parker – Copperworks Distilling Co.

Comment: WAC 314-28-070 (3)(a) should be revised to remove “craft distillery” from the requirement to pay 17% of their gross spirits revenue to the board on sales to customers for off-premises consumption.

LCB response: The “craft distillery” was removed from section of the rule.

Comment: WAC 314-28-090 should be revised to read “150 thousand” proof gallons, not 150 proof gallons.

LCB response: WAC 314-28-090 was corrected to read “150 thousand” proof gallons.

Stephanie Meier – Attorney, Stoel Rivers LLP

Comment: Custom crush arrangements should be addressed to mimic TTB’s position.

LCB response: Custom crush arrangements will be addressed in a future rulemaking which will include alternating proprietorships.

Josh McDonald – Washington Wine Institute

Comment: Further discussion is needed regarding custom crush operations and winery alternating proprietorships to mirror TTB requirements.

LCB response: Custom crush arrangements will be addressed in a future rulemaking which will include alternating proprietorships.

Comment: WAC 314-24-008, application for domestic wineries. WSLCB should mirror the TTB application requirements.

LCB response: The application requirements for domestic wineries has not changed. The application process was added to rule to clarify what is required for applicants.

Comment: WAC 314-24-070 should read...”domestic wineries may purchase and/or receive under federal bond”....

LCB response: The revision was made to WAC 314-24-070 to include “and/or”.

Comment: Generally support WAC 314-24-160, retail sale of wine on winery premises, but subsection (9) should be revised to allow wine manufacturers and employees to sample wine during the tasting to ensure the flavor of the wine is acceptable for tasting.

LCB response: The rule was not changed. Licensees and/or their employees are not allowed to consume alcohol during tastings.

Comment: The new rule on winery alternating proprietorships is not consistent with the TTB. I would suggest the WSLCB follow the TTB guidelines for winery alternating proprietorships.

LCB response: The alternating proprietorship language for both breweries and wineries was removed and will be addressed in a later rulemaking.

Comment: The new rule on consumer orders, internet sales, and delivery needs to be revised to allow current practice.

LCB response: The new rule on consumer orders, internet sales, and delivery was removed and will be addressed in a later rulemaking.

Comment: New section WAC 314-24-265, defining wine of a winery’s own production should be revised by removing subsection (3) of the rule.

LCB response: The new rule was written to implement the board interim policy 08-2011. The interim policy and the new rule requires that both Washington and Oregon wineries must manufacture wine within the same TTB authorized appellation.



Katie Jacoy – Wine Institute

Comment: The new rules on alternating proprietorships and consumer orders, internet sales, and delivery need revisions.

LCB response: Both proposed new rules were removed from this rulemaking. Both issues will be addressed in a future rulemaking.

Comment: WAC 314-24-040 (1)(a) should include the word “or” because not all labels are required to have an approval by TTB.

LCB response: This change was made to the rule.

Comment: WAC 314-24-040(3) regarding samples of wine provided to the board for the purpose of analysis – we encourage you to include a limit on the volume of requested samples, such as no more than 1.5 liters.

LCB response: The language in this rule is existing language. No changes were made to include a limit on the volume of requested samples.

Comment: WAC 314-24-080, containers – sizes and types permitted. This rule is confusing to members.

LCB response: This is an existing rule that was revised to remove language that repeated federal regulations. Federal regulations are referenced rather than repeating them.

Comment: WAC 314-24-090 (1)(c) would be easier for wineries if the bottling statement language was consistent with TTB requirements. TTB requires the name of the bottler, city, and state. The current rule requires the name and address.

LCB response: The rules as adopted by the board require the name, city, and state of the bottler or packager.

Paul Beveridge – Family Wineries of Washington State

Comment: WAC 314-24-008, application procedure for domestic wineries. The proposed rule requires a winery to produce a minimum of 100 gallons of wine. The production requirement needs to be removed. There is no need for this new section. The state should only be concerned with taxes.

LCB response: The requirement that a winery must produce a minimum of 100 gallons of wine was removed. The rule was adopted without a production requirement. The rule was adopted to provide applicants for wineries clarity for what the application procedure entails. The rule reflects the current application process.

Comment: The new rules on alternating proprietorships and consumer orders, internet sales, and delivery need revisions to mirror TTB. The board doesn’t need to have rules for custom crush. The board needs to allow alternating proprietorships between wineries and distilleries.

LCB response: Both proposed new rules were removed. Both issues will be addressed in a future rulemaking as well as custom crush.

Comment: The legislature eliminated mandatory tied house restrictions over ten years ago. LCB should be taking out the leftover vestiges of tied house restrictions from the regulations, not proposing new ones.

LCB response: There are still tied house statutes in Washington State. In the 2010 legislative session there were some changes made to the tied house statutes. Initiative 1183 also made some changes to the tied house statutes, but many of the tied house



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statutes still remain. Chapter 66.28 RCW contains many exceptions to the tied house statutes.

Comment: All of these rules should be repealed and let the federal government enforce the federal regulations. Wineries don't need state regulations.

WAC Changes

See attachment.