



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: November 18, 2020

TIME: 11:53 AM

WSR 20-23-125

Agency: Washington State Liquor and Cannabis Board

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 20-15-160 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) Implementation of 2020 Alcohol Legislation. The Washington State Liquor and Cannabis Board (Board) proposes new rule sections and amendments to existing rule sections to align existing rules with and implement the law as established by the following four alcohol-related bills enacted during the 2020 legislative session: House Bill (HB) 2412 (chapter 230, Laws of 2020), Engrossed Substitute Senate Bill (ESSB) 5006 (chapter 186, Laws of 2020), Engrossed Substitute Senate Bill (ESSB) 6095 (chapter 200, Laws of 2020), and Substitute Senate Bill (SSB) 6392 (chapter 210, Laws of 2020).

The following section in chapter 314-02 WAC is revised: WAC 314-02-115 "What are the requirements for licensees that sell keg beer?".

The following section in chapter 314-12 WAC is revised: WAC 314-12-140 "Prohibited practices—Contracts—Gifts—Rebates, etc.".

The following sections in chapter 314-20 WAC are revised or new: WAC 314-20-017 "Brewery and microbrewery retail liquor licenses—Selling kegs and containers."; WAC 314-20-019 "Domestic brewery or microbrewery endorsement for on-premises consumption of wine."

The following sections in chapter 314-24 WAC are new: WAC 314-24-163 "Domestic winery endorsement for on-premises consumption of beer."; WAC 314-24-270 "Local wine industry association license."

The following section in chapter 314-27 WAC is revised: WAC 314-27-010 "Liquor purchases by Interstate Common Carrier licensees—Reports."

The following sections in chapter 314-52 WAC are revised: WAC 314-52-080 "Novelty advertising."; WAC 314-52-090 "Advertising sponsored jointly by retailers and manufacturers, imports, or distributors."; WAC 314-52-110 "Advertising by retail licensees."

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
January 6, 2021	10:00 am	In response to the coronavirus disease 2019 (COVID-19) public health emergency, the Board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Board members, presenters, and staff will all participate remotely. The public may login using a computer or	For more information about Board meetings, please visit https://lcb.wa.gov/Boardmeetings/Board_meetings .

device, or call-in using a phone, to listen to the meeting through the Webex application. The public may provide verbal comments during the specified public comment and rules hearing segments.

Date of intended adoption: Not earlier than January 20, 2021. (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Audrey Vasek
Address: 1025 Union Avenue, Olympia, WA 98501
Email: rules@lcb.wa.gov
Fax: 360-664-9689
Other:
By (date) January 6, 2021

Assistance for persons with disabilities:

Contact Claris Nhanabu, ADA Coordinator, Human Resources
Phone: 360-664-1642
Fax: 360-664-9689
TTY: 7-1-1 or 1-800-833-6388
Email: Claris.Nhanabu@lcb.wa.gov
Other:
By (date) December 30, 2020

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of this rule proposal is to align existing rule language with changes made to the law by HB 2412 and ESSB 6095 and establish new rule sections needed to implement ESSB 5006 and SSB 6392. Specifically, the rule proposal:

- Amends **WAC 314-02-115**, concerning keg registration requirements. The proposed amendments to this rule section align the existing rule language with the law as established and dictated by HB 2412. Revisions include exempting licensed domestic breweries and microbreweries from certain keg registration and identification requirements when selling kegs of beer of their own production, consistent with RCW 66.28.200 and 66.28.210.
- Amends **WAC 314-12-140**, concerning prohibited practices under the three-tier system for alcohol regulation. The proposed amendments to this rule section align the existing rule language with the law as established and dictated by ESSB 6095. A cross-reference to RCW 66.28.310, which contains exceptions to the money or moneys' worth restrictions, is added to subsection (2).
- Amends **WAC 314-20-017**, concerning brewery and microbrewery retail liquor licenses. The proposed amendments to this rule section align the existing rule language with the law as established and dictated by HB 2412. Revisions include increasing the number of retail liquor licenses that a licensed domestic brewery or microbrewery may hold from two to four, consistent with RCW 66.24.240 and 66.24.244, and making a non-substantive technical and clarifying change to update a subsection number in an RCW cross-reference.
- Creates a new section **WAC 314-20-019**, concerning the domestic brewery or microbrewery endorsement for on-premises consumption of wine. The proposed new rule section implements the law as established and dictated by ESSB 5006. Consistent with RCW 66.24.246, the proposed rule section describes and clarifies the requirements that an endorsement holder must comply with in order to sell wine for on-premises consumption, and includes a reference to the annual fee for the new endorsement, which is set by law at \$200.
- Creates a new section **WAC 314-24-163**, concerning the domestic winery endorsement for on-premises consumption of beer. The proposed new rule section implements the law as established and dictated by ESSB 5006. Consistent with RCW 66.24.246, the proposed rule section describes and clarifies the requirements that an endorsement holder must comply with in order to sell beer for on-premises consumption, and includes a reference to the annual fee for the new endorsement, which is set by law at \$200.
- Creates a new section **WAC 314-24-270**, concerning the local wine industry association license. The proposed new rule section implements the law as established and dictated by SSB 6392. Consistent with RCW 66.24.165, the proposed rule section describes and clarifies the application criteria for a local wine industry association license, along with certain requirements and privileges of the license. A reference to the annual fee for the new endorsement, which is set by law at \$200, is also included.

- Amends **WAC 314-27-010**, concerning the interstate common carrier license. The proposed amendments to this rule section align the existing rule language with the law as established and dictated by ESSB 6095. Revisions include adding a new subsection (5) containing a reference to the new privileges authorized under RCW 66.24.395, and a new subsection (6) containing a reference to the promotional, advertising, and other activities that licensed interstate common carriers and industry members are permitted to engage in under RCW 66.28.310. Revisions also include non-substantive technical and clarifying changes, such as lower-casing the term “Interstate Common Carrier” throughout the section and updating the section caption from “Liquor purchases by Interstate Common Carrier licensees—Reports.” to “Interstate common carrier license—Reports.” The phrase “spirituous liquor” is removed from the tax reporting requirement consistent with Initiative 1183, which moved all spirits tax collection from the WSLCB to the Department of Revenue in 2012.
- Amends **WAC 314-52-080**, concerning novelty advertising. The proposed amendments to this rule section align the existing rule language with the law as established and dictated by ESSB 6095. A new subsection (6) is added containing a reference to the promotional, advertising, and other activities that licensed interstate common carriers and industry members are permitted to engage in under RCW 66.28.310 as an exception to the money or moneys’ worth restrictions under the three-tier system for alcohol regulation.
- Amends **WAC 314-52-090**, concerning advertising sponsored jointly by retailers and manufacturers, importers, or distributors. The proposed amendments to this rule section align the existing rule language with the law as established and dictated by ESSB 6095. A new subsection (4) is added containing a reference to the promotional, advertising, and other activities that licensed interstate common carriers and industry members are permitted to engage in under RCW 66.28.310 as an exception to the money or moneys’ worth restrictions under the three-tier system for alcohol regulation.
- Amends **WAC 314-52-110**, concerning advertising by retail licensees. The proposed amendments to this rule section align the existing rule language with the law as established and dictated by ESSB 6095. A new subsection (5) is added containing a reference to the promotional, advertising, and other activities that licensed interstate common carriers and industry members are permitted to engage in under RCW 66.28.310 as an exception to the money or moneys’ worth restrictions under the three-tier system for alcohol regulation.

Reasons supporting proposal: The proposed rules are needed to align existing rules with and implement the law as established by HB 2412, ESSB 5006, ESSB 6095, and SSB 6392. See purpose statement.

Statutory authority for adoption: RCW 66.08.030.

Statute being implemented: HB 2412 (chapter 230, Laws of 2020), ESSB 5006 (chapter 186, Laws of 2020), ESSB 6095 (chapter 200, Laws of 2020), and SSB 6392 (chapter 210, Laws of 2020).

Is rule necessary because of a:

- | | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None.

Name of proponent: (person or organization) Washington State Liquor and Cannabis Board

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting: Rules Coordinator	Audrey Vasek, Policy and	1025 Union Avenue, Olympia WA, 98501	360-664-1758

Implementation: Becky Smith, Director of Licensing 1025 Union Avenue, Olympia, WA. 98501 360-664-1753

Enforcement: Justin Nordhorn, Chief of Enforcement 1025 Union Avenue, Olympia, WA, 98501 360-664-1726

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

No: Please explain: Consistent with RCW 34.05.328(5)(a), these proposed rules are not subject to cost-benefit analysis requirements unless requested by the joint administrative rules review committee or voluntarily applied. Additionally, these proposed rules do not qualify as significant legislative rules under RCW 34.05.328(5)(c), and are exempt from cost-benefit analysis requirements under RCW 34.05.328(5)(b):

- The rule proposal creates new rule sections and amends existing rule sections to implement and align the rules with the law as established and dictated by HB 2412, ESSB 5006, ESSB 6095, and SSB 6392 consistent with RCW 34.05.328(5)(b)(v).
- The rule proposal also revises and incorporates references to statutory language where necessary and appropriate consistent with RCW 34.05.328(5)(b)(iii).

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- | | |
|--|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3) by way of RCW 34.05.310 (4) (c) and (e).

Explanation of exemptions, if necessary: The revisions made to WAC 314-20-017, 314-02-115, 314-27-010, 314-52-080, 314-52-090, 314-52-110, and 314-12-140, and the new rules added as WAC 314-20-019, 314-24-163, and 314-24-270, are exempt from the RFA's SBEIS requirement under RCW 34.05.310(4)(c) and (e). The proposed rules incorporate by reference or explicitly restate statute where appropriate consistent with RCW 34.05.310(4)(c), and create new rule sections or amend existing rule sections to implement the law or align existing rule language with the law as established and dictated by HB 2412, ESSB 5006, ESSB 6095, and SSB 6392 consistent with RCW 34.05.310(4)(e).

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated.

ESSB 5006

Estimated Cost of Compliance: The Board applied an estimated cost of compliance of \$225 when analyzing whether the rules impose more than "minor costs" as defined in RCW 19.85.020(2) on brewery, microbrewery, or winery licensees that could potentially apply for an on-premises consumption endorsement under ESSB 5006 (codified as RCW 66.24.246). The estimated cost of compliance assumes the following costs:

Cost of endorsement: \$200. Brewery, microbrewery, and winery licensees that choose to apply for the new endorsement type created by ESSB 5006 must pay a \$200 annual fee that is mandated by RCW 66.24.246. However, the new endorsement created by ESSB 5006 is optional. Breweries, microbreweries, and wineries are not required to obtain the endorsement to continue operating as usual under the terms of their licenses. Licensees only need to obtain this endorsement if they wish to have the new beer/wine on-premise consumption privileges allowed by statute.

Administrative costs: \$25 or less. Licensees that apply for the new endorsement type will have costs associated with the initial application process, including the time needed to complete the application and any associated interaction with Board representatives to discuss or verify application information. The time needed to complete these administrative tasks is estimated at one hour or less during the initial application year, with no additional time needed for renewal in any following years. The application process for the new endorsement is straightforward because the application is completed by existing licensees. During the initial application year, the Board estimates that it will take 10 minutes for the licensee to complete the application for the endorsement, and 5-10 minutes for a phone call that confirms receipt. When the licensee renews their underlying license in following years, the endorsement could be automatically renewed along with the underlying license (provided that the licensee pays the annual fee for the endorsement in addition to the fee for the underlying license) so that licensee does not need to spend any additional time on the endorsement at renewal.

According to the 2019 Occupational Employment Statistics (OES) Databook available in the Employment Security Department (ESD) labor market report library, the average hourly wage in Washington State for Secretaries and Administrative Assistants, Except Legal, Medical, and Executive (using the Standard Occupational Classification (SOC) Code 43-6014) is \$21.31. Based on that data, the estimated cost for these administrative activities during the initial application year is \$21.31 [\$21.31 avg. hourly wage x 1 hour = \$21.31]. For the purpose of the minor cost calculations, these estimated administrative costs are rounded up to \$25. Assuming that these administrative costs are one-time only and amortized over the total number of years that the licensee renews the endorsement, the annual estimated administrative cost for the licensee would be less than \$25.

Minor Cost Estimate: The Board applied NAICS codes 312120 for Breweries and 312130 for Wineries to estimate minor costs for brewery, microbrewery, and winery licensees. According to the 2017 NAICS Manual, the brewery industry (312120) "comprises establishments primarily engaged in brewing beer, ale, lager, malt liquors, and nonalcoholic beer," and the winery industry (312130) "comprises establishments primarily engaged in one or more of the following: (1) growing grapes and manufacturing wines and brandies; (2) manufacturing wines and brandies from grapes and other fruits grown elsewhere; and (3) blending wines and brandies." There is no separate NAICS code available for microbreweries.

As shown in the table below, the estimated cost of compliance (\$225) does not exceed the minor cost estimate for these industries (\$3,453.63 for Breweries and \$3,581.58 for Wineries), so a small business economic impact statement (SBEIS) is not required under RCW 19.85.030.

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate - Max of 1%Pay, 0.3%Rev, and \$100	1% of Avg Annual Payroll . (0.01*AvgPay)	0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)
312120	\$225.00	Breweries	Breweries	\$3,453.63	\$3,244.72 2018 Dataset pulled from ESD	\$3,453.63 2018 Dataset pulled from DOR

312130	\$225.00	Wineries	Wineries	\$3,581.58	\$3,581.58 2018 Dataset pulled from ESD	\$3,369.76 2018 Dataset pulled from DOR
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SSB 6392

Estimated Cost of Compliance: The Board applied an estimated cost of compliance of \$850 when analyzing whether the rules impose more than “minor costs” as defined in RCW 19.85.020(2) on organizations that could potentially apply for a local wine industry association license under SSB 6392 (codified as RCW 66.24.165). The estimated cost of compliance assumes the following costs:

Cost of license: \$700. Organizations that choose to apply for the new local wine industry association license created by SSB 6392 must pay a \$700 annual fee that is mandated by RCW 66.24.165. The new license created by SSB 6392 is optional. Businesses are not required to obtain the license to continue operating as usual, and only need to obtain this license if they wish to have the new privileges allowed by RCW 66.24.165. For example, the new license authorizes licensees to hold up to 12 events or marketing programs per year on domestic winery premises or offsite locations if the licensee satisfies certain conditions specified in the statute.

Administrative costs: \$150 or less. Organizations that apply for the license will have costs associated with the initial application and annual renewal process, including the time needed to complete the application for the license and any associated interaction with Board representatives to discuss or verify application information. Licensees will also have administrative costs associated with each event or marketing program that they hold.

Application and annual renewal costs: During the initial application year, the Board estimates that it will take an applicant one hour to prepare the application and required materials, including any phone calls or other communication with Board staff. For license renewal in following years, the Board estimates that it will take licensees around 20-30 minutes to complete the renewal process.

Event or marketing program costs: Under the statute, licensees must notify the Board of any event or marketing program that they plan to hold at least 45 days in advance. The Board estimates it will take the licensee around 30 minutes for each event or marketing program notification and any related phone calls or communications with Board staff. Licensees are limited by statute to no more than twelve events per year. If a licensee engages in the full twelve events per year, they could spend up to six hours per year on event notifications. [0.5 hour per event x 12 events per year = 6 hours per year]

The total time needed to complete these annual administrative tasks is estimated at anywhere between 1 hour to 7 hours during the year of initial application, depending on the number of events that a licensee holds. (The total time is around 30min less during renewal years.)

According to the 2019 OES Databook available in the ESD labor market report library, the average hourly wage in Washington State for Secretaries and Administrative Assistants, Except Legal, Medical, and Executive (using the SOC Code 43-6014) is \$21.31. The estimated annual cost for these administrative activities is anywhere between \$21.31 to \$149.17 [\$21.31 avg. hourly wage x 7 hours = \$149.17]. For the purpose of the minor cost calculations, these estimated annual administrative costs are rounded up to \$150.

Minor Cost Estimate: The Board applied NAICS code 813910 for Business Associations to estimate minor costs for local wine industry associations. According to the 2017 NAICS Manual, “This industry comprises establishments primarily engaged in promoting the business interests of their members. These establishments may conduct research on new products and services; develop market statistics; sponsor quality and certification standards; lobby public officials; or publish newsletters, books, or periodicals for distribution to their members.”

As shown in the table below, the estimated cost of compliance (\$850) does not exceed the minor cost estimate for this industry (\$3,878.90), so a SBEIS is not required under RCW 19.85.030.

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate - Max of 1%Pay, 0.3%Rev, and \$100	1% of Avg Annual Payroll . (0.01*AvgPay)	0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)
813910	\$850.00	Local Wine Industry Associations	Business Associations	\$3,878.90	\$3,737.22 2018 Dataset pulled from USBLS	\$3,878.90 2018 Dataset pulled from DOR

HB 2412

Estimated Cost of Compliance: The Board applied an estimated cost of compliance of \$100 when analyzing whether the rules impose more than “minor costs” as defined in RCW 19.85.020(2) on brewery and microbrewery licensees affected by the proposed rule revisions to implement HB 2412. The estimated cost of compliance was based on the following reasoning:

Nominal costs: The Board anticipates that the proposed rule revisions to implement HB 2412 will not result in any new or additional costs of compliance or regulatory burden for licensees. The proposed rule revisions to implement HB 2412 do not create any new fees or add additional costs for licensees. In fact, the proposed rule revisions will likely reduce costs and regulatory burden for breweries and microbreweries by eliminating keg registration requirements and container identification requirements for sales by these licensees of kegs or other containers containing four gallons or more of beer of their own production, consistent with HB 2412. Although the Board does not anticipate any new costs of compliance resulting from the proposed rule revisions, for the purpose of the minor cost calculation, the Board applied a nominal estimated cost of compliance of \$100.

Minor Cost Estimate: The Board applied NAICS code 312120 for Breweries to estimate minor costs for brewery and microbrewery licensees. According to the 2017 NAICS Manual, “This industry comprises establishments primarily engaged in brewing beer, ale, lager, malt liquors, and nonalcoholic beer.” There is no separate NAICS code available for microbreweries.

As shown in the table below, the estimated cost of compliance (\$100) does not exceed the minor cost estimate (\$3,453.63) for these industries, so a SBEIS is not required under RCW 19.85.030.

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate - Max of 1%Pay, 0.3%Rev, and \$100	1% of Avg Annual Payroll . (0.01*AvgPay)	0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)
312120	\$100.00	Breweries	Breweries	\$3,453.63	\$3,244.72 2018 Dataset pulled from ESD	\$3,453.63 2018 Dataset pulled from DOR

ESSB 6095

Estimated Cost of Compliance: The Board applied a nominal estimated cost of compliance of \$100 when analyzing whether the rules impose more than “minor costs” as defined in RCW 19.85.020(2) on interstate common carriers or industry members potentially affected by the proposed rule revisions to implement ESSB 6095.

For the purpose of the interstate common carrier license in RCW 66.24.395, “interstate common carriers” include “corporations, associations, or persons operating as federally licensed commercial common passenger carriers engaged in interstate commerce, in or over territorial limits of the state of Washington on passenger trains, vessels, or airplanes.”

For the purpose of the three-tier system for alcohol regulation as defined in RCW 66.28.285(3), “industry member” means “a licensed manufacturer, producer, supplier, importer, wholesaler, distributor, authorized representative, certificate of approval holder, warehouse, and any affiliates, subsidiaries, officers, directors, partners, agents, employees, and representatives of any industry member.”

The estimated cost of compliance was based on the following reasoning:

Nominal costs: The Board estimates that the proposed rule revisions to implement ESSB 6095 will not result in any new or additional costs of compliance or regulatory burden for interstate common carriers or industry members. The proposed rule revisions to implement ESSB 6095 do not create any new fees. In fact, the proposed rule revisions will likely reduce costs and regulatory burden for interstate common carrier licensees and industry members by implementing the new exceptions to the moneys or moneys’ worth restrictions created by ESSB 6095. Although the Board does not estimate any new costs of compliance resulting from the proposed rule revisions, for the purpose of the minor cost calculations, the Board applied a nominal estimated cost of compliance of \$100.

Minor Cost Estimate: Interstate common carriers and industry members include a wide range of industries.

To estimate minor costs for interstate common carriers, the Board applied NAICS codes for passenger airplanes (481111 Scheduled Passenger Air Transportation & 481211 Nonscheduled Chartered Passenger Air Transportation), passenger trains (482111 Line-Haul Railroads), and passenger vessels/ships (483114 Coastal and Great Lakes Passenger Transportation & 483112 Deep Sea Passenger Transportation). These NAICS codes were selected based on descriptions and illustrative examples in the 2017 NAICS Manual indicating that these codes capture data for industries primarily engaged in the transportation of passengers in interstate commerce and exclude those primarily engaged in transportation of freight or cargo.

To estimate minor costs for industry members, the Board applied NAICS codes for wholesalers/ distributors (4248 Beer, Wine, and Distilled Alcoholic Beverage Merchant Wholesalers), warehouses (493190 Other Warehousing and Storage), and manufacturers/producers (312120 Breweries, 312130 Wineries, and 312140 Distilleries). According to the 2017 NAICS Manual, the beer, wine, and distilled alcoholic beverage merchant wholesalers industry (4248) “comprises establishments primarily engaged in the merchant wholesale distribution of beer, ale, wine, and/or distilled alcoholic beverages,” and the other warehousing and storage industry (493190) “comprises establishments primarily engaged in operating warehousing and storage facilities (except general merchandise, refrigerated, and farm product warehousing and storage).” An illustrative example given for the other warehousing and storage industry is “Whiskey warehousing.”

According to the 2017 NAICS Manual, the distillery industry (312140) “comprises establishments primarily engaged in one or more of the following: (1) distilling potable liquors (except brandies); (2) distilling and blending liquors; and (3) blending and mixing liquors and other ingredients.” The 2017 NAICS Manual descriptions for breweries and wineries are provided in the section above related to ESSB 5006.

As shown in the table below, the estimated cost of compliance (\$100) does not exceed the minor cost estimate for any of these industries (ranging from \$2,076.60 for Distilleries, to \$256,707.21 for Scheduled Passenger Air Transportation), so a SBEIS is not required under RCW 19.85.030.

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate - Max of 1%Pay, 0.3%Rev, and \$100	1% of Avg Annual Payroll . (0.01*AvgPay)	0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)
481111	\$100.00	Passenger airplanes	Scheduled Passenger Air Transportation	\$256,707.21	\$256,707.21 2018 Dataset pulled from USBL	\$18,661.75 2018 Dataset pulled from DOR
481211	\$100.00	Passenger airplanes	Nonscheduled Chartered Passenger Air Transportation	\$ 6,873.72	\$6,873.72 2018 Dataset pulled from ESD	\$3,760.60 2018 Dataset pulled from DOR
482111	\$100.00	Passenger trains	Line-Haul Railroads	\$53,599.45	Redacted 2018 Dataset pulled from ESD	\$53,599.45 2018 Dataset pulled from DOR
483114	\$100.00	Passenger vessels/ships	Coastal and Great Lakes Passenger Transportation	\$ 8,630.12	Redacted 2018 Dataset pulled from USBL	\$8,630.12 2018 Dataset pulled from DOR
483112	\$100.00	Passenger vessels/ships	Deep Sea Passenger Transportation	\$201,488.29	\$201,488.29 2018 Dataset pulled from USBL	\$10,972.00 2018 Dataset pulled from DOR
4248	\$100.00	Wholesalers/ Distributors	Beer; Wine; and Distilled Alcoholic Beverage Merchant Wholesalers	\$18,339.22	\$14,627.69 2018 Dataset pulled from USBL	\$18,339.22 2018 Dataset pulled from DOR
493190	\$100.00	Warehouses	Other Warehousing and Storage	\$12,122.17	\$8,723.03 2018 Dataset pulled from USBL	\$12,122.17 2018 Dataset pulled from DOR
312120	\$100.00	Breweries	Breweries	\$3,453.63	\$3,244.72 2018 Dataset pulled from ESD	\$3,453.63 2018 Dataset pulled from DOR
312130	\$100.00	Wineries	Wineries	\$3,581.58	\$3,581.58 2018 Dataset pulled from ESD	\$3,369.76 2018 Dataset pulled from DOR
312140	\$100.00	Distilleries	Distilleries	\$2,076.60	\$2,076.60 2018 Dataset pulled from ESD	\$1,471.28 2018 Dataset pulled from DOR

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:

Address:

Phone:

Fax:

TTY:


Email:

Other:

Date: November 18, 2020

Signature:

Name: Jane Rushford



Title: Chair

WAC 314-02-115 (~~(What are the)~~) **Requirements for licensees that sell keg beer(?)**. (~~(Per)~~) Consistent with RCW 66.28.200 and 66.28.210(~~(, any)~~):

(1)(a) Any licensee, except for a domestic brewery or microbrewery selling beer of its own production as provided in subsection (3) of this section, who sells beer for off-premises consumption in kegs or other containers holding four or more gallons of beer must(~~(+~~

~~(1))~~ require the purchaser to provide at least one piece of identification (see (~~(RCW 66.16.040)~~) WAC 314-11-025 for acceptable forms of identification); and

~~((2))~~ (b) The licensee or employee and purchaser must fill out a keg registration form, provided by the board, which contains:

~~((a))~~ (i) The name and address of the purchaser;

~~((b))~~ (ii) The type and number of the identification presented by the purchaser;

~~((c))~~ (iii) The address where the beer will be consumed and the date on which it will be consumed; and

~~((d))~~ (iv) A sworn statement, signed by the purchaser under penalty of perjury, that (~~(the purchaser)~~):

~~((i))~~ (A) The purchaser is at least twenty-one years of age;

~~((ii))~~ (B) The purchaser will not allow persons under twenty-one years of age to consume the beer purchased;

~~((iii))~~ (C) The purchaser will not remove or obliterate the keg registration form affixed to the keg or allow it to be removed or obliterated; and

~~((iv))~~ (D) The address listed in (~~(c))~~ (b)(iii) of this subsection is the true and correct address at which the beer will be consumed or physically located.

~~((3))~~ (2) It is the licensee's or employee's responsibility to distribute the properly completed keg registration form as follows:

(a) One copy to the purchaser;

(b) One copy affixed to the keg or container holding four gallons or more of beer, prior to it leaving the licensed premises; and

(c) One copy must be retained on the licensed premises for one year, available for inspection and copying by any law enforcement officer.

(3) Domestic breweries and microbreweries and their licensed retail locations are not subject to the keg registration and container identification requirements when selling kegs or other containers containing four gallons or more of beer of the licensee's own production, and purchasers of these kegs or containers are not subject to the related purchaser requirements, except that the purchaser must be at least twenty-one years of age and must not allow persons under twenty-one years of age to consume any beer purchased.

(4) Except in cases involving sales by domestic breweries and microbreweries of beer of the licensee's own production as described in subsection (3) of this section, possession of a keg or other container which holds four gallons or more of beer without a properly completed keg registration form affixed to it, other than on the licensee's premises, will be a violation of this title.

WAC 314-12-140 Prohibited practices—Contracts—Gifts—Rebates, etc. (1) No industry member or retailer shall enter into any agreement which causes undue influence over another retailer or industry member. This regulation shall not be construed as prohibiting the placing and accepting of orders for the purchase and delivery of liquor which are made in accordance with the usual and common business practice and which are otherwise in compliance with the regulations.

(2) Except as permitted under RCW 66.28.310, no industry member shall advance and no retailer, any employee thereof, or applicant for a retail liquor license shall receive money or money's worth under any written or unwritten agreement or any other business practice or arrangement such as:

- (a) Gifts;
- (b) Discounts;
- (c) Loans of money;
- (d) Premiums;
- (e) Rebates;
- (f) Free liquor of any kind; or
- (g) Treats or services of any nature whatsoever except such services as are authorized in this regulation.

(3) Pursuant to RCW 66.28.310 and 66.44.318 an industry member or licensed agent may perform the following services for a retailer:

(a) Build, rotate, and restock displays, utilizing filled cases, filled bottles or filled cans of its own brands only, from stock or inventory owned by the retailer.

(b) Rotate, rearrange or replenish bottles or cans of its own brands on shelves or in the refrigerators but is prohibited from rearranging or moving displays of its products in such a manner as to cover up, hide or reduce the space of display of the products of any other industry member.

(c) Industry members or any employees thereof may move or handle in any manner any products of any other manufacturer, importer or distributor on the premises of any retail licensee when a two-day notice is given to other interested industry members or their agents and such activity occurs during normal business hours or upon hours that are mutually agreed.

(d) Provide price cards and may also price goods of its own brands in accordance with the usual and common business practice and which are otherwise in compliance with the regulations.

(e) Provide point of sale advertising material and brand signs.

(f) Provide sales analysis of beer and wine products based on statistical sales data voluntarily provided by the retailer involved for the purpose of proposing a schematic display for beer and wine products. Any statistical sales data provided by retailers for this purpose shall be at no charge.

(g) Such services may be rendered only upon the specific approval of the retail licensee. Displays and advertising material installed or supplied for use on a retailer's premises must be in conformity with the board's advertising rules as set forth in chapter 314-52 WAC.

(h) Licensees holding nonretail class liquor licenses are permitted to allow their employees between the ages of eighteen and twenty-one to stock, merchandise, and handle liquor on or about the:

(i) Nonretail premises if there is an adult twenty-one years of age or older on duty supervising such activities on the premises; and

(ii) Retail licensee's premises, except between the hours of 11:00 p.m. and 4:00 a.m., as long as there is an adult twenty-one years of age or older, employed by the retail licensee, and present at the retail licensee's premises during the activities.

Any act or omission of the nonretail class liquor licensee's employee occurring at or about the retail licensee's premises, which violates any provision of this title, is the sole responsibility of the nonretail class liquor licensee.

(4) No industry member or employee thereof shall, directly or indirectly, give, furnish, rent or lend to, or receive from, any retailer, any equipment, fixtures, supplies or property of any kind, nor shall any retail licensee, directly or indirectly, receive, lease or borrow from, or give or offer to, any industry member any equipment, fixtures, supplies or property of any kind. Sales authorized in this regulation shall be made on a cash on delivery basis only.

(5) No industry member or employee thereof shall sell to any retail licensee or solicit from any such licensee any order for any liquor tied in with, or contingent upon, the retailer's purchase of some other beverage, alcoholic or otherwise, or any other merchandise, property or service.

(6) In selling equipment, fixtures, supplies or commodities other than liquor, no industry member shall grant to any retailer, nor shall such retailer accept, more favorable prices than those extended to nonlicensed retailers. The price thereof shall be not less than the industry member's cost of acquisition. In no event shall credit be extended to any retailer.

(7) Any industry member who sells what is commonly referred to as heavy equipment and fixtures, such as counters, back bars, stools, chairs, tables, sinks, refrigerators or cooling boxes and similar articles, shall immediately after making any such sales have on file and available for inspection, records including a copy of the invoice covering each such sale, which invoice shall contain the following information:

(a) A complete description of the articles sold;

(b) The purchase price of each unit sold together with the total amount of the sale;

(c) Transportation costs and services rendered in connection with the installation of such articles; and

(d) The date of such sale and affirm that full cash payment for such articles was received from the retailer as provided in subsection (4) of this section.

(8) If the board finds in any instance that any licensee has violated this regulation, then all licenses involved shall be held equally responsible for such violation.

Note: WAC 314-12-140 is not intended to be a relaxation in any respect of section 90 of the Liquor Act (RCW 66.28.010). As a word of caution to persons desiring to avail themselves of the opportunity to sell to retail licensees fixtures, equipment and supplies subject to the conditions and restrictions provided in section 90 of the act and the foregoing regulation, notice is hereby given that, if at any time such privilege is abused or experience proves that as a matter of policy it should be further curtailed or eliminated completely, the board will be free to impose added restrictions or to limit all manufacturers and distributors solely to the sale of liquor when dealing with retail licensees. WAC 314-12-140 shall not be considered as granting any vested right to any person, and persons who engage in the business of selling to retail licensees property or merchandise of any nature voluntarily assume the risk of being divested of that privilege and they will undertake such business subject to this understanding. The board also cautions that certain trade practices are prohibited by rulings issued under the Federal Alcohol Administration Act by the United States Bureau of Alcohol, Tobacco and Firearms, and WAC 314-12-140 is not intended to conflict with such rulings or other requirements of federal law or regulations.

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))~~ four 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. 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 beer.

(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 and cider as defined in RCW 66.24.210~~((+6))~~ without a kegs-to-go endorsement provided that it sells this beer and cider for off-premises consumption only. A brewery or microbrewery may supply the container or use a container brought to the premises by a customer, and filled at the tap at the time of sale.

(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 off-premises consumption. The malt liquor may be of the licensee's own production or the production of another brewery or microbrewery;

(b) Sell containers of beer for 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; and

(c) Sell containers of cider as defined in RCW 66.24.210(6) for off-premises consumption in a sanitary container brought to the premises by the customer or provided by the licensee and filled at the tap at the time of sale, provided the licensee has a license to sell wine. The licensee must comply with federal regulations.

NEW SECTION

WAC 314-20-019 Domestic brewery or microbrewery endorsement for on-premises consumption of wine. Consistent with RCW 66.24.246:

(1) A domestic brewery or microbrewery may apply for an endorsement to sell wine for on-premises consumption.

(2) The endorsement holder must comply with each of the following requirements:

(a) The wine must be produced in Washington;

(b) The wine must be sold by the single serving for on-premises consumption; and

(c) The number of wine offerings for sale at any one time is limited to three.

(3) The annual fee for the on-premises consumption endorsement is two hundred dollars.

NEW SECTION

WAC 314-24-163 Domestic winery endorsement for on-premises consumption of beer. Consistent with RCW 66.24.246:

(1) A licensed domestic winery may apply for an endorsement to sell beer for on-premises consumption. A separate endorsement is required for each location.

(2) The endorsement holder must comply with each of the following requirements:

(a) The beer must be produced in Washington;

(b) The beer must be sold by the single serving for on-premises consumption; and

(c) The number of beer offerings for sale at any one time is limited to three.

(3) The annual fee for the on-premises consumption endorsement is two hundred dollars for each location.

NEW SECTION

WAC 314-24-270 Local wine industry association license. Consistent with RCW 66.24.165:

(1) A nonprofit society or organization that is specifically created with the express purpose of encouraging consumer education of and promoting the economic development for a designated area of the Washington state wine industry, including both Washington statewide and Washington regional organizations, may apply for a local wine industry association license. Consistent with RCW 66.24.010(9), the board will send a local authority notice before issuing a local wine industry association license.

(2) A local wine industry association licensee may conduct a maximum of twelve events per year, and must provide notification to the board at least forty-five days before an event or the start of a marketing program conducted under the license. The board will send a local authority notice to the jurisdiction in which the event or marketing program is to be conducted under the license.

(3) A local wine industry association licensee may also apply for special occasion licenses under RCW 66.24.380 (see chapter 314-05 WAC) and special permits under RCW 66.20.010 (see chapter 314-38 WAC). The twelve events allowable under the local wine industry association license are separate and distinct from the twelve events allowable under the special occasion license.

(4) Wine furnished to a local wine industry association licensee is subject to taxes under RCW 66.24.210 (see WAC 314-19-015).

(5) The annual fee for the local wine industry association license is seven hundred dollars.

WAC 314-27-010 ((Liquor purchases by)) Interstate common carrier ((licensees)) license—Reports. (1) Any licensee authorized by the board to sell liquor may sell liquor to the holder of an interstate common carrier license upon presentation of a special permit issued by the board to such licensee.

(2) Sales of liquor to such properly licensed interstate commercial common passenger carriers shall be treated as sales for export.

(3) Every federally licensed interstate commercial common passenger carrier, holding an interstate common carrier license shall, on or before the twentieth day of each month, make a report to the board, upon forms approved by the board, of all ((spirituous liquor,)) beer and wine served or sold at retail for passenger consumption by such common carrier within or over the territorial limits of the state of Washington during the preceding calendar month.

(4) Licensed beer and wine importers and distributors who sell beer or wine to such properly licensed interstate commercial common passenger carriers shall treat such sales as exports from the state.

(5) Licensed interstate common carriers may provide complimentary alcoholic beverages to passengers aboard passenger trains, vessels, or airplanes as authorized under RCW 66.24.395.

(6) Licensed interstate common carriers and industry members may engage in promotional, advertising, and other activities permitted under RCW 66.28.310.

WAC 314-52-080 Novelty advertising. (1) Novelty branded promotional advertising items which are of nominal value, singly or in the aggregate, may be provided to retailers by industry members. Singly or in the aggregate is per licensed location. Such items include, but are not limited to: Trays, lighters, blotters, post cards, pencils, coasters, menu cards, meal checks, napkins, clocks, mugs, glasses, bottle or can openers, corkscrews, matches, printed recipes, shirts, hats, visors, and other similar items. Branded promotional items:

(a) Must be used exclusively by the retailer or its employees in a manner consistent with its license;

(b) Must bear imprinted advertising matter of the industry member only;

(c) May only be provided by industry members to retailers and their employees;

(d) May not be provided by or through retailers or their employees to retail customers.

(2) An industry member is not obligated to provide any branded promotional items, and a retailer may not require an industry member to provide such branded promotional items as a condition for selling any alcohol to the retailer.

(3) Any industry member, retailer, or other person asserting the provision of branded promotional items has resulted or is more likely than not to result in undue influence or an adverse impact on public health and safety, or is otherwise inconsistent with the criteria in subsection (1) of this section, may file a complaint with the board.

Upon receipt of a complaint the board may conduct an investigation as it deems appropriate in the circumstances.

(a) The board may issue an administrative violation notice to the industry member, to the retailer, or both.

(b) The recipient of the administrative violation notice may request a hearing under chapter 34.05 RCW.

(4) An industry member or their employee, may sell, and a retail licensee may purchase, for use, resale, or distribution on the licensed premises any novelty advertising items. The price shall be not less than the industry member's cost of acquisition. In no event shall credit be extended to any retail licensee. The purchase by retail licensees of such items shall be supported by invoices or signed vouchers which shall be preserved for three years on the licensed premises and available for immediate inspection by board enforcement officers.

(5) An industry member who sells novelty advertising items to retail licensees shall keep on file the original or copy of all sales slips, invoices, and other memoranda covering all purchases of novelty advertising items by the industry member and shall also keep on file a copy of all invoices, sales slips, or memoranda reflecting the sales to retail licensees or other disbursement of all novelty advertising items. Such records shall be maintained in a manner satisfactory to the board and must be preserved in the office of the industry member for a period of at least three years after each purchase or sale. Any manufacturer which does not maintain a principal office within the state shall, when requested, furnish the above required records at a designated location within the state for review by the board.

(6) Licensed interstate common carriers and industry members may engage in promotional, advertising, and other activities permitted under RCW 66.28.310.

AMENDATORY SECTION (Amending WSR 10-06-122, filed 3/3/10, effective 4/3/10)

WAC 314-52-090 Advertising sponsored jointly by retailers and manufacturers, importers, or distributors. (1) The name of a retail licensee shall not appear in, or as a part of, or supplementary to, any advertising of a manufacturer, importer or distributor, except:

(a) To produce brochures and materials promoting tourism in Washington state;

(b) A manufacturer, importer, or distributor may list on their web sites information related to retailers who sell or promote their products.

(2) The brand name of liquor may appear in or as a part of advertising by a retail licensee: Provided, such advertising is upon the retail licensee's free initiative and no moneys or moneys' worth has been offered or solicited as an inducement to secure such mention of any manufacturer, importer, or distributor's product.

(3) A professional sports team who holds a liquor license may accept liquor advertisements from manufacturers, importers, or distributors for use in sports entertainment facilities and may allow a manufacturer, importer, or distributor to use the name and trademark of the professional sports team in their advertising and promotions, if such advertising:

(a) Is paid for by the manufacturer, importer, or distributor at reasonable fair market value; and

(b) Carries no express or implied offer by the manufacturer, importer, or distributor on the part of the retail licensee to stock or list any particular brand of liquor to the total or partial exclusion of any other brand.

(4) Licensed interstate common carriers and industry members may engage in promotional, advertising, and other activities permitted under RCW 66.28.310.

AMENDATORY SECTION (Amending WSR 10-06-122, filed 3/3/10, effective 4/3/10)

WAC 314-52-110 Advertising by retail licensees. (1) Every advertisement by a retail licensee shall carry the licensed trade name or the registered franchise name or the trademark name. The term "trade name" shall be defined as the name as it appears on the license issued to the licensee:

(a) Words such as tavern, cafe, grocery, market, wine shop, and other similar words used to identify the type of business licensed, and numbers used to identify chain licensees, shall neither be required nor prohibited as part of the trade name in advertisements.

(b) Advertisements by a spirit, beer and wine restaurant licensee may also refer to cocktails, bar, lounge and/or the "room name." The

term "room name" shall be defined as the name of the room designated as the cocktail lounge and/or the dining room.

(2) No retail licensee shall offer for sale any liquor for on premises consumption under advertising slogans where the expressed or implied meaning is that a customer, in order to receive a reduced price, would be required to purchase more than one drink at a time, such as "two for the price of one," "buy one—get one free," or "two for \$_____."

(3) Beer, wine, or spirituous liquor shall not be advertised, offered for sale, or sold by retail licensees at less than acquisition cost. The provisions of this section shall not apply to any sales made:

(a) For the purpose of discontinuing the trade of any product or disposing of seasonal goods after the season has passed;

(b) When the goods are damaged or deteriorated in quality, or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation provided notice is given to the public;

(c) By an officer acting under the orders of any court; or

(d) In an endeavor to meet the prices of a competitor selling the same article or product in the same locality or trade area and in the ordinary channels of trade.

(4) Specialty shops, wineries, breweries, and craft distilleries acting as a retail licensee, providing free tastings to the public, are prohibited from using any term that implies the product is free in their advertising for such events.

(5) Licensed interstate common carriers and industry members may engage in promotional, advertising, and other activities permitted under RCW 66.28.310.