



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: March 27, 2020

TIME: 1:38 PM

WSR 20-08-084

Agency: Washington State Liquor and Cannabis Board

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
- No
- If Yes, explain:

Purpose: WAC 314-19-020 – What if a licensee doesn't report or pay the taxes due, or report or pays late? The Washington State Liquor and Cannabis Board (Board) has adopted an emergency rule to amend WAC 314-19-020 that provides a retroactive waiver of late filing penalty provisions for taxes that become due under RCW 66.24.210 and RCW 66.24.290 while Proclamation 20-26 is in effect.

Citation of rules affected by this order:

- New:
- Repealed:
- Amended: WAC 314-19-020
- Suspended:

Statutory authority for adoption: RCW 66.24.210; RCW 66.24.290; RCW 66.08.0501

Other authority: Governor's Proclamation 20-26, dated March 24, 2020

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

On February 29, 2020, Governor Inslee issued Proclamation 20-05 that confirmed the person-to-person spread of the novel coronavirus (COVID-19) in Washington State, and proclaimed a State of Emergency for all counties throughout the state of Washington based on the COVID-19 outbreak in the United States.

On March 16, 2020, Governor Inslee issued Proclamation 20-13 that imposed statewide limits on food and beverage services, and areas of congregation to limit opportunities for disease exposure and transmission in the State. Proclamation 20-13 was based on both guidance from the United States Center for Disease Control and Prevention to reduce the size of gatherings from 250 persons to 50 persons, and the necessity to prohibit any number of people from congregating in public venues for the purposes of entertainment, recreation, food or beverage service, theater, bowling or other similar activities.

Establishments licensed by the Board and subject to the restrictions of Proclamation 20-13 are required to timely remit various taxes and fees by a date certain, or a mandatory late payment penalty will be imposed. As a result of the COVID-19 pandemic, many of these establishments are suffering significant economic hardships and in some cases, their financial resources are becoming severely limited. While the Board possesses authority to waive penalties for late payment of taxes by specific types of establishments it licenses, it lacked the authority to provide the same relief to microbreweries, domestic breweries, and beer distributors licensed under RCW 66.24.290, and wineries and wine distributors licensed under RCW 66.24.210.

Governor's Proclamation 20-26 found that strict compliance with the statutory obligations or limitations provided in RCW 66.24.210 and RCW 66.24.290 will prevent, hinder, or delay action in providing relief to the businesses impacted by these statutes. Such relief is necessary for coping with the COVID-19 State of Emergency under Proclamation 20-05.

This emergency rule accomplishes the following:

- Waives late filing penalty provisions, retroactive to February 29, 2020, for microbreweries, domestic breweries, and beer distributors licensed under RCW 66.24.290, and wineries and wine distributors licensed under RCW 66.24.210 while Governor's Proclamation 20-13 and 20-26 are in effect;
- Supports the ability of businesses to adjust to the COVID-19 outbreak; and
- Reduces economic hardships suffered by businesses during the temporary suspension of business under Governor's Proclamation 20-13.

This rule does **not** relieve any WSLCB licensee from its statutory obligation to remit taxes to the WSLCB.

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
-----	-----	---------	-----	----------	-----

The number of sections adopted on the agency's own initiative:

New	___	Amended	<u>1</u>	Repealed	___
-----	-----	---------	----------	----------	-----

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	___	Repealed	___
-----	-----	---------	-----	----------	-----

The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	<u>1</u>	Repealed	___

Date Adopted: March 27, 2020

Name: Jane Rushford

Title: Board Chair

Signature:



WAC 314-19-020 What if a licensee doesn't report or pay the taxes due, or reports or pays late? The board may take the following actions against a licensee or permit holder in order to collect any of the reports or taxes due that are outlined in this title.

<p>(1) Suspension or revocation of license</p>	<p>(a) Failure to make a report and/or pay the taxes in the manner and dates outlined in this chapter will be sufficient ground for the board to suspend or revoke a liquor license, wine shipper permit, or certificate of approval (per RCW 66.08.150, 66.24.010, 66.24.120, 66.24.206, 66.20.370, 66.20.380, and 66.24.270).</p> <p>(b) The suspension will remain in effect until all missing reports and/or taxes have been filed with the board (see WAC 314-19-010(1) for the definition of "missing").</p>
<p>(2) Penalties</p>	<p>A penalty of two percent per month will be assessed on any tax payments postmarked after the twentieth day of the month following the reporting period of the transactions (per the reporting requirements outlined in WAC 314-19-015, RCW 66.24.290, and 66.24.210). 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.</p> <p>Absent a postmark, the date received at the Washington state liquor control board, or designee, will be used to determine if penalties are to be assessed.</p>
<p>(3) Surety bond requirements</p>	<p>(a) What is a surety bond? A "surety bond" is a type of insurance policy that guarantees beer and/or wine tax payment to the state. The surety bond must be:</p> <ul style="list-style-type: none"> (i) Executed by a surety company authorized to do business in the state of Washington; (ii) On a form and in an amount acceptable to the board; (iii) Payable to the Washington state liquor control board; and (iv) Conditioned that the licensee will pay the taxes and penalties levied by RCW 66.24.210 and/or 66.24.290. <p>(v) 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.</p> <p>(b) When will the board require a surety bond? The board may require a surety bond from a Washington beer and/or wine distributor, domestic microbrewery, domestic brewery, public house, domestic winery, wine shipper, or a beer or wine certificate of approval holder that has a direct shipment privilege. If any of the following occur, the board may require the licensee or permit holder to obtain a surety bond or assignment of savings account, within twenty-one days after an administrative violation notice is issued:</p> <ul style="list-style-type: none"> (i) A report or tax payment is missing, as defined in WAC 314-19-010, for two or more consecutive months; or

(ii) A report or tax payment is missing, as defined in WAC 314-19-010, two or more times within a two year period.

(c) What will happen if the licensee does not acquire the surety bond or savings account? Failure to meet the bonding or savings account requirements outlined in subsections (a) and (b) of this rule may result in immediate suspension of license privileges until all missing reports are filed and late taxes have been paid and the surety bond is acquired or the savings account is established.

(d) In what amount and for how long will the board require a surety bond? The amount of a surety bond or savings account required by this chapter must be either \$3,000, or the total of the highest four months' worth of tax liability for the previous twelve month period, whichever is greater.

(i) The licensee or permit holder must maintain the bond for at least two years. After the two year period the licensee or permit holder may request an exemption as outlined in subsection (f) of this rule.

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

(e) What action will the board take when a licensee or permit holder holds a surety bond and does not pay taxes due or pays late? If a licensee or permit holder holds a surety bond or savings account, the board will immediately start the process to collect overdue taxes from the surety company or assigned account. If the exact amount of taxes due is not known due to missing reports, the board will estimate the taxes due based on previous production, receipts, and/or sales.

(f) Can a licensee or permit holder request an exemption to the surety bond or savings account requirement? A licensee or permit holder may make a written request to the board's financial division for an exemption from the surety bond or assignment of savings account requirements. The board will grant an exemption once the following criteria are met:

(i) The licensee or permit holder has filed reports and paid applicable taxes to the board for at least two years immediately prior to the exemption request; and

(ii) There have been no late or missing reports or tax payments during the previous two years.

(iii) In order to remain exempt from the surety bond or assignment of savings account requirements, the licensee must continue to meet the tax reporting and payment requirements outlined in this title (outlined in WAC 314-19-015, RCW 66.24.206, 66.24.210, 66.24.270, 66.24.290, and 66.24.580).

(4) Subsections (1) and (2) of the section are waived, retroactive to February 29, 2020, while Governor's Proclamation 20-13 is in effect.