



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

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FILED

DATE: July 20, 2022

TIME: 11:33 AM

WSR 22-15-121

Agency: Washington State Liquor and Cannabis Board

☒ **Original Notice**

☐ **Supplemental Notice to WSR** _____

☐ **Continuance of WSR** _____

☒ **Preproposal Statement of Inquiry was filed as WSR 22-10-035 ; 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) The Washington State Liquor and Cannabis Board (WSLCB) proposes new rules and amendments to an existing rule to implement SB 5940 (chapter 64, Laws of 2022; codified as RCW 66.24.248):

- New Section WAC 314-20-350, Contract packaging services endorsement for domestic breweries and microbreweries.
- New Section WAC 314-24-350, Contract packaging services endorsement for domestic wineries.
- New Section WAC 314-28-350, Contract packaging services endorsement for domestic distilleries and craft distilleries.
- Amended Section WAC 314-11-065, Types of liquor allowed on a licensed premises.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
August 31, 2022	10:00 am	All public Board activity will be held in a "hybrid" environment. This means that the public will have options for in-person or virtual attendance. The Boardroom at the headquarters building in Olympia (1025 Union Avenue, Olympia, WA 98504) will be open for in-person attendance. The public may also login using a computer or device, or call-in using a phone, to listen to the meeting through the Microsoft Teams application. The public may provide verbal comments during the specified public comment and rules hearing segments. TVW also regularly airs these meetings. Please note that although the Boardroom will be staffed during a meeting, Board Members and agency participants may continue to appear virtually.	For more information about Board meetings, please visit https://lcb.wa.gov/Boardmeetings/Board_meetings .

Date of intended adoption: No earlier than September 14, 2022. (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Audrey Vasek, Policy and Rules Coordinator
Address: P.O. Box 43080, Olympia, WA 98504-3080
Email: rules@lcb.wa.gov
Fax: 360-704-5027
Other:
By (date) August 31, 2022

Assistance for persons with disabilities:

Contact Anita Bingham, ADA Coordinator, Human Resources
Phone: 360-664-1739
Fax: 360-664-9689
TTY: 7-1-1 or 1-800-833-6388
Email: anita.bingham@lcb.wa.gov
Other:
By (date) August 24, 2022

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of this rule proposal is to implement SB 5940, which created a new endorsement allowing breweries, wineries, and distilleries to contract with each other, and with other non-liquor licensed businesses if the contract does not include alcohol products, to provide certain packaging services, such as canning, bottling, bagging, mixing, and repacking.

The proposed new rule sections in WAC 314-20-350, 314-24-350, and 314-28-350 describe the contract packaging services endorsement and how to submit an application for an endorsement. The term "good standing" is defined as currently licensed, not suspended, and having the proper federal alcohol and tobacco tax and trade bureau permits. The proposed amendments to WAC 314-11-065 would allow licensees with a contract packaging services endorsement to keep other types of liquor on the premises as needed to provide contract packaging services.

Reasons supporting proposal: New rule sections are needed to implement SB 5940, align agency rules with the law, and inform licensees about the availability of the endorsement and its requirements.

Statutory authority for adoption: RCW 66.08.030.

Statute being implemented: RCW 66.24.248

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
☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Audrey Vasek, Policy and Rules Coordinator	1025 Union Avenue, Olympia WA, 98504	360-664-1758
Implementation:	Becky Smith, Director of Licensing	1025 Union Avenue, Olympia, WA. 98504	360-664-1753
Enforcement:	Chandra Brady, Director of Enforcement and Education	1025 Union Avenue, Olympia, WA, 98504	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: The proposed rules do not qualify as a type of rule requiring a cost-benefit analysis under RCW 34.05.328(5). The WSLCB is not a listed agency under RCW 34.05.328(5)(a)(i), so the cost-benefit analysis requirements in RCW 34.05.328 are not applicable to the proposed rules unless voluntarily applied or made applicable by the joint administrative rules review committee under RCW 34.05.328(5)(a)(ii). In this case, since the proposed rules implement a legislatively mandated endorsement, the agency did not decide to complete a cost-benefit analysis.

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) through the exemptions in RCW 34.05.310 (4)(c) and (e)..

Explanation of exemptions, if necessary: Portions of the proposed rules are exempt from the Regulatory Fairness Act's (RFA) Small Business Economic Impact Statement (SBEIS) requirement under RCW 34.05.310(4)(c) and (e) as described in the table below:

Proposed Rule	Description	SBEIS Exemption
New Sections: <ul style="list-style-type: none">WAC 314-20-350, Contract packaging services	<i>The following components of the rule qualify for an SBEIS exemption:</i> Specifically dictated by SB 5940:	RCW 34.05.310(4)(e): Content of the proposed rules is explicitly and specifically dictated by statute.

<ul style="list-style-type: none"> • endorsement for domestic breweries and microbreweries; WAC 314-24-350, Contract packaging services endorsement for domestic wineries; and • WAC 314-28-350, Contract packaging services endorsement for domestic distilleries and craft distilleries. <p>(The content of these three proposed new rule sections is substantially the same.)</p>	<ul style="list-style-type: none"> • Subsections (1) and (2): Description of licensees eligible for the endorsement and activities allowed under the endorsement; • Subsection (3), second sentence: "If a licensee is in good standing at the time of the application request, the endorsement will be issued without further requirement for additional licensing or administrative review."; and • Subsection (5): \$100 annual endorsement fee. <p>Incorporation by reference:</p> <ul style="list-style-type: none"> • Subsection (4): Incorporates by reference RCW 66.08.130. 	RCW 34.05.310(4)(c): Adopts or incorporates by reference without material change Washington state statutes.
	<p><i>The following components of the rule do not qualify for an SBEIS exemption:</i></p> <ul style="list-style-type: none"> • Subsection (3): Endorsement application process and definition of "good standing." 	No exemption applies. See estimated cost of compliance and minor cost analysis in section below.
Amended Section WAC 314-11-065, Types of liquor allowed on a licensed premises.	<p><i>The following components of the rule qualify for an SBEIS exemption:</i></p> <p>Incorporation by reference:</p> <ul style="list-style-type: none"> • Subsection (1)(e): Incorporates by reference the new RCW section created by SB 5940. 	RCW 34.05.310(4)(c): Adopts or incorporates by reference without material change Washington state statutes.
	<p><i>The following components of the rule do not qualify for an SBEIS exemption:</i></p> <ul style="list-style-type: none"> • None 	N/A

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. To the extent that the proposed rules are not exempt from the RFA's SBEIS requirement (i.e. with respect to the endorsement application process and definition of "good standing" included in subsection (3) of the three proposed new rule sections, as described in the table above) the agency estimates the annual costs of compliance for potentially impacted businesses as described below.

Estimated Annual Costs of Compliance: Under the RFA, agencies are required to consider the costs that complying with proposed rules will impose on businesses. RCW 19.85.040 requires agencies to consider reporting, recordkeeping, and other compliance costs of the proposed rules, including costs of equipment, supplies, labor, professional services, and increased administrative costs, and whether compliance with the proposed rule will cause businesses to lose sales or revenue.

In this case, the non-exempt portion of the proposed rules require licensees who seek to add this endorsement to submit an application to the Board's Licensing Division. The agency anticipates that it will take licensees around 10-15 minutes to complete the application for the endorsement during the initial application year, with no additional time needed beyond what is required to renew their underlying license in following years. The amount of time needed to complete the application can be considered a one-time administrative cost.

To calculate this administrative cost, the agency relied on data from the 2021 Occupational Employment and Wage Statistics (OEWS) Online Databook available in the Employment Security Department (ESD) labor market report library (<https://esd.wa.gov/labormarketinfo/report-library>): the estimated 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 \$22.68. Based on that data, the estimated administrative cost during the initial application year is \$5.67 [$\$22.68 \text{ avg. hourly wage} \times .25 \text{ hours (~15min)} = \5.67], and the estimated cost during subsequent renewal years is \$0. For the purpose of the minor cost calculations, this estimated administrative cost is rounded up to \$6.

For these reasons, the agency estimates that the cost of compliance for potentially impacted businesses is a one-time cost of \$6. The estimated annual cost of compliance would be less than \$6 if this one-time cost were amortized over of the amount of time that the licensee continues to renew the endorsement.

Minor Cost Threshold Estimates: Businesses potentially impacted by the proposed rules include breweries, wineries, and distilleries. The agency applied the following North American Industry Classification System (NAICS) codes to estimate minor cost thresholds for licensees:

Licensee Type	NAICS Code	Description from the 2022 NAICS Manual (https://www.census.gov/naics/reference_files_tools/2022_NAICS_Manual.pdf)
Distilleries and Craft Distilleries	312140 Distilleries	"This industry 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." There are no separate NAICS codes available for craft distilleries.

Wineries	312130 Wineries	"This industry 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."
Breweries and Microbreweries	312120 Breweries	"This industry comprises establishments primarily engaged in brewing beer, ale, lager, malt liquors, and nonalcoholic beer." There are no separate NAICS codes available for microbreweries.

As shown in the table below, the estimated annual cost of compliance (~\$6) for potentially impacted businesses in each of these industries does not exceed the minor cost estimate for these industries, 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 [Licensee Type]	NAICS Code Title	Minor Cost Estimate = MAX (WT, RT, and \$100)	Wage Threshold (WT) 1% of Avg Annual Payroll (0.01*AvgPay)	Revenue Threshold (RT) 0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)
312120	\$6	Breweries and Microbreweries	Breweries	\$3,085.32	\$2,803.58 2020 Dataset pulled from USBLS	\$3,085.32 2020 Dataset pulled from DOR
312130	\$6	Wineries	Wineries	\$3,905.58	\$3,905.58 2020 Dataset pulled from ESD	\$3,560.33 2020 Dataset pulled from DOR
312140	\$6	Distilleries and Craft Distilleries	Distilleries	\$2,806.14	\$2,806.14 2020 Dataset pulled from USBLS	\$1,707.60 2020 Dataset pulled from DOR

The revenue and wage thresholds used to determine the minor cost estimates for each of the business industries listed in the table above were calculated using Minor-Cost Threshold Calculator (*updated October 2021*) provided by the Governor's Office for Regulatory Innovation and Assistance (ORIA). For more information, see the ORIA Regulatory Fairness Act Tools & Guidance webpage at https://www.oria.wa.gov/site/alias__oria/934/Regulatory-Fairness-Act-Support.aspx.

☐ 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: July 20, 2022	Signature: 
Name: David Postman	
Title: Chair	

NEW SECTION

WAC 314-20-350 Contract packaging services endorsement for domestic breweries and microbreweries. Consistent with RCW 66.24.248:

(1) There is an endorsement available to domestic breweries, microbreweries, wineries, distilleries, and craft distilleries to provide contract packaging services to other domestic breweries, microbreweries, wineries, distilleries, craft distilleries, and nonliquor licensed businesses.

(2) Contract packaging services allowed under the endorsement include:

(a) Canning, bottling, and bagging;

(b) Mixing products before packaging;

(c) Repacking of finished products into mixed consumer packs or multipacks; and

(d) Receiving and returning products to the originating liquor licensed businesses as part of a contract in which the contracting liquor licensed party for which the services are being provided retains title and ownership of the products at all times.

(3) An application for an endorsement under this section must be submitted to the board's licensing division. If a licensee is in good standing at the time of the application request, the endorsement will be issued without further requirement for additional licensing or administrative review. "Good standing" means currently licensed, not suspended, and having the proper federal alcohol and tobacco tax and trade bureau permits. The applicant must submit a copy of the proper federal permits with the application. If at any time after the endorsement is issued a licensee begins contract packaging a product for which new federal permits are required, the licensee must submit a copy of the proper federal permits to the board's licensing division.

(4) Consistent with RCW 66.08.130, endorsement holders must make a copy of any contracts and federal permits available to representatives of the board upon request.

(5) The annual fee for this endorsement is \$100.

NEW SECTION

WAC 314-24-350 Contract packaging services endorsement for domestic wineries. Consistent with RCW 66.24.248:

(1) There is an endorsement available to domestic breweries, microbreweries, wineries, distilleries, and craft distilleries to provide contract packaging services to other domestic breweries, microbreweries, wineries, distilleries, craft distilleries, and nonliquor licensed businesses.

(2) Contract packaging services allowed under the endorsement include:

(a) Canning, bottling, and bagging;

(b) Mixing products before packaging;

(c) Repacking of finished products into mixed consumer packs or multipacks; and

(d) Receiving and returning products to the originating liquor licensed businesses as part of a contract in which the contracting liquor licensed party for which the services are being provided retains title and ownership of the products at all times.

(3) An application for an endorsement under this section must be submitted to the board's licensing division. If a licensee is in good standing at the time of the application request, the endorsement will be issued without further requirement for additional licensing or administrative review. "Good standing" means currently licensed, not suspended, and having the proper federal alcohol and tobacco tax and trade bureau permits. The applicant must submit a copy of the proper federal permits with the application. If at any time after the endorsement is issued a licensee begins contract packaging a product for which new federal permits are required, the licensee must submit a copy of the proper federal permits to the board's licensing division.

(4) Consistent with RCW 66.08.130, endorsement holders must make a copy of any contracts and federal permits available to representatives of the board upon request.

(5) The annual fee for this endorsement is \$100.

NEW SECTION

WAC 314-28-350 Contract packaging services endorsement for domestic distilleries and craft distilleries. Consistent with RCW 66.24.248:

(1) There is an endorsement available to domestic breweries, microbreweries, wineries, distilleries, and craft distilleries to provide contract packaging services to other domestic breweries, microbreweries, wineries, distilleries, craft distilleries, and nonliquor licensed businesses.

(2) Contract packaging services allowed under the endorsement include:

(a) Canning, bottling, and bagging;

(b) Mixing products before packaging;

(c) Repacking of finished products into mixed consumer packs or multipacks; and

(d) Receiving and returning products to the originating liquor licensed businesses as part of a contract in which the contracting liquor licensed party for which the services are being provided retains title and ownership of the products at all times.

(3) An application for an endorsement under this section must be submitted to the board's licensing division. If a licensee is in good standing at the time of the application request, the endorsement will be issued without further requirement for additional licensing or administrative review. "Good standing" means currently licensed, not suspended, and having the proper federal alcohol and tobacco tax and trade bureau permits. The applicant must submit a copy of the proper federal permits with the application. If at any time after the endorsement is issued a licensee begins contract packaging a product for which new federal permits are required, the licensee must submit a copy of the proper federal permits to the board's licensing division.

(4) Consistent with RCW 66.08.130, endorsement holders must make a copy of any contracts and federal permits available to representatives of the board upon request.

(5) The annual fee for this endorsement is \$100.

WAC 314-11-065 ((What)) Types of liquor ((is)) allowed on a licensed premises((?)). (1) Licensees may only possess and allow persons to consume or possess the type of liquor permitted by the type of liquor license held on the premises; except:

(a) Under authority of a banquet permit (see chapter 314-18 WAC);
(b) Restaurant licensees may allow patrons to bring wine into the premises for consumption with a meal;

(c) Beer and/or wine restaurant or tavern licensees may keep spirituous liquor on the premises for use in the manufacture of food products, provided that:

(i) All food products manufactured contain one percent or less of alcohol by weight (per RCW 66.12.160);

(ii) Customers are made aware that the food products contain liquor; and

(iii) The beer and/or wine restaurant or tavern licensee notifies the local liquor control board enforcement office in writing before they bring spirituous liquor on the premises((-));

(d) Under the authority of a special occasion license; and

(e) Licensees with an endorsement under WAC 314-20-350, 314-24-350, or 314-28-350 may keep other types of liquor on the premises to provide contract packaging services consistent with RCW 66.24.248.

(2) For on-premises liquor licenses, the licensee or employees may not permit the removal of liquor in an open container from the licensed premises, except:

(a) Liquor brought on a licensed premises under authority of a banquet permit may be resealed in its original container and removed at the end of the banquet permit function;

(b) Per RCW 66.24.320 and 66.24.400, wine that is sold with a meal may be recorked or resealed and removed from the premises;

(c) Liquor purchased by registered guests for consumption inside a hotel or motel room may be resealed in its original container and removed from the hotel or motel premises by the guest; and

(d) Liquor removed from a licensed premises that holds a caterer's endorsement, for the purpose of catering an approved event.