

Chapter 314-28 WAC

DISTILLERS

WAC

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WAC 314-28-005 Definitions. The following definition applies to distilleries.

"Craft distillery" means any distillery licensed under RCW 66.24.145 and located in the state of Washington.

"Domestic distillery" means any distillery licensed under RCW 66.24.140 and located in the state of Washington.

[Statutory Authority: RCW 66.24.145, and 66.08.030. WSR 14-20-047, § 314-28-005, filed 9/24/14, effective 10/25/14. Statutory Authority: RCW 66.08.030 and 66.28.320. WSR 10-01-090, § 314-28-005, filed 12/16/09, effective 1/16/10.]

WAC 314-28-010 Records. (1) All distilleries licensed under RCW 66.24.140 and 66.24.145, including craft, fruit, and laboratory distillers must:

(a) Keep records regarding any spirits, whether produced or purchased, for three years after each sale. A distiller is required to report on forms approved by the liquor and cannabis board;

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

(c) Submit duplicate copies of transcripts, notices, or other data that is required by the federal government to the liquor and cannabis board if requested, within thirty days of the notice of such request. A distiller shall also furnish copies of the bills of lading, covering all shipments of the products of the licensee, to the board within thirty days of notice of such request;

(d) Preserve all sales records to spirits retail licensees, sales to spirits distributors, and exports from the state; and

(e) Submit copies of its monthly records to the liquor and cannabis board upon request.

(2) In addition to the above, a craft distiller must:

(a) Preserve all sales records of retail sales to consumers; and

(b) Submit its monthly records to the liquor and cannabis board upon request.

[Statutory Authority: RCW 66.08.030. WSR 16-01-102, § 314-28-010, filed 12/16/15, effective 1/16/16. Statutory Authority: RCW 66.08.030, 66.24-055, 66.24.160, 66.24.630, and 66.24.640. WSR 12-12-065, § 314-28-010, filed 6/5/12, effective 7/6/12. Statutory Authority: RCW 66.24.145 and

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66.08.030. WSR 10-19-066, § 314-28-010, filed 9/15/10, effective 10/16/10; WSR 09-02-011, § 314-28-010, filed 12/29/08, effective 1/29/09. Statutory Authority: RCW 66.08.030. WSR 86-07-022 (Order 172, Resolution No. 181), § 314-28-010, filed 3/13/86; Order 14, § 314-28-010, filed 12/1/70, effective 1/1/71; Rule 84, filed 6/13/63.]

WAC 314-28-030 What does a distillery allow? (1) A distillery license allows the licensee to:

(a) Sell spirits of their own production directly to a licensed spirits distributor in the state of Washington and to a licensed spirits retailer in the state of Washington;

(b) Sell spirits of its own production for consumption off the premises. A distiller selling spirits under this subsection must comply with the applicable laws and rules relating to retailers;

(c) Provide free or for a charge one-half ounce or less samples of spirits of its own production to persons on the premises of the distillery.

(i) Samples may be altered with mixers, ice, and/or water.

(ii) The maximum total per person per day is two ounces.

(iii) Every person who participates in any manner in the service of samples must obtain a class 12 alcohol server permit.

(d) Contract distilled spirits for, and sell contract distilled spirits to, holders of distillers' or manufacturers' licenses, including licenses issued under RCW 66.24.520, or for export.

(2) Contract production is when one distillery, referred to as the "contractor," produces distilled spirits for and sells contract distilled spirits to holders of a distillery license, or manufacturers' license including licenses issued under RCW 66.24.520, referred to as "contractee," and for export from the state. This distilled spirit is referred to as the "product."

(a) The contractee is the product owner. The contractee may handle the product under its license as the Revised Code of Washington and the Washington Administrative Code allow.

(b) The contractor is required to physically transport all contracted product to the contractee. The contractor is not allowed to distribute or retail the product.

(3) The contractor must submit a copy of the contract to the board prior to production. Any changes in the contract must also be submitted to the board prior to subsequent production. The board may require additional information.

(4) The contractor and contractee are required to obtain any federal approvals.

[Statutory Authority: RCW 66.08.030, 66.24.145. WSR 15-16-049, § 314-28-030, filed 7/29/15, effective 8/29/15; WSR 14-20-047, § 314-28-030, filed 9/24/14, effective 10/25/14. Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, and 66.24.640. WSR 12-12-065, § 314-28-030, filed 6/5/12, effective 7/6/12.]

WAC 314-28-050 What does a craft distillery license allow? (1) A craft distillery license allows a licensee to:

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

(b) Sell spirits of its own production directly to a customer for off-premises consumption, provided that the sale occurs when the customer is physically present on the licensed premises. A craft distiller may not sell liquor products of someone else's production;

(c) Sell spirits of its own production to a licensed spirits distributor;

(d) Sell spirits of its own production to a licensed spirits retailer in the state of Washington;

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

(f) Provide, free or for a charge, samples of spirits of its own production to persons on the distillery premises.

(i) Each sample must be one-half ounce or less, with no more than two ounces of samples provided per person per day.

(ii) Samples may be altered with mixers, ice, and/or water.

(iii) Anyone involved in the serving of such samples must have a valid Class 12 alcohol server permit.

(iv) Samples must be in compliance with RCW 66.28.040;

(g) Provide samples of spirits of its own production to retailers. Samples must be unaltered, and in compliance with RCW 66.28.040, 66.24.310 and WAC 314-64-08001. Samples are considered sales and are subject to taxes;

(h) Contract produce spirits for holders of a distiller or manufacturer license.

(2) A craft distillery licensee may add a spirits, beer, and wine restaurant license at the craft distillery premises. The licensee must complete an application and submit the application and applicable fees to the board for processing.

[Statutory Authority: RCW 66.08.030, 66.24.145. WSR 15-16-049, § 314-28-050, filed 7/29/15, effective 8/29/15; WSR 14-20-047, § 314-28-050, filed 9/24/14, effective 10/25/14. Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, and 66.24.640. WSR 12-12-065, § 314-28-050, filed 6/5/12, effective 7/6/12. Statutory Authority: RCW 66.24.145 and 66.08.030. WSR 10-19-066, § 314-28-050, filed 9/15/10, effective 10/16/10; WSR 09-02-011, § 314-28-050, filed 12/29/08, effective 1/29/09.]

WAC 314-28-055 What are the requirements for contract production by craft distilleries? (1) This section clarifies the language for contract production found in RCW 66.24.145. For the purposes of this section, contract production is when one craft distillery, referred to as the "contractor," produces distilled spirits for and sells contract distilled spirits to holders of distillers' or manufacturers' licenses including licenses issued under RCW 66.24.520, referred to as "contractee," and for export from the state. This distilled spirit is referred to as the "product."

(a) The contractee is the product owner. The contractee may handle the product under its license as RCW and WAC allow.

(b) The contractor is required to physically transport all contracted product to the contractee. The contractor is not allowed to distribute or retail the product.

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(2) The contractor must submit a copy of the contract to the board prior to production. Any changes in the contract must also be submitted to the board prior to subsequent production. The board may require additional information.

(3) The contractor and contractee are required to obtain any federal approvals.

(4) Maintaining qualification as a craft distillery. Each craft distillery, whether in the capacity of a contractor or contractee, is allowed to produce one hundred fifty thousand gallons or less of total product per year. Total product, in this instance, includes:

(a) Product owned and produced by the craft distillery;

(b) Product owned and produced by the craft distillery for export from the state;

(c) Product owned by the craft distillery but produced by another craft distillery;

(d) Product produced by the craft distillery on behalf of another craft distillery;

(e) Product produced by the craft distillery under contract for another distillery, manufacturer, or grower.

(5) Reporting and recordkeeping.

(a) The contractor must include all product produced including contract production when it reports its monthly production to the board.

(b) The contractee must include the product contract produced by another craft distillery when the contractee reports its monthly production to the board.

(c) The contractor's and the contractee's recordkeeping documents must include the product information for each contract. The information must show the quantities produced.

[Statutory Authority: RCW 66.24.145, and 66.08.030. WSR 14-20-047, § 314-28-055, filed 9/24/14, effective 10/25/14; WSR 10-19-066, § 314-28-055, filed 9/15/10, effective 10/16/10.]

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

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

(2) Submit other licensing documents as determined by the board;

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

[Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, and 66.24.640. WSR 12-12-065, § 314-28-060, filed 6/5/12, effective 7/6/12. Statutory Authority: RCW 66.24.145 and 66.08.030. WSR 10-19-066, § 314-28-060, filed 9/15/10, effective 10/16/10; WSR 09-02-011, § 314-28-060, filed 12/29/08, effective 1/29/09.]

WAC 314-28-070 What are the monthly reporting and payment requirements for a distillery and craft distillery license? (1) A distiller or craft distiller must submit monthly reports and payments to the board.

The required monthly reports must be:

(a) On a form furnished by the board;

(b) Filed every month, including months with no activity or payment due;

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(c) Submitted, with payment due, to the board on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. postal service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

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

(3) On sales on or after March 1, 2012, a distillery or craft distillery must pay ten percent of their gross spirits revenue to the board on sales to a licensee allowed to sell spirits for on- or off-premises consumption during the first two years of licensure and five percent of their gross spirits revenues to the board in year three and thereafter.

(a) On sales after June 1, 2012, a distillery or craft distillery must pay seventeen percent of their gross spirits revenue to the board on sales to customers for off-premises consumption.

(b) Payments must be submitted, with monthly reports, to the board on or before the twentieth day of each month, for the previous month. (For example, payment for a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, payment must be postmarked by the U.S. postal service no later than the next postal business day.

[Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, and 66.24.640. WSR 12-12-065, § 314-28-070, filed 6/5/12, effective 7/6/12. Statutory Authority: RCW 66.24.145 and 66.08.030. WSR 10-19-066, § 314-28-070, filed 9/15/10, effective 10/16/10; WSR 09-02-011, § 314-28-070, filed 12/29/08, effective 1/29/09.]

WAC 314-28-080 What if a distillery or craft distillery licensee fails to report or pay, or reports or pays late? Failure of a distillery or craft distiller to submit its monthly reports and payment to the board as required in WAC 314-28-070(1) will be sufficient grounds for the board to suspend or revoke the liquor license.

Penalties. A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.

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.

[Statutory Authority: RCW 66.08.030. WSR 14-12-101, § 314-28-080, filed 6/4/14, effective 7/5/14. Statutory Authority: RCW 66.24.630, 66.24.055, 66.24.145 and 66.08.030. WSR 13-07-085, § 314-28-080, filed 3/20/13, effective 4/20/13. Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.-

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160, 66.24.630, and 66.24.640. WSR 12-12-065, § 314-28-080, filed 6/5/12, effective 7/6/12. Statutory Authority: RCW 66.08.030, 66.24.145. WSR 09-02-011, § 314-28-080, filed 12/29/08, effective 1/29/09.]

WAC 314-28-090 Distilleries or craft distilleries—Selling out-of-state. What are the requirements for a craft distillery licensee to sell its spirits product outside the state of Washington?

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

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

(3) Product produced in-state and sold out-of-state is subject to the fifty percent Washington grown raw materials requirement for a craft distillery.

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

[Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, and 66.24.640. WSR 12-12-065, § 314-28-090, filed 6/5/12, effective 7/6/12. Statutory Authority: RCW 66.24.145 and 66.08.030. WSR 10-19-066, § 314-28-090, filed 9/15/10, effective 10/16/10; WSR 09-02-011, § 314-28-090, filed 12/29/08, effective 1/29/09.]

WAC 314-28-095 Farmer's market spirits sales. To conduct bottled spirits sales at a farmer's market, the following criteria must be met:

(1) The farmer's market must be authorized to allow distilleries and craft distilleries to sell bottled spirits at retail.

(2) The farmer's market endorsement does not allow sampling of spirits.

(3) A distillery or craft distillery selling bottled spirits at a farmer's market must have an endorsement from the liquor and cannabis board to sell bottled spirits of its own production at a farmer's market (see RCW 66.24.145).

(4) The distillery or craft distillery is required to send a list of the dates, times, and locations where bottled spirits may be offered for sale to the liquor and cannabis board at the beginning of each month.

(5) The farmer's market is required to provide a sketch to the licensing division of the area where spirits bottle sales will be conducted.

[Statutory Authority: RCW 66.08.030. WSR 16-01-102, § 314-28-095, filed 12/16/15, effective 1/16/16.]

WAC 314-28-100 Consumer orders, internet sales, and delivery for distillery and craft distillery licensees. A distillery or craft distillery licensee may accept orders for spirits from, and deliver spirits to, customers.

(1) **Resale.** Spirits shall not be for resale.

(2) **Stock location.** Spirits must come directly from a licensed distillery or craft distillery possession.

(3) **How to place an order.** Spirits may be ordered in person at a licensed location, by mail, telephone, or internet, or by other similar methods.

(4) Sales and payment.

(a) Only a spirits distillery or craft distillery licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a spirits distillery or craft distillery licensee, except for transmittal of payment through a third-party service. A third-party service may not solicit customer business on behalf of a spirits distillery or craft distillery licensee.

(b) All orders and payments shall be fully processed before spirits transfers ownership or, in the case of delivery, leaves a licensed distillery's or craft distillery's possession.

(c) Payment method. Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account. An existing prepaid account may not have a negative balance.

(d) Internet. To sell spirits via the internet, a new spirits distillery or craft distillery license applicant must request internet sales privileges in his or her application. An existing spirits distillery or craft distillery licensee must notify the board prior to beginning internet sales. A corporate entity representing multiple stores may notify the board in a single letter on behalf of affiliated spirits distillery or craft distillery licensees, as long as the liquor license numbers of all licensee locations utilizing internet sales privileges are clearly identified.

(5) **Delivery location.** Delivery shall be made only to a residence or business that has an address recognized by the United States postal service; however, the board may grant an exception to this rule at its discretion. A residence includes a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(6) **Hours of delivery.** Spirits may be delivered each day of the week between the hours of 6:00 a.m. and 2:00 a.m. Delivery must be fully completed by 2:00 a.m.

(7) Age requirement.

(a) Under chapter 66.44 RCW, any person under twenty-one years of age is prohibited from purchasing, delivering, or accepting delivery of liquor.

(b) A delivery person must verify the age of the person accepting delivery before handing over liquor.

(c) If no person twenty-one years of age or older is present to accept a liquor order at the time of delivery, the liquor shall be returned.

(8) **Intoxication.** Delivery of liquor is prohibited to any person who shows signs of intoxication.

(9) Containers and packaging.

(a) Individual units of spirits must be factory sealed in bottles. For the purposes of this subsection, "factory sealed" means that a unit is in one hundred percent resalable condition, with all manufacturer's seals intact.

(b) The outermost surface of a liquor package, delivered by a third party, must have language stating that:

(i) The package contains liquor;

(ii) The recipient must be twenty-one years of age or older; and

(iii) Delivery to intoxicated persons is prohibited.

(10) Required information.

(a) Records and files shall be retained at the licensed premises. Each delivery sales record shall include the following:

(i) Name of the purchaser;

(ii) Name of the person who accepts delivery;

(iii) Street addresses of the purchaser and the delivery location; and

(iv) Time and date of purchase and delivery.

(b) A private carrier must obtain the signature of the person who receives liquor upon delivery.

(c) A sales record does not have to include the name of the delivery person, but it is encouraged.

(11) **Web site requirements.** When selling over the internet, all web site pages associated with the sale of liquor must display the spirits distillery or craft distillery licensee's registered trade name.

(12) **Accountability.** A spirits distillery or craft distillery licensee shall be accountable for all deliveries of liquor made on its behalf.

(13) **Violations.** The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement, or restriction.

[Statutory Authority: RCW 66.08.030, WSR 16-01-102, § 314-28-100, filed 12/16/15, effective 1/16/16.]

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

[Statutory Authority: RCW 66.08.030, 66.24.145, WSR 09-02-011, § 314-28-200, filed 12/29/08, effective 1/29/09.]