

Chapter 314-28 WAC

DISTILLERS

WAC

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

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

[Statutory Authority: RCW 66.08.030 and 66.28.320. 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:

(a) Must keep records concerning any spirits, whether produced or purchased, for three years after each sale. A distiller may be required to report on forms approved by the board;

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

(c) Must submit duplicate copies of transcripts, notices, or other data that are required by the federal government to the 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.

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

(a) Preserve all sales records, in the case of retail sales to consumers; and

(b) Submit duplicate copies of its monthly returns to the board upon request.

[Statutory Authority: RCW 66.24.145 and 66.08.030. 10-19-066, § 314-28-010, filed 9/15/10, effective 10/16/10; 09-02-011, § 314-28-010, filed 12/29/08, effective 1/29/09. Statutory Authority: RCW 66.08.030. 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 314-28-050 What does a craft distillery license allow? (1) A craft distillery license allows a licensee to:

(a) Produce sixty 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

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licensed premises. A licensee may sell no more than two liters per customer per day. A craft distiller may not sell liquor products of someone else's production;

(c) Sell spirits of its own production to the board provided that the product is "listed" by the board, or is special-ordered by an individual Washington state liquor store;

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

(e) Provide, free of charge, samples of spirits of its own production to persons on the distillery premises. Each sample must be one-half ounce or less, with no more than two ounces of samples provided per person per day. Samples must be unaltered, and anyone involved in the serving of such samples must have a valid Class 12 alcohol server permit. Samples must be in compliance with RCW 66.28.040;

(f) Provide, free of charge, 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;

(g) Contract produced spirits for holders of a distiller or manufacturer license.

(2) A craft distillery licensee may not sell directly to in-state retailers or in-state distributors.

[Statutory Authority: RCW 66.24.145 and 66.08.030. 10-19-066, § 314-28-050, filed 9/15/10, effective 10/16/10; 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 a distillery licensed under RCW 66.24.140, manufacturers licensed under RCW 66.24.-150, wine growers licensed 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.

(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 sixty 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. 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;
- (4) Purchase any spirits sold at the distillery premises for off-premises consumption from the board, at the price set by the board;
- (5) Purchase any spirits used for sampling at the distillery premises from the board; and
- (6) Purchase any spirits used for samples provided to retailers from the board.

[Statutory Authority: RCW 66.24.145 and 66.08.030. 10-19-066, § 314-28-060, filed 9/15/10, effective 10/16/10; 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 craft distillery license?

(1) A 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 or in a format approved by the board;
- (b) Filed every month, including months with no activity or payment due;
- (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 twenti-

eth 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) Payments to the board. A distillery must pay the difference between the cost of the alcohol purchased by the board and the sale of alcohol at the established retail price, less the established commission rate during the preceding calendar month, including samples at no charge.

(a) Any on-premises sale or sample provided to a customer is considered a sale reportable to the board.

(b) Samples provided to retailers are considered sales reportable to the board.

(c) 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 66.24.145 and 66.08.030. 10-19-066, § 314-28-070, filed 9/15/10, effective 10/16/10; 09-02-011, § 314-28-070, filed 12/29/08, effective 1/29/09.]

WAC 314-28-080 What if a craft distillery licensee fails to report or pay, or reports or pays late? If a craft distiller fails to submit its monthly reports or payment to the board, or submits late, then the licensee is subject to penalties and surety bonds.

(1) 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.

(2) Surety bonds. A "surety bond" is a type of insurance policy that guarantees payment to the state, and is executed by a surety company authorized to do business in the state of Washington. Surety bond requirements are as follows:

(a) Must be on a surety bond form and in an amount acceptable to the board;

(b) Payable to the "Washington state liquor control board"; and

(c) Conditioned that the licensee will pay the taxes and penalties levied by RCW 66.28.040 and by all applicable WACs.

(3) The board may require a craft distillery to obtain a surety bond or assignment of savings account, within twenty-

one days after a notification by mail, if any of the following occur:

(a) A report or payment is missing more than thirty days past the required filing date, for two or more consecutive months;

(b) A report or payment is missing more than thirty days past the required filing date, for two or more times within a two-year period; or

(c) Return of payment for nonsufficient funds.

(4) 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.

(5) The amount of a surety bond or savings account required by this chapter must be either three thousand dollars, or the total of the highest four months' worth of liability for the previous twelve month period, whichever is greater. The licensee must maintain the bond for at least two years.

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

(7) If a licensee holds a surety bond or savings account, the board will immediately start the process to collect overdue payments from the surety company or assigned account. If the exact amount of payment due is not known because of missing reports, the board will estimate the payment due based on previous production, receipts, and/or sales.

[Statutory Authority: RCW 66.08.030, 66.24.145, 09-02-011, § 314-28-080, filed 12/29/08, effective 1/29/09.]

WAC 314-28-090 Craft distilleries—Selling in-state, retail pricing and product listing—Selling out-of-state—Special orders. (1) What steps must a craft distillery licensee take to sell a spirits product in the state of Washington?

(a) There are two ways to sell a spirits product at a state liquor store:

(i) Through the special order process; and

(ii) Through product listing.

(b) If a craft distillery licensee wants the board to regularly stock its product on the shelf at a state liquor store, a licensee must request the board to list its product. If the board agrees to list the product, a licensee must then sell its product to the board and transport its product to the board's distribution center.

(c) Before a craft distillery licensee may sell its product to a customer (twenty-one years old or older) at its distillery premises, a licensee must;

(i) Obtain a retail price from the board;

(ii) Sell its product to the board; and

(iii) Purchase its product back from the board. Product that a licensee produces and sells at its distillery premises is not transported to the board's distribution center.

(d) *Listing a product.* A craft distillery licensee must submit a formal request to the board to have the board regularly stock its product at a state liquor store. The board's purchasing division administers the listing process.

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(i) A licensee must submit the following documents and information: A completed standard price quotation form, a listing request profile, bottle dimensions, an electronic color photograph of the product, a copy of the federal certificate of label approval, and a signed "tied house" statement.

(ii) The purchasing division shall apply the same consideration to all listing requests.

(iii) A craft distillery licensee is not required to submit a formal request for product listing if a licensee sells its product in-state only by special order (see chapter 314-74 WAC).

(e) *Obtaining a retail price.* A craft distillery licensee must submit a pricing quote to the board forty-five days prior to the first day of the effective pricing month. A pricing quote submittal includes a completed standard price quotation form, and the product's federal certificate of label approval. The board will then set the retail price.

(i) Pricing may not be changed within a calendar month.

(ii) A craft distillery licensee is required to sell to its on-premises customers at the same retail price as set by the board. If and when the board offers a temporary price reduction for a period of time, a licensee may also sell its product at the reduced price, but only during that same period of time.

(2) What are the requirements for a craft distillery licensee to sell its spirits product outside the state of Washington?

(a) A 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 the composition of raw materials used in production of the product.

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

(c) Product produced in-state and sold out-of-state is subject to the fifty percent Washington grown raw materials requirement.

(d) Product sold out-of-state is not subject to retail pricing by the board.

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

[Statutory Authority: RCW 66.24.145 and 66.08.030, 10-19-066, § 314-28-090, filed 9/15/10, effective 10/16/10; 09-02-011, § 314-28-090, filed 12/29/08, effective 1/29/09.]

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, 09-02-011, § 314-28-200, filed 12/29/08, effective 1/29/09.]