

Chapter 314-23 WAC

SPIRITS DISTRIBUTORS, SPIRITS CERTIFICATE OF APPROVAL LICENSES, AND SPIRITS IMPORTERS

WAC

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WAC 314-23-001 What does a spirits distributor license allow? (1) A spirits distributor licensee may not commence sales until March 1, 2012. A spirits distributor licensee is allowed to:

- Sell spirits purchased from manufacturers, distillers, importers, or spirits certificate of approval holders;
 - Sell spirits to any liquor licensee allowed to sell spirits;
 - Sell spirits to other spirits distributors; and
 - Export spirits from the state of Washington.
- (2) The price of spirits sold to retailers may not be below acquisition cost.

[Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, and 66.24.640. WSR 12-12-065, § 314-23-001, filed 6/5/12, effective 7/6/12.]

WAC 314-23-005 What are the fees for a spirits distributor license? (1) The holder of a spirits distributor license must pay to the board a monthly license fee as follows:

- Ten percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the first two years of licensure; and
- Five percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the third year of licensure and every year thereafter.

(9/21/15)

(c) The license fee is only calculated on sales of items which the licensee was the first spirits distributor in the state to have received:

(i) In the case of spirits manufactured in the state, from the distiller; or

(ii) In the case of spirits manufactured outside the state, from a spirits certificate of approval holder.

(d) Reporting of sales and payment must be submitted on forms provided by the board.

(2) The annual fee for a spirits distributor license is one thousand three hundred twenty dollars.

[Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, and 66.24.640. WSR 12-12-065, § 314-23-005, filed 6/5/12, effective 7/6/12.]

WAC 314-23-020 What are the requirements for a spirits distributor license? (1) In addition to any application requirements in chapter 314-07 WAC, applicants applying for a spirits distributor license must submit:

(a) A copy of all permits required by the federal government;

(b) Documentation showing the applicant has the right to the property;

(c) An acknowledgment form certifying the applicant has a security plan which addresses:

- Inventory management; and
- Physical security of spirits product with respect to preventing theft.

(2) Spirits distributors must sell and deliver product from their licensed premises.

[Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, and 66.24.640. WSR 12-12-065, § 314-23-020, filed 6/5/12, effective 7/6/12.]

WAC 314-23-021 What are the monthly reporting and payment requirements for a spirits distributor license? (1) A spirits distributor must submit monthly reports and payments to the board.

(2) The required monthly reports must be:

- On a form furnished by the board;
- 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 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.

[Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, and 66.24.640. WSR 12-12-065, § 314-23-021, filed 6/5/12, effective 7/6/12.]

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WAC 314-23-022 What if a distributor licensee fails to report or pay, or reports or pays late? (1) Failure of a spirits distributor licensee to submit its monthly reports and payment to the board as required in WAC 314-23-021(1) will be sufficient grounds for the board to suspend or revoke the liquor license.

(2) 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, § 314-23-022, 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, § 314-23-022, filed 3/20/13, effective 4/20/13. Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, and 66.24.640, WSR 12-12-065, § 314-23-022, filed 6/5/12, effective 7/6/12.]

WAC 314-23-025 Collection of shortfall of spirits distributor license fees from spirits distributor license holders. (1) RCW 66.24.055 requires that all persons holding a spirits distributor license on or before March 31, 2013, must have collectively paid a total of one hundred fifty million dollars in spirits distributor license fees by March 31, 2013. If the spirits distributor license fees collected by March 31, 2013, total less than one hundred fifty million dollars, the board is required to assess those persons holding a spirits distributor license on or before March 31, 2013, in order to collect a total of one hundred fifty million dollars. The board will calculate the additional amount owed by each spirits distributor licensee as follows:

(a) The amount of additional fees owed will be calculated using the total spirits sales made by each spirits distributor licensee during calendar year 2012. If a spirits distributor licensee had no spirits sales during calendar year 2012, no additional fees will be due;

(b) Each licensee will be assessed and required to pay their proportionate share of the remaining liability between one hundred fifty million dollars and actual collections. The proportionate share of fees due will be calculated by dividing the total dollar amount of sales made by each spirits distributor licensee by the total spirits sales made by all spirits distributor licensees combined. If the total amount of payments exceeds one hundred fifty million dollars, each licensee will be credited a proportionate amount of the overpayment to their future license issuance fee obligations.

(2) The board will notify all spirits distributor licensees no later than April 30, 2013, of the amount they are required to pay in additional license fees. Spirits distributor licensees must pay the additional license fees to the board by May 31, 2013.

(3) The board may suspend or revoke any spirits distributor license if the required additional license fees are not paid by May 31, 2013. If suspended, the suspension will remain in effect until the additional license fees are paid.

(4) The board may also initiate collection proceedings for any amount of additional fees not paid to the board by May 31, 2013.

[Statutory Authority: RCW 66.24.055 and 66.08.030, WSR 12-21-057, § 314-23-025, filed 10/15/12, effective 11/15/12.]

WAC 314-23-030 What does a spirits certificate of approval license allow? (1) A spirits certificate of approval licensee may not commence sales until March 1, 2012. A spirits certificate of approval license may be issued to spirits manufacturers located outside of the state of Washington but within the United States.

(2) There are three separate spirits certificate of approval licenses as follows:

(a) A holder of a spirits certificate of approval may act as a distributor of spirits they are entitled to import into the state by selling directly to spirits distributors or spirits importers licensed in Washington state. The fee for a certificate of approval is two hundred dollars per year.

(b) A holder of an authorized representative out-of-state spirits importer or brand owner for spirits produced in the United States but outside of Washington state may obtain a spirits authorized representative domestic certificate of approval license which entitles the holder to import spirits into the state by selling directly to spirits distributors, or spirits importers licensed in Washington state. The fee for an authorized representative certificate of approval for spirits is two hundred dollars per year.

(c) A holder of an authorized representative out-of-state spirits importer or brand owner for spirits produced outside of the United States obtains a spirits authorized representative foreign certificate of approval which entitles the holder to import spirits into the state by selling directly to spirits distributors, or spirits importers licensed in Washington state. The fee for an authorized representative certificate of approval for foreign spirits is two hundred dollars per year.

(3) A spirits certificate of approval holder, a spirits authorized representative domestic certificate of approval holder, and/or a spirits authorized representative foreign certificate of approval holder must obtain an endorsement to the certificate of approval that allows the shipment of spirits the holder is entitled to import into the state directly to licensed liquor retailers. The fee for this endorsement is one hundred dollars per year and is in addition to the fee for the certificate of approval license. The holder of a certificate of approval license that sells directly to licensed liquor retailers must:

(a) Report to the board monthly, on forms provided by the board, the amount of all sales of spirits to licensed retailers.

(b) Pay to the board a fee of ten percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the first two years of licensure.

(c) Pay to the board five percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the third year of licensure and every year thereafter.

[Statutory Authority: RCW 66.24.640, 66.08.030, WSR 13-07-009, § 314-23-030, filed 3/7/13, effective 4/7/13. Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, and 66.24.640, WSR 12-12-065, § 314-23-030, filed 6/5/12, effective 7/6/12.]

WAC 314-23-040 What are the requirements for a certificate of approval license? The following documents are required to obtain a certificate of approval license:

- (1) Copies of all permits required by the federal government;
- (2) Copies of all state licenses and permits required by the state in which your operation is located; and
- (3) Licensing documents as determined by the board.

[Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, and 66.24.640. WSR 12-12-065, § 314-23-040, filed 6/5/12, effective 7/6/12.]

WAC 314-23-041 What are the monthly reporting and payment requirements for a spirits certificate of approval licensee? (1) A spirits certificate of approval licensee must submit monthly reports and payments to the board.

- (2) 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;
 - (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.

[Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, and 66.24.640. WSR 12-12-065, § 314-23-041, filed 6/5/12, effective 7/6/12.]

WAC 314-23-042 What if a certificate of approval licensee fails to report or pay, or reports or pays late? (1) If a spirits certificate of approval licensee does not submit its monthly reports and payment to the board as required by this subsection (1), the licensee is subject to penalties.

(2) 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, § 314-23-042, filed 6/4/14, effective 7/5/14. Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, and 66.24.640. WSR 12-12-065, § 314-23-042, filed 6/5/12, effective 7/6/12.]

WAC 314-23-050 What does a spirits importer license allow? (1) A spirits importer license is issued to an in-state spirits importer. A spirits importer is allowed to:

- (a) Import spirits into the state of Washington;
- (b) Store spirits in the state of Washington;
- (c) Sell spirits to spirits distributors; and
- (d) Export spirits in original containers.

(2) An out-of-state spirits importer is required to obtain an authorized representative certificate of approval license as referenced in WAC 314-23-030.

(9/21/15)

[Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, and 66.24.640. WSR 12-12-065, § 314-23-050, filed 6/5/12, effective 7/6/12.]

WAC 314-23-060 What are "volume discounts"? Volume discounts are discounts that are based solely on the volume of the spirits and/or wine that is purchased by a retailer from a distributor or supplier. However, the limitations on interactions between the levels of licenses remain including, but not limited to, the prohibition on undue influence and sales below cost.

[Statutory Authority: RCW 66.08.030. WSR 15-19-130, § 314-23-060, filed 9/21/15, effective 10/22/15.]

WAC 314-23-065 What are "unfair trade practices"? (1) "Unfair trade practice" means one retailer or industry member directly or indirectly influencing the purchasing, marketing, or sales decisions of another retailer or industry member by any agreement written or unwritten or any other business practices or arrangements such as, but not limited to, the following:

- (a) Any form of coercion between industry members and retailers or between retailers and industry members through acts or threats of physical or economic harm, including threat of loss of supply or threat of curtailment of purchase;
- (b) A retailer on an involuntary basis purchasing less than it would have of another industry member's product;
- (c) Purchases made by a retailer or industry member as a prerequisite for purchase of other items;
- (d) A retailer purchasing a specific or minimum quantity or type of a product or products from an industry member;
- (e) An industry member requiring a retailer to take and dispose of a certain product type or quota of the industry member's products;
- (f) A retailer having a continuing obligation to purchase or otherwise promote or display an industry member's product;
- (g) An industry member having a continuing obligation to sell a product to a retailer;
- (h) A retailer having a commitment not to terminate its relationship with an industry member with respect to purchase of the industry member's products or an industry member having a commitment not to terminate its relationship with a retailer with respect to the sale of a particular product or products;

(i) An industry member being involved in the day-to-day operations of a retailer or a retailer being involved in the day-to-day operations of an industry member in a manner that violates the provisions of this subsection;

(j) Discriminatory pricing practices as prohibited by law or other practices that are discriminatory in that the product is not offered to all retailers in the local market at the same price.

(2) The exercise of undue influence is an unfair trade practice and is prohibited.

[Statutory Authority: RCW 66.08.030. WSR 15-19-130, § 314-23-065, filed 9/21/15, effective 10/22/15.]

WAC 314-23-070 What is "local market"? Local market is limited to businesses in geographic recognized market areas such as town, city, county or other recognized geographic area in which distribution services are provided.

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For the purposes of differential pricing, sales to on-premises retailers and off-premises retailers constitute separate markets.

[Statutory Authority: RCW 66.08.030. WSR 15-19-130, § 314-23-070, filed 9/21/15, effective 10/22/15.]

WAC 314-23-075 Are licensed distributors or other suppliers of spirits and wine allowed to provide discounts to on-premises or off-premises retail licensees based on a commitment from the retailer to purchase a particular percentage of the spirits back-bar, well-drinks, wine by the glass, or any combination of these? (1) It is unlawful for a distributor or other supplier of spirits or wine to offer a lower price to an on-premises or off-premises retailer if the retailer is required to purchase a specific portion of some or all of its wine or spirits from that distributor or supplier in order to qualify for the lower price. Such requirements include, but are not necessarily limited to, agreeing to devote certain percentage of the spirits back-bar, well-drinks, wine by the glass, or any combination of these or other types of purchases to products sold by that distributor or supplier.

(2) Such exclusive discounts are prohibited under RCW 66.28.170 and federal law 27 C.F.R. 6.72.

[Statutory Authority: RCW 66.08.030. WSR 15-19-130, § 314-23-075, filed 9/21/15, effective 10/22/15.]

WAC 314-23-080 Are licensed distributors or other licensed suppliers of spirits and wine allowed to provide volume discounts to on-premises or off-premises retail licensees? (1) Yes, distributors or other licensed suppliers are allowed to provide volume discounts to licensed on-premises and off-premises retailers. The discounts must be based solely on the volume of the spirits and/or wine that is purchased by a retailer from a distributor or other licensed suppliers. However, the limitations on interactions between the levels of licenses remain, including the prohibition on undue influence and sales below cost of acquisition.

(2) Differential pricing between on-premises licensed retailers and off-premises licensed retailers is allowed under the following exceptions:

(a) For spirits: A new product to the market may be sold to on-premises retailers at an "introductory price" for a maximum of six months. After the six-month introductory period the price for on-premises and off-premises retailers must be the same price for the same volume purchased.

(i) "New product" means the product has not previously been offered for sale to retailers.

(ii) "Introductory price" means the price of the spirits product when it first becomes available for purchase.

(b) For wine: Wine may be sold to on-premises retailers and off-premises retailers at different prices.

[Statutory Authority: RCW 66.08.030. WSR 15-19-130, § 314-23-080, filed 9/21/15, effective 10/22/15.]

WAC 314-23-085 What type of discounts are not allowed? The following types of discounts are not allowed. Please note that this list is representative and not inclusive of all practices that are not allowed:

(1) **Volume discounts that violate local, state, or federal laws.**

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(2) **Discounts on purchases over time.** Prices must be based on the spirits or wine delivered in a single shipment or single invoice.

(3) **Discounts on a combined order that is delivered to multiple licensed sites.** Volume discounts may only be provided based on combined orders by one or more licensees to the "central warehouse" or a single location to which the order is delivered. The delivery of product to multiple sites cannot be used in determining the volume discount for a combined order unless the order is delivered to multiple liquor licensed locations owned and operated by the same liquor licensed entity.

[Statutory Authority: RCW 66.08.030. WSR 15-19-130, § 314-23-085, filed 9/21/15, effective 10/22/15.]