

WSR 21-01-211
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed December 23, 2020, 10:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-16-150.

Title of Rule and Other Identifying Information: The Washington state liquor and cannabis board (board) proposes new rule sections and amendments to existing rule sections to align existing rules with and implement the law as established by E2SSB 5549 (chapter 238, Laws of 2020).

The following sections in chapter 314-28 WAC are amended: WAC 314-28-005 Definitions, 314-28-030 What does a distillery license allow?, and 314-28-050 What does a craft distillery license allow?

The following sections in chapter 314-28 WAC are new: WAC 314-28-065 Sampling, service, and sales requirements for distillery and craft distillery licensees, 314-28-066 Tasting room age restrictions for distillery and craft distillery licensees, 314-28-067 Food offerings requirements, 314-28-300 Off-site tasting room license, 314-28-310 Jointly operated off-site tasting rooms, and 314-28-320 Jointly operated conjoined consumption areas.

The following section in chapter 314-28 WAC is repealed: WAC 314-28-095 Farmer's market spirits sales.

The following section in chapter 314-29 WAC is amended: WAC 314-29-035 Group 4 nonretail violations.

Hearing Location(s): On February 3, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Board members, presenters, and staff will all participate remotely. The public may login using a computer or device, or call-in using a phone, to listen to the meeting through the WebEx application. The public may provide verbal comments during the specified public comment and rules hearing segments. For more information about board meetings, please visit <https://lcb.wa.gov/Boardmeetings/Boardmeetings>.

Date of Intended Adoption: No earlier than February 17, 2021.

Submit Written Comments to: Audrey Vasek, 1025 Union Avenue, Olympia, WA 98501, email rules@lcb.wa.gov, fax 360-664-9689, by February 3, 2021.

Assistance for Persons with Disabilities: Claris Nhanabu, Americans with Disabilities Act coordinator, human resources, phone 360-664-1642, fax 360-664-9689, TTY 711 or 1-800-833-6388, email Claris.Nhanabu@lcb.wa.gov, by January 27, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule proposal is to align existing rule language with changes made to the law by E2SSB 5549 and establish new rule sections needed to implement the law. Specifically, the rule proposal:

- Amends WAC 314-28-005, relating to definitions. The proposed revisions include adding a definition of "off-site tasting room" and a cross-reference to RCW 66.24.146. An introductory sentence is added as a technical update, stating that the definitions ap-

ply throughout chapter 314-28 RCW [WAC] unless the context clearly requires otherwise.

- Amends WAC 314-28-030, relating to distillery licenses. The proposed revisions include removing language in subsection (1) that corresponds to language that was deleted or amended by E2SSB 5549 and adding a cross-reference to the authorizing statute, RCW 66.24.140. A new subsection (2) is added containing cross-references to applicable laws and rules. A new subsection (4) is added containing language related to obtaining a spirits, beer, and wine restaurant license consistent with RCW 66.24.1474.
- Amends WAC 314-28-050, relating to craft distillery licenses. The proposed revisions include removing language in subsection (1) that corresponds to language that was deleted or amended by E2SSB 5549 and adding a cross-reference to the authorizing statute, RCW 66.24.145. A new subsection (2) is added containing cross-references to applicable laws and rules. A cross-reference to RCW 66.24.140 is added to subsection (3) to provide context for the one hundred fifty thousand proof gallon limit for craft distilleries, and cross-references to RCW 66.24.1474 and 66.24.400 are added to subsection (4) related to obtaining a spirits, beer, and wine restaurant license.
- Creates a new section WAC 314-28-065, relating to sampling, service, and sales requirements. The proposed rule section implements the statutory requirements in RCW 66.24.140 and 66.24.145 applicable to distillery and craft distillery licensees that sell spirits and other authorized alcohol products (such as vermouth or sparkling [sparkling] wine) for off-premises or on-premises consumption, or sell servings of adulterated spirits (mixed drinks) for on-premises consumption. These statutory requirements include, but are not limited to, the alcohol stock-keeping unit requirement and the thirty percent annual limit on revenue derived from sales of adulterated spirits for on-premises consumption.
- Creates a new section WAC 314-28-066, relating to tasting room age restrictions. The proposed rule section implements the statutory requirements related to tasting room age restrictions in RCW 66.24.140 and 66.24.145 applicable to distillery and craft distillery licensees. For example, the requirement that persons under the age of twenty-one be accompanied by their parent or legal guardian in order to enter a tasting room, and that tasting rooms include a designated area for persons under the age of twenty-one.
- Creates a new section WAC 314-28-067, relating to food offerings requirements. The proposed rule section implements RCW 66.24.1471 by describing the food offerings requirements applicable to distilleries, craft distilleries, and off-site tasting rooms.
- Creates a new section WAC 314-28-300, relating to off-site tasting room licenses. The proposed rule section implements RCW 66.24.146, which creates the new off-site tasting room license available to distillery or craft distillery licensees, and includes a reference to the annual fee for the new license, which is set by law at \$2000. The proposed rule section also includes a cross-reference to the limit on the total number of off-site tasting room licenses under RCW 66.24.1473, and includes cross-references to other applicable laws and rules.
- Creates a new section WAC 314-28-310, relating to jointly operated off-site tasting rooms. The proposed rule section implements the statutory requirements in RCW 66.24.1472 related to jointly

operated off-site tasting rooms. These requirements are applicable to any distillery, craft distillery, or winery, or any combination of these licenses, who choose to jointly operate an off-site tasting room location. Cross-references to applicable laws and rules are included.

- Creates a new section WAC 314-28-320, relating to jointly operated conjoined consumption areas. The proposed rule section implements the statutory requirements in RCW 66.24.1472 related to jointly operated conjoined consumption areas. These requirements are applicable to breweries, microbreweries, wineries, distilleries, or craft distilleries, or any combination of these licenses, whose property parcels or buildings are located in direct physical proximity to one another. Cross-references to applicable laws and rules are included.
- Amends WAC 314-29-035, relating to penalties—Group 4 nonretail violations. The proposed revisions to this rule section implement E2SSB 5549 by updating the penalty schedule to include violations of the new statutory requirements. Penalties corresponding to violations of the requirements related to food offerings, alcohol stock-keeping units, and the thirty percent annual limit on revenue derived from sales of adulterated spirits (mixed drinks) for on-premises consumption, are added to the penalty schedule, along with cross-references to the appropriate RCW and WAC.
- Repeals WAC 314-28-095, relating to farmer's market spirits sales. The proposed repeal of this section is necessary to implement E2SSB 5549, which deleted the statutory language creating the distillery and craft distillery farmer's market spirits sales endorsement.

Reasons Supporting Proposal: The proposed rules are needed to align existing rules with and implement the law as established by E2SSB 5549. See purpose.

Statutory Authority for Adoption: RCW 66.24.148, 66.24.1471, and 66.08.030.

Statute Being Implemented: E2SSB 5549 (chapter 238, Laws of 2020); RCW 66.24.140, 66.24.145, 66.24.146, 66.24.1471, 66.24.1472, 66.24.1473, 66.24.1474.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state liquor and cannabis board, governmental.

Name of Agency Personnel Responsible for Drafting: Audrey Vasek, Policy and Rules Coordinator, 1025 Union Avenue, Olympia, WA 98501, 360-664-1758; Implementation: Becky Smith, Director of Licensing, 1025 Union Avenue, Olympia, WA 98501, 360-664-1753; and Enforcement: Justin Nordhorn, Chief of Enforcement, 1025 Union Avenue, Olympia, WA 98501, 360-664-1726.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Consistent with RCW 34.05.328 (5) (a), these proposed rules are not subject to cost-benefit analysis requirements unless requested by the joint administrative rules review committee or voluntarily applied. Additionally, these proposed rules do not qualify as significant legislative rules under RCW 34.05.328 (5) (c), and are exempt from cost-benefit analysis requirements under RCW 34.05.328 (5) (b):

- The rule proposal creates new rule sections and amends or repeals existing rule sections to implement and align the rules with the law as established and dictated by E2SSB 5549 consistent with RCW 34.05.328 (5) (b) (v).
- The rule proposal also revises and incorporates references to statutory language where necessary and appropriate consistent with RCW 34.05.328 (5) (b) (iii).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(3) by way of RCW 34.05.310 (4) (c) and (e).

Explanation of exemptions: The revisions made to WAC 314-28-005, 314-28-030, 314-28-050, and 314-29-035, the repeal of WAC 314-28-095, and the new rules added as WAC 314-28-065, 314-28-066, 314-28-067, 314-28-300, 314-28-310, and 314-28-320, 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). The proposed rules incorporate by reference or explicitly restate statute where appropriate consistent with RCW 34.05.310 (4) (c), and create or amend rule sections to implement and align existing rule language with the law as established and dictated by E2SSB 5549 consistent with RCW 34.05.310 (4) (e).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated.

Estimated Cost of Compliance: The board applied the following estimated costs of compliance when analyzing whether the proposed rules to implement E2SSB 5549 impose more than "minor costs" as defined in RCW 19.85.020(2) on businesses potentially impacted by the proposed rules:

(1) Estimated annual cost of compliance for distillery or craft distilleries: \$0 to \$1855. E2SSB 5549 permits a wide range of new activities that distillery or craft distillery licensees may choose to engage in, and creates new requirements that licensees must comply with. For example, a combination of indoor and outdoor seating is allowed at the distillery or craft distillery premises, food offerings are required during public service hours, and tasting rooms must include designated areas for minors. Licensees have the option of applying for up to two off-site tasting room licenses, and have the option of jointly operating off-site tasting rooms and conjoined consumption areas. These requirements and optional activities are described in the proposed rules. However, the proposed rules implementing E2SSB 5549 are largely exempt from the minor cost analysis under the RFA to the extent that these new requirements are explicitly dictated by statute. For example, the \$2000 off-site tasting room license fee required by

RCW 66.24.146 is not included in the estimated cost of compliance because it is legislatively mandated and therefore exempt from inclusion in the minor cost analysis under RCW 19.85.025(3) by way of RCW 34.05.310 (4)(e). Similarly, the food offerings and designated area requirements are explicitly dictated by statute, so the costs associated with complying with these rules are exempt from analysis.

Portions of the rules not explicitly dictated by statute, but necessary to implement E2SSB 5549, include licensing and monthly sales summary fee reporting requirements. A breakdown of the estimated costs of compliance associated with these requirements is provided below.

Monthly Production and Sales Summary Fee Reporting—Administrative costs: A distillery or craft distillery licensee that opens an off-site tasting room or sells products not of their own production will have new administrative costs related to recordkeeping and filing the monthly production and sales summary fee reports, which have been revised to include reporting for selling spirits produced by another distillery or craft distillery for consumption, and selling certain other authorized alcohol produces [products] (e.g., vermouth, sparkling wine) as allowed by E2SSB 5549.

Costs of recordkeeping vary widely depending on the method chosen by the licensee. Licensees could purchase and maintain a point of sale accounting system, or could keep receipt books and summary journals. Licensees could choose to hire or outsource accounting or do the work themselves. Time spent is also dependent on methodology. Setting up a system (tracking stock-keeping units and categories in the point of sale system or in spreadsheets) could initially take several hours. Reporting time is dependent upon initial setup. The figures needed to fill out the monthly reporting forms could be retrieved in minutes or hours depending on how an individual licensee's system is set up.

To determine a reasonable range of time that licensees might spend on completing the portions of the monthly reporting forms corresponding to implementation of E2SSB 5549, four licensees were interviewed. One licensee (L1) interviewed stated that, based on a survey they conducted in which three other licensees responded, they believed it would take double the amount [of] time it currently takes them, for around ten hours total per month. A second licensee (L2) interviewed also stated that they believed it would take them double the amount [of] time it currently takes them, for around two hours total per month. A third licensee (L3) interviewed stated that with the extra work in processing, it would take three to four hours per month, and estimated that in a worst-case scenario it might take two to three times more than the amount of time they currently spend. A fourth licensee (L4) interviewed stated that it would take them less than an hour to fill out the additional information required because they have already set up their point of sale system to track the appropriate categories. For the purpose of the minor cost analysis, the board took the average of the time estimates provided by the four licensees interviewed [(L1 and the three other licensees surveyed by L1 (4 x 10 hours) + L2 (2 hours) + L3 (4 hours) + L4 (1 hour))/7 total licensees = 6.71 hours]. For the purpose of estimating compliance costs, this time is rounded up to 7 hours/month.

Based on these licensee interviews, the board estimates that licensees that open an off-site tasting room or sell products not of their own production will spend anywhere between one to ten hours a month to complete the portions of the monthly reporting forms corre-

sponding to implementation of E2SSB 5549, with an average of approximately seven hours each month, or eighty-four hours annually.

According to the 2019 Occupational Employment Statistics (OES) Databook available in the Employment Security Department (ESD) labor market report library (<https://esd.wa.gov/labormarketinfo/report-library>), the 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 \$21.31. Based on that data, the estimated cost for the administrative activities related to filing the production and sales summary fee reports is \$1790.04 ($\$21.31 \text{ avg. hourly wage} \times 84 \text{ hours} = \1790.04). For the purpose of the minor cost calculations, these estimated administrative costs are rounded to \$1790 annually.

A distillery or craft distillery that chooses to jointly operate an off-site tasting room or a conjoined consumption area will not have any additional monthly reporting requirements beyond those associated with the underlying license types.

Licensing—Administrative Costs: A distillery or craft distillery licensee that chooses to apply for the new off-site tasting room license under RCW 66.24.146 will have additional administrative costs related to licensing. The board estimates that applicants will spend approximately three hours in order to complete an initial application for an off-site tasting room license (which includes ninety minutes for the applicant to complete the application and answer follow-up questions, and roughly ninety minutes for interactions with board staff on required information and an investigator interview). For renewals of the license in subsequent years, the board estimates that applicants will spend fifteen to twenty minutes on the licensing process (which includes the online renewal application process and inputting financial information for payment of the fee).

According to the 2019 OES Databook, the average hourly wage in Washington state for secretaries and administrative assistants, except legal, medical, and executive (using the SOC Code 43-6014) is \$21.31. Based on that data, the estimated cost for these administrative activities during the initial application year is \$63.93 ($\$21.31 \text{ avg. hourly wage} \times 3 \text{ hours} = \63.93), and the estimated cost during subsequent renewal years is \$7.10 ($\$21.31 \text{ avg. hourly wage} \times 0.3 \text{ hour} = \text{approximately } \7.10). For the purpose of the minor cost calculations, these estimated administrative costs are rounded up to \$65 and \$10, respectively.

A distillery or craft distillery that chooses to jointly operate an off-site tasting room will not have any additional licensing costs beyond those associated with the underlying license types.

A distillery or craft distillery that chooses to jointly operate a conjoined consumption area at an existing licensed location will have licensing costs related to an alteration request. The board estimates that the time needed for an alteration request is forty minutes (twenty minutes to submit the request, and twenty minutes for interaction with board staff for follow-up questions). According to the 2019 OES Databook, the average hourly wage in Washington state for secretaries and administrative assistants, except legal, medical, and executive (using the SOC Code 43-6014) is \$21.31. Based on that data, the estimated cost for these administrative activities is a one-time cost of \$14.21 ($\$21.31 \text{ avg. hourly wage} \times 0.6 \text{ hour} = \text{approximately } \14.21). For the purpose of the minor cost calculations, this estimated administrative cost is rounded up to \$15.

Total Administrative Costs: For the reasons described above, the board estimates that the total annual cost of compliance for distillery or craft distillery licensees will range between \$0 to \$1855. Licensees that choose not to open an off-site tasting room or sell products not of their own production will not have any additional costs (\$0). For licensees that choose to sell products not of their own production, the estimated annual cost of compliance is \$1790 related to filing monthly reports. For licensees that choose to apply for an off-site tasting room license, the estimated annual cost of compliance is \$1855 in the initial application year (\$1790 related to filing monthly reports + \$65 related to licensing) and \$1800 in subsequent renewal years (\$1790 related to filing monthly reports + \$10 related to licensing). For licensees that wish to jointly operate a conjoined consumption area at an existing licensed location where an alteration request is needed, a one-time compliance cost of \$15 should be added to these estimated costs of compliance.

(2) Estimated annual cost of compliance for wineries: \$0 to \$65. There are no new costs for winery licensees that continue operating as usual, without engaging in any of the new privileges allowed by E2SSB 5549, such as jointly operating an off-site tasting room or a conjoined consumption area.

A winery licensee that wishes to jointly operate an off-site tasting room with a distillery or craft distillery licensee will have the same administrative costs related to licensing for the off-site tasting room as described above for distilleries and craft distilleries (\$65 during the initial application year and \$10 in subsequent renewal years).

A winery licensee that wishes to jointly operate a conjoined consumption area at an existing licensed location will have the same administrative costs related to an alteration request as described above for distilleries and craft distilleries (a one-time cost of \$15).

(3) Estimated annual cost of compliance for breweries or microbreweries: \$0 to \$15. There are no new costs for brewery or microbrewery licensees that continue operating as usual, without engaging in any of the new privileges allowed by E2SSB 5549, such as jointly operating a conjoined consumption area. A brewery or microbrewery licensee that wishes to jointly operate a conjoined consumption area at an existing licensed location will have the same administrative costs related to an alteration request as described above for distilleries and craft distilleries (a one-time cost of \$15).

Minor Cost Threshold Estimates: The board applied North American Industry Classification System (NAICS) codes 312140 for Distilleries, 312130 for Wineries, and 312120 for Breweries to estimate the minor cost thresholds for distillery, craft distillery, winery, brewery, and microbrewery licensees. According to the 2017 NAICS Manual (<https://www.census.gov/library/publications/2017/econ/2017-naics-manual.html>), the distillery industry (312140) "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." The winery industry (312130) "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." The brewery industry (312120) "comprises establishments primarily engaged in brewing beer, ale, lager, malt liquors, and nonalcoholic beer."

There are no separate NAICS codes available for craft distilleries or microbreweries.

As shown in the table below, the highest estimated cost of compliance for each of these industries (\$1855 for Distilleries, \$65 for Wineries, and \$15 for Breweries) does not exceed the minor cost estimate for these industries (\$2076.60 for Distilleries, \$3453.63 for Breweries, and \$3581.58 for Wineries), so an SBEIS is not required under RCW 19.85.030.

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate - Max of 1% Pay, 0.3% Rev, and \$100	1% of Avg Annual Payroll (0.01*AvgPay)	0.3% of Avg Annual Gross Business Income (0.003*AvgG BI)
312140	\$1855	Distilleries	Distilleries	\$2,076.60	\$2,076.60 2018 Dataset pulled from ESD	\$1,471.28 2018 Dataset pulled from DOR
312130	\$65	Wineries	Wineries	\$3,581.58	\$3,581.58 2018 Dataset pulled from ESD	\$3,369.76 2018 Dataset pulled from DOR
312120	\$15	Breweries	Breweries	\$3,453.63	\$3,244.72 2018 Dataset pulled from ESD	\$3,453.63 2018 Dataset pulled from DOR

December 23, 2020
Jane Rushford
Chair

OTS-2748.2

AMENDATORY SECTION (Amending WSR 14-20-047, filed 9/24/14, effective 10/25/14)

WAC 314-28-005 Definitions. ~~The ((following definition applies to distilleries))~~ definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

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

(3) "Off-site tasting room" means an off-site tasting room licensed under RCW 66.24.146.

[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.]

AMENDATORY SECTION (Amending WSR 18-02-006, filed 12/20/17, effective 1/20/18)

WAC 314-28-030 (~~What does a~~) Distillery license (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 under the following conditions:

 - ~~(i) Samples may be altered with nonalcoholic mixers, mixers with alcohol of the distiller's own production, ice, and/or water.~~
 - ~~(ii) The maximum amount of alcohol 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) engage in activities authorized in RCW 66.24.140.~~
- (2) A distillery licensee must comply with all applicable laws and rules including, but not limited to, the sampling, service, and sales requirements in WAC 314-28-065, the tasting room age restrictions in WAC 314-28-066, and the food offerings requirements in WAC 314-28-067. For information on local city or county requirements, licensees need to contact their local government offices.
- (3) (a) 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))~~ (i) 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))~~ (ii) 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))~~ (b) 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))~~ (c) The contractor and contractee are required to obtain any federal approvals.
- (4) Consistent with RCW 66.24.1474, a distillery licensee may add a spirits, beer, and wine restaurant license as authorized in RCW 66.24.400 at the distillery premises. The licensee must complete an application and submit the application and applicable fees to the board for processing. For more information about spirits, beer, and wine restaurant license requirements, see WAC 314-02-015.

[Statutory Authority: RCW 66.24.170, 66.24.640, 66.24.695, and 66.08.030. WSR 18-02-006, § 314-28-030, filed 12/20/17, effective

1/20/18. 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.]

AMENDATORY SECTION (Amending WSR 18-02-006, filed 12/20/17, effective 1/20/18)

WAC 314-28-050 (~~What does a~~) **Craft distillery license** (~~allow?~~). (1) A craft distillery license allows a licensee to (~~+~~ ~~a~~) engage in activities authorized in RCW 66.24.145.

(2) A craft distillery licensee must comply with all applicable laws and rules including, but not limited to, the sampling, service, and sales requirements in WAC 314-28-065, the tasting room age restrictions in WAC 314-28-066, and the food offerings requirements in WAC 314-28-067. For information on local city or county requirements, licensees need to contact their local government offices.

(3) Consistent with RCW 66.24.140, a craft distillery licensee may 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 subject to the following conditions:~~

~~(i) The maximum amount of alcohol per person per day is two ounces.~~

~~(ii) Samples may be altered with nonalcoholic mixers, mixers with alcohol of the distiller's own production, 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~~) (4) Consistent with RCW 66.24.1474, a craft distillery licensee may add a spirits, beer, and wine restaurant license as authorized in RCW 66.24.400 at the craft distillery premises. The licensee must complete an application and submit the application and applicable fees to the board for processing. For more information about spirits, beer, and wine restaurant license requirements, see WAC 314-02-015.

[Statutory Authority: RCW 66.24.170, 66.24.640, 66.24.695, and 66.08.030. WSR 18-02-006, § 314-28-050, filed 12/20/17, effective 1/20/18. 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.]

NEW SECTION

WAC 314-28-065 Sampling, service, and sales requirements for distillery and craft distillery licensees. Consistent with RCW 66.24.140 and 66.24.145:

(1) Distillery and craft distillery licensees may engage in the following sampling, service, and sales activities:

(a) Sell, for off-premises consumption:

(i) Spirits of their own production;

(ii) Spirits produced by another distillery or craft distillery licensed in Washington, subject to the alcohol stock-keeping unit requirements in subsection (2) of this section; and

(iii) Vermouth and sparkling wine produced by a licensee in Washington, subject to the alcohol stock-keeping unit requirements in subsection (2) of this section.

(b) Serve or sell, for on-premises consumption, samples of spirits of their own production or samples of spirits produced by another distillery or craft distillery licensed in Washington, subject to the alcohol stock-keeping unit requirements in subsection (2) of this section and the following requirements:

(i) Samples may be free or for a charge;

(ii) Each sample must be one-half ounce or less of spirits;

(iii) Spirits samples may be adulterated with water, ice, other alcohol allowed to be sold on-site, or nonalcoholic mixers; and

(iv) A licensee may not allow an individual person to receive more than a cumulative total of two ounces of unadulterated spirits for on-premises consumption. Additional spirits purchased for on-premises consumption must be adulterated.

(c) Sell, for on-premises consumption, servings of spirits of their own production or servings of spirits produced by another distillery or craft distillery licensed in Washington, subject to the alcohol stock-keeping unit requirements in subsection (2) of this section and the following requirements:

(i) Servings must be adulterated with water, ice, other alcohol permitted to be sold at the location, or nonalcoholic mixers; and

(ii)(A) The revenue derived from the sale of adulterated products for on-premises consumption under (c) of this subsection must not comprise more than thirty percent of the overall gross revenue earned in the tasting room during the calendar year.

(B) The thirty percent limit described in this subsection is an annual limit. As long as the thirty percent limit is not exceeded on an annual basis, revenue that exceeds the thirty percent limit in any one month does not violate the limit.

(C) The annual reporting requirement for tasting room sales of adulterated products for on-premises consumption is satisfied through cumulative monthly reporting under WAC 314-28-070.

(d) Sell, for on-premises consumption, servings of vermouth or sparkling wine produced by a licensee in this state, subject to the alcohol stock-keeping unit requirements in subsection (2) of this section.

(e) Sell nonalcoholic products at retail.

(2) A distillery or craft distillery licensee that provides or sells, for on-premises or off-premises consumption, spirits, sparkling wine, or vermouth produced by another licensee in this state, must meet the following alcohol stock-keeping unit requirements:

(a) Except as provided in (b) of this subsection, at any one time no more than twenty-five percent of a distillery or craft distillery licensee's total alcohol stock-keeping units, offered or sold at the distillery or craft distillery premises and at any off-site tasting rooms, may be vermouth, sparkling wine, or spirits produced by another licensee in this state.

(b) If a distillery or craft distillery licensee sells fewer than twenty different alcohol stock-keeping units of its own production at any one time, it may sell up to five alcohol stock-keeping units of vermouth, sparkling wine, or spirits that are produced by another licensee in this state.

(3) Any person serving or selling spirits or other alcohol authorized to be served or sold by a distillery or craft distillery licensee must obtain a class 12 alcohol server permit.

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NEW SECTION

WAC 314-28-066 Tasting room age restrictions for distillery and craft distillery licensees. Consistent with RCW 66.24.140 and 66.24.145:

(1) A distillery or craft distillery licensee must not allow any person under the age of twenty-one to enter a tasting room unless they are accompanied by their parent or legal guardian.

(2) (a) Every tasting room must include a designated area where persons under the age of twenty-one are allowed to enter.

(b) The designated area may be in a separate room or within the tasting room.

(c) The designated area must be separated from the remainder of the tasting room space by a clear demarcation. "Demarcation" has the same meaning and options as provided in WAC 314-02-025(3).

(3) Persons under the age of twenty-one are not allowed on the premises of a licensed distillery, craft distillery, or off-site tasting room past 9:00 p.m., unless:

(a) They are on the premises during an event where a private party has secured a banquet permit (see chapter 314-18 WAC); or

(b) They are the children of owners, operators, or managers of the licensed distillery, craft distillery, or off-site tasting room, and they are under direct supervision of their parent or legal guardian while on the premises.

(4) For the purposes of this section, "tasting room" includes both off-site tasting rooms in WAC 314-28-300 and on-site tasting rooms operated at a licensed distillery or craft distillery premises.

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NEW SECTION

WAC 314-28-067 Food offerings requirements. (1) Consistent with RCW 66.24.1471, licensed distilleries, craft distilleries, and off-site tasting rooms must comply with the food offerings requirements in this section. "Food offerings" has the same meaning as provided in RCW 66.24.1471.

(a) Food offerings may be prepackaged for individual sale and consumption.

(b) Food offerings may be preprepared off-site for plating for the customer.

(c) Food offerings are not required to be warmed, cooked, or heated off-site or on-site prior to service.

(d) Food heating devices or preparation apparatuses are not required to be installed, maintained, or used to prepare any food offerings.

(2) In addition to the food offerings requirements in this section, licensed distilleries, craft distilleries, and off-site tasting rooms must comply with all applicable requirements in RCW 66.24.1471 including, but not limited to, requirements related to posting lists of local restaurants or food trucks and any local city or county health requirements. For information on local city or county health requirements, licensees need to contact their local health department.

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NEW SECTION

WAC 314-28-300 Off-site tasting room license. (1) Distillery and craft distillery licensees may apply for an off-site tasting room license as authorized in RCW 66.24.146.

(2) Consistent with RCW 66.24.146:

(a) A distillery or craft distillery licensee is eligible for up to two off-site tasting room licenses located in this state, subject to the limit on the total number of off-site tasting room licenses under RCW 66.24.1473.

(b) Off-site tasting rooms may be indoors, outdoors, or a combined indoor and outdoor area. For requirements related to outside alcohol service, see WAC 314-03-200.

(c) The fee for each off-site tasting room license is two thousand dollars per year.

(3) An off-site tasting room must comply with all applicable requirements in RCW 66.24.146 and any other applicable laws and rules including, but not limited to, the sampling, service, and sales requirements in WAC 314-28-065, the tasting room age restrictions in WAC 314-28-066, and the food offerings requirements in WAC 314-28-067. For

information on local city or county requirements, licensees need to contact their local government offices.

(4) RCW 66.24.146 allows an off-site tasting room to have a section identified and separated as a federally bonded space for the storage of bulk or packaged spirits, and allows products of the licensee's own production to be bottled or packaged in the space. A licensee engaging in this activity at an off-site tasting room must comply with all applicable federal laws and regulations and obtain any required federal approvals.

(5) Consistent with RCW 66.24.1474, an off-site tasting room licensee may add a spirits, beer, and wine restaurant license as authorized in RCW 66.24.400 at the off-site tasting room premises. The licensee must complete an application and submit the application and applicable fees to the board for processing. For more information about spirits, beer, and wine restaurant license requirements, see WAC 314-02-015.

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NEW SECTION

WAC 314-28-310 Jointly operated off-site tasting rooms. (1)

Jointly operated off-site tasting rooms are allowed as authorized in RCW 66.24.1472. Consistent with RCW 66.24.1472:

(a) Any licensed distillery, craft distillery, or domestic winery, or any combination of these licensees, may jointly occupy and co-operate up to two off-site tasting room locations described in WAC 314-28-300. The limit of four winery additional locations in WAC 314-24-161 and RCW 66.24.170 does not apply to the two jointly operated off-site tasting room locations allowed under this section.

(b) (i) At a jointly operated off-site tasting room, distillery and craft distillery licensees may sample, serve, and sell products subject to the requirements in WAC 314-28-065, and domestic winery licensees may sample, serve, and sell products subject to the requirements in chapter 314-24 WAC.

(ii) Consistent with RCW 66.24.140 and 66.24.145, a licensee may not allow an individual person to receive more than a cumulative total of two ounces of unadulterated spirits for on-premises consumption at a jointly operated off-site tasting room, regardless of the number of licensees operating at a jointly operated off-site tasting room.

(c) At a jointly operated off-site tasting room, licensees must:

(i) Maintain separate storage of products and separate financial records. If licensees share any point of sale system, the licensees must keep complete documentation and records for the shared point of sale system showing clear separation as to what sales items and categories belong to each respective licensee;

(ii) Comply with the applicable laws and rules relating to retailers; and

(iii) Share staffing resources under a written plan. The written plan should demonstrate in general how responsibility for staffing the premises is shared among the licensees. Licensees are not required to submit the written plan to the board at the time of application or alteration but must keep documentation of an up-to-date written plan available for inspection on premises.

(2) In addition to the requirements in this section, jointly operated off-site tasting rooms must comply with all applicable requirements in RCW 66.24.1472 and any other applicable laws and rules including, but not limited to, the tasting room age restrictions in WAC 314-28-066 and the food offerings requirements in WAC 314-28-067. For information on local city or county requirements, licensees need to contact their local government offices.

(3) Responsibility for violations or enforcement issues will be determined consistent with RCW 66.24.1472(5).

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NEW SECTION

WAC 314-28-320 Jointly operated conjoined consumption areas.

(1) Jointly operated conjoined consumption areas are allowed as authorized in RCW 66.24.1472. Consistent with RCW 66.24.1472:

(a) Any domestic brewery, microbrewery, domestic winery, distillery, or craft distillery, or any combination of these licensees, whose property parcels or buildings are located in direct physical proximity to one another may share a jointly operated conjoined consumption area. "Direct physical proximity" means that the property parcels or buildings are physically connected or touching each other along a boundary or at a point.

(b) The jointly operated conjoined consumption area may be a standing or seated tasting area for patrons to use, which may be indoors, outdoors, or a combined indoor and outdoor area. For requirements related to outside alcohol service, see WAC 314-03-200.

(c)(i) Each licensee may sample, serve, and sell products as authorized under the terms of their respective licenses for on-premises consumption in the jointly operated conjoined consumption area. For the requirements applicable to:

(A) Distillery and craft distillery licensees, see WAC 314-28-065.

(B) Domestic winery licensees, see chapter 314-24 WAC.

(C) Domestic brewery and microbrewery licensees, see chapter 314-20 WAC.

(ii) Consistent with RCW 66.24.140 and 66.24.145, a licensee may not allow an individual person to receive more than a cumulative total of two ounces of unadulterated spirits for on-premises consumption at a jointly operated conjoined consumption area, regardless of the number of licensees operating at a jointly operated conjoined consumption area.

(iii) Consistent with WAC 314-11-065, a licensee may not permit the removal of liquor in an open container from the jointly operated conjoined consumption area, except to reenter the licensed premises where the liquor was purchased. Signage prohibiting the removal of liquor in an open container must be visible to patrons in the jointly operated conjoined consumption area.

(d) In a jointly operated conjoined consumption area, licensees must:

(i) Maintain separate storage of products and separate financial records. If licensees share any point of sale system, the licensees must keep complete documentation and records for the shared point of

sale system showing clear separation as to what sales items and categories belong to each respective licensee;

(ii) Use distinctly marked glassware or serving containers to identify the source of any product being consumed;

(iii) Comply with the applicable laws and rules relating to retailers; and

(iv) Share staffing resources under a written plan. The written plan should demonstrate in general how responsibility for staffing the premises is shared among the licensees. Licensees are not required to submit the written plan to the board at the time of application or alteration but must keep documentation of an up-to-date written plan available for inspection on premises.

(2) In addition to the requirements in this section, licensees at jointly operated conjoined consumption areas must comply with all requirements in RCW 66.24.1472 and any other applicable laws and rules including, but not limited to:

(a) For distillery and craft distillery licensees, the tasting room age restrictions in WAC 314-28-066 and the food offerings requirements in WAC 314-28-067.

(b) For domestic winery licensees, see chapter 314-24 WAC.

(c) For domestic brewery and microbrewery licensees, see chapter 314-20 WAC.

(d) For information on local city or county requirements, licensees need to contact their local government offices.

(3) Responsibility for violations or enforcement issues will be determined consistent with RCW 66.24.1472(5).

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REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 314-28-095 Farmer's market spirits sales.

OTS-2747.2

AMENDATORY SECTION (Amending WSR 09-21-050, filed 10/14/09, effective 11/14/09)

WAC 314-29-035 Group 4 nonretail violations. Group 4 violations are violations involving the manufacture, supply, and/or distribution of liquor by nonretail licensees and prohibited practices between a nonretail licensee and a retail licensee.

Violation type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Providing credit to a retail licensee. RCW 66.28.010 WAC 314-12-140 WAC 314-12-145 WAC 314-13-015 WAC 314-13-020	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Quantity discount. RCW 66.28.170 RCW 66.28.180	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Giving away liquor in violation of liquor law or rule. RCW 66.28.040 WAC 314-64-080 WAC 314-64-08001	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Consignment sales/ return of product in violation of liquor law or rule. RCW 66.28.010 WAC 314-12-140 WAC 314-13-015 WAC 314-20-070 WAC 314-20-090 WAC 314-24-210	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Advertising violations involving prohibited practices between a nonretail and a retail licensee. RCW 66.28.010 RCW 66.24.570 WAC 314-05-030 WAC 314-52-040 WAC 314-52-070 WAC 314-52-080 WAC 314-52-090 WAC 314-52-113	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Price lists/labeling/ packaging violations. RCW 66.24.145 RCW 66.28.100 RCW 66.28.110 RCW 66.28.120 RCW 66.28.180 WAC 314-20-020 WAC 314-20-030 WAC 314-20-100 WAC 314-20-130 WAC 314-24-003 WAC 314-24-006 WAC 314-24-040 WAC 314-24-080 WAC 314-24-090 WAC 314-24-190 WAC 314-28-090	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option

Violation type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
<p>Agents violations: Nonretail licensee employing an unlicensed agent. RCW 66.24.310 RCW 66.28.050 WAC 314-44-005</p>	<p>3 day suspension or \$500 monetary option</p>	<p>5 day suspension or \$2,500 monetary option</p>	<p>10 day suspension or \$5,000 monetary option</p>	<p>20 day suspension or \$10,000 monetary option</p>
<p>Unauthorized product/ unapproved storage or delivery. RCW 66.24.140 RCW 66.24.160 RCW 66.24.170 RCW 66.24.185 RCW 66.24.200 RCW 66.24.203 RCW 66.24.206 RCW 66.24.240 RCW 66.24.244 RCW 66.24.250 RCW 66.24.261 RCW 66.24.395 RCW 66.28.010 RCW 66.44.140 RCW 66.44.150 RCW 66.44.160 RCW 66.44.170 WAC 314-20-015 WAC 314-20-017 WAC 314-20-055 WAC 314-20-095 WAC 314-20-120 WAC 314-20-160 WAC 314-20-170 WAC 314-24-070 WAC 314-24-115 WAC 314-24-120 WAC 314-24-140 WAC 314-24-160 ((WAC 312-24-161 {WAC 314-24-161})) WAC 314-24-161 WAC 314-24-220 WAC 314-25-020 WAC 314-25-030 WAC 314-25-040 WAC 314-28-050</p>	<p>3 day suspension or \$500 monetary option</p>	<p>5 day suspension or \$2,500 monetary option</p>	<p>10 day suspension or \$5,000 monetary option</p>	<p>20 day suspension or \$10,000 monetary option</p>
<p>Sampling/tasting/food offerings violations. RCW 66.20.010 RCW 66.24.140 RCW 66.24.145 RCW 66.24.1471 RCW 66.24.170 RCW 66.28.040 RCW 66.28.150 WAC 314-20-015 WAC 314-24-160 WAC 314-28-065 WAC 314-28-067 WAC 314-45-010 Chapter 314-64 WAC</p>	<p>3 day suspension or \$500 monetary option</p>	<p>5 day suspension or \$2,500 monetary option</p>	<p>10 day suspension or \$5,000 monetary option</p>	<p>20 day suspension or \$10,000 monetary option</p>

Violation type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Entertainment/instruction/meeting/trade show violations. RCW 66.20.010 RCW 66.28.010 RCW 66.28.042 RCW 66.28.043 RCW 66.28.150 RCW 66.28.155 WAC 314-45-010	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Providing/accepting money or money's worth: Goods or services worth up to \$1,500. RCW 66.28.010 WAC 314-12-140 WAC 314-44-005	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Providing/accepting money or money's worth: Goods or services worth over \$1,500. RCW 66.28.010 WAC 314-12-140 WAC 314-44-005	Cost of item or service provided plus: 3 day suspension or \$1,000 monetary option	Cost of item or service provided plus: 5 day suspension or \$2,500 monetary option	Cost of item or service provided plus: 10 day suspension or \$5,000 monetary option	Cost of item or service provided plus: 20 day suspension or \$10,000 monetary option
Providing/accepting exclusive or contingency agreements. RCW 66.28.010 RCW 66.24.570 WAC 314-12-140 WAC 314-05-030	3 day suspension or \$1,000 monetary option	10 day suspension or \$6,000 monetary option	20 day suspension or \$12,000 monetary option	30 day suspension or \$20,000 monetary option
Unauthorized interest or ownership in retail license. RCW 66.28.010 WAC 314-12-030	3 day suspension or \$1,000 monetary option	30 day suspension or \$20,000 monetary option	Cancellation of license	
<u>Failure to follow stock-keeping unit requirements.</u> <u>RCW 66.24.140</u> <u>RCW 66.24.145</u> <u>WAC 314-28-065</u>	<u>3 day suspension or \$500 monetary option</u>	<u>5 day suspension or \$2,500 monetary option</u>	<u>10 day suspension or \$5,000 monetary option</u>	<u>20 day suspension or \$10,000 monetary option</u>
<u>Failure to maintain 30% annual limit on overall gross revenue per tasting room derived from sales of adulterated spirits for on-premises consumption.</u> <u>RCW 66.24.140</u> <u>RCW 66.24.145</u> <u>WAC 314-28-065</u>	<u>3 day suspension or monetary option of \$100 per percentage point over the 30% limit</u>	<u>5 day suspension or monetary option of \$200 per percentage point over the 30% limit</u>	<u>10 day suspension or monetary option of \$300 per percentage point over the 30% limit</u>	

Violation type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Failure to obtain surety bond/savings account, if required by the board. RCW 66.24.210 RCW 66.24.290 WAC 314-19-020	Immediate suspension of license until surety bond has been obtained and all missing reports are filed and late taxes are paid.			
Failure to file tax/shipment report. RCW 66.24.210 RCW 66.24.290 WAC 314-19-005 WAC 314-19-010 WAC 314-19-020	3 day suspension or \$250 monetary option	5 day suspension or \$500 monetary option	10 day suspension or \$1,000 monetary option	20 day suspension or \$2,000 monetary option
Certificate of approval (COA) and/or authorized representative violations. RCW 66.24.206 WAC 314-19-005 WAC 314-19-010 WAC 314-19-020	15 day suspension or \$100 monetary option	30 day suspension or \$500 monetary option	180 day suspension or \$1,000 monetary option	Cancellation of license

[Statutory Authority: RCW 66.08.030. WSR 09-21-050, § 314-29-035, filed 10/14/09, effective 11/14/09. Statutory Authority: RCW 66.08.030, 66.24.010, 66.24.120. WSR 03-09-015, § 314-29-035, filed 4/4/03, effective 5/5/03.]