



Washington State
Liquor and Cannabis Board

Date: February 17, 2021

To: Jane Rushford, Board Chair
 Ollie Garrett, Board Member
 Russ Hauge, Board Member

From: Audrey Vasek, Policy and Rules Coordinator

Copy: Rick Garza, Agency Director
 Megan Duffy, Deputy Director
 Justin Nordhorn, Chief of Enforcement
 Becky Smith, Licensing Director
 Jim Morgan, Chief Financial Officer
 Kathy Hoffman, Policy and Rules Manager

Subject: **Approval to file a pre-proposal statement of inquiry (CR 101) regarding WAC 314-28-070 “Monthly reporting and payment requirements for a distiller and craft distiller.”**

The Washington State Liquor and Cannabis Board (WSLCB) is considering revising WAC 314-28-070 “Monthly reporting and payment requirements for a distiller and craft distiller,” WAC 314-28-080 “What if a distillery or craft distillery licensee fails to report or pay, or reports or pays late?” and other rules if necessary, consistent with the Court of Appeals decision in *Blue Spirits Distilling, LLC v. WSLCB*, No. 53341-3-II, slip op. (Wash. Ct. App. Dec. 22, 2020).

Process

The Policy and Rules Coordinator requests approval to file the pre-proposal statement of inquiry (CR 101) for the rule making described above. A CR 101 Memorandum was presented at the Board meeting on February 17, 2021, and is attached to this order.

If approved for filing, the **tentative timeline** for the rule making process is outlined below:

February 17, 2021	Board is asked to approve filing pre-proposal statement of inquiry (CR 101). CR 101 filed with the Office of the Code Reviser. LCB webpage updated and notice circulated by GovDelivery distribution list. Initial comment period begins.
March 3, 2021	Notice is published in the Washington State Register under WSR #21-05.

March 31, 2021	Initial comment period ends.
April 14, 2021	Board is asked to approve filing proposed rules (CR 102). CR 102 is filed with the Office of the Code Reviser. LCB webpage is updated and notice is circulated by the rules distribution list. Formal comment period begins.
May 5, 2021	Notice is published in the Washington State Register under WSR #21-09.
May 26, 2021	Public hearing is held and formal comment period ends.
June 9, 2021	Board is asked to adopt rules, if no substantive changes are made (CR 103). Concise explanatory statement is provided to individuals offering written or oral comment at the public hearing or during the formal comment period under RCW 34.05.325. CR 103 and adopted rules are filed with the Office of the Code Reviser. LCB webpage is updated and notice is circulated by the rules distribution list.
July 10, 2021	The rules are effective 31 days after filing unless otherwise specified. See RCW 34.05.380(2).

_____ Approve _____ Disapprove _____ Jane Rushford, Chair _____ Date

_____ Approve _____ Disapprove _____ Ollie Garrett, Board Member _____ Date

_____ Approve _____ Disapprove _____ Russ Hauge, Board Member _____ Date

Attachment: CR 101 Memorandum.



CR 101 Memorandum

Regarding WAC 314-28-070 “Monthly reporting and payment requirements for a distiller and craft distiller.”

Date: February 17, 2021

Presented by: Audrey Vasek, Policy and Rules Coordinator

Background

The Court of Appeals decision in *Blue Spirits Distilling, LLC v. WSLCB*,¹ issued on December 22, 2020, held that the Washington State Liquor and Cannabis Board (WSLCB) rules requiring distillers to pay spirits retailer licensing fees when they acted as spirits retailers were invalidated by the decision in *Washington Restaurant Association v. WSLCB*,² issued on August 8, 2017.

Reasons Why Rules May Be Needed

Revisions to rules including, but not limited to, WAC 314-28-070 “Monthly reporting and payment requirements for a distiller and craft distiller,” WAC 314-28-080 “What if a distillery or craft distillery licensee fails to report or pay, or reports or pays late?” and other rules if necessary, may be needed to take into account the Court of Appeals decision in *Blue Spirits*.

Process

The rule making process begins by announcing the WSLCB’s intent to consider changes to existing rules, adding new rule sections, or both by filing a CR 101 form with the Office of the Code Reviser. This allows staff, stakeholders, industry partners, and all members of the authorizing environment to begin discussing proposed rule changes. At the CR 101 stage of the rulemaking process, no proposed language is offered. Any interested party may comment on the subject of this possible rulemaking during the designated comment period. Notice will be sent to all who have indicated that they want to receive notice of rule activity pertaining to this preproposal inquiry. The notice will identify the public comment period and where comments can be sent.

¹ *Blue Spirits Distilling, LLC v. WSLCB*, No. 53341-3-II, slip op. (Wash. Ct. App. Dec. 22, 2020).

² *Washington Restaurant Association v. WSLCB*, 200 Wn. App. 119, 401 P.3d 428 (2017).

PREPROPOSAL STATEMENT OF INQUIRY



CR-101 (October 2017)
(Implements RCW 34.05.310)
Do **NOT** use for expedited rule making

Agency: Washington State Liquor and Cannabis Board

Subject of possible rule making: WAC 314-28-070 "Monthly reporting and payment requirements for a distiller and craft distiller." WAC 314-28-080 "What if a distillery or craft distillery licensee fails to report or pay, or reports or pays late?" The Washington State Liquor and Cannabis Board (WSLCB) is considering revising WAC 314-28-070, 314-28-080, and other rules if necessary, consistent with the Court of Appeals decision in *Blue Spirits Distilling, LLC v. WSLCB*, No. 53341-3-II, slip op. (Wash. Ct. App. Dec. 22, 2020).

Statutes authorizing the agency to adopt rules on this subject: RCW 66.08.030

Reasons why rules on this subject may be needed and what they might accomplish: The Court of Appeals decision in *Blue Spirits Distilling, LLC v. WSLCB*, issued on December 22, 2020, held that the WSLCB rules requiring distillers to pay spirits retailer licensing fees when they acted as spirits retailers were invalidated by the decision in *Washington Restaurant Association v. WSLCB*, issued on August 8, 2017. *Washington Restaurant Association v. WSLCB*, 200 Wn. App. 119, 401 P.3d 428 (2017). Revisions to rules including, but not limited to, WAC 314-28-070 and 314-28-080 may be needed to take into account the Court of Appeals decision in *Blue Spirits*.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: None.

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe) Collaborative rule making

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

	(If necessary)
Name: Audrey Vasek, Policy and Rules Coordinator	Name:
Address: PO Box 43080, Olympia, WA 98504	Address:
Phone: 360-664-1758	Phone:
Fax: 360-704-5027	Fax:
TTY:	TTY:
Email: rules@lcb.wa.gov	Email:
Web site: lcb.wa.gov	Web site:
Other:	Other:

Additional comments: Interested parties may participate in the WSLCB collaborative rulemaking process.

Date: February 17, 2021

Name: Jane Rushford

Title: Chair

Signature:

Place signature here