



**Washington State  
Liquor and Cannabis Board**

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**Date:** April 14, 2021

**To:** David Postman, 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  
Chandra Brady, Director of Enforcement and Education  
Becky Smith, Licensing Director  
Jim Morgan, Chief Financial Officer  
Justin Nordhorn, Policy and External Affairs Director  
Kathy Hoffman, Policy and Rules Manager

**Subject: CR 102 for Distillery Reporting and Payment Rules**

The Policy and Rules Coordinator requests approval to file a rule proposal (CR 102) for the rule making described in the CR 102 Memorandum attached to this order and presented at the Board meeting on April 14, 2021.

If approved for filing, the tentative timeline for this rule proposal is as follows:

April 14, 2021	Board is asked to approve filing proposed rules (CR 102). CR 102 filed with the Office of the Code Reviser. LCB webpage updated and notice circulated by GovDelivery distribution list. Formal comment period begins.
May 5, 2021	Notice published in the Washington State Register.
May 26, 2021	Public hearing held and formal comment period ends.
No earlier than June 9, 2021	Board is asked to adopt rules if no substantive changes are made (CR 103). Concise Explanatory Statement provided to individuals who offered written or oral comment at the public hearing, and during the formal comment period, consistent with RCW 34.05.325. CR 103 and adopted rules are filed with the Office of the Code Reviser. LCB webpage updated and notice circulated by GovDelivery distribution list.
July 10, 2021	Rules are effective 31 days after filing (unless otherwise specified), consistent with RCW 34.05.380(2).

Approve     Disapprove



David Postman, Chair

4.14.2021  
Date

Approve     Disapprove



Ollie Garrett, Board Member

4.14.2021  
Date

Approve     Disapprove

Not Present  
Russ Hauge, Board Member

\_\_\_\_\_  
Date

Attachments: CR 102 Memorandum



## CR 102 Memorandum

### Regarding Distillery Reporting and Payment Rules.

Date: April 14, 2021  
Presented by: Audrey Vasek, Policy and Rules Coordinator

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### Background

The Washington State Liquor and Cannabis Board (WSLCB) initiated a formal rule inquiry under WSR # 21-05-069 on February 17, 2021 to revise the current distillery reporting and payment rules to be consistent with the Court of Appeals decision in *Blue Spirits Distilling, LLC v. WSLCB*,<sup>1</sup> issued on December 22, 2020, which held that 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*,<sup>2</sup> issued on August 8, 2017.

### Stakeholder Engagement

To develop potential rule language, a set of conceptual draft rules<sup>3</sup> was shared publicly through GovDelivery on March 1, 2021. As part of the collaborative rule development process, the messaging asked for stakeholder feedback and suggestions for revisions to the conceptual draft rules by March 31, 2021.<sup>4</sup>

Most of the feedback<sup>5</sup> received was general in nature and did not include any specific suggestions for changes to the conceptual draft rule language. Based on the feedback received, the WSLCB did not make any changes to the conceptual draft rule language. The proposed rules are identical to the conceptual draft rules.

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<sup>1</sup> *Blue Spirits Distilling, LLC v. WSLCB*, 15 Wn. App. 2d 779, 478 P.3d 153 (2020).

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

<sup>3</sup> The conceptual draft rules were developed by a WSLCB project team consisting of staff from the finance, enforcement and education, and licensing divisions.

<sup>4</sup> See Attachment A to this CR 102 Memo, GovDelivery message titled “WSLCB Seeks Input on Draft Distillery Reporting Rules” (March 1, 2021).

<sup>5</sup> See Attachment B to this CR 102 Memo, table containing public feedback received February 17 through April 02, 2021 on the distillery reporting rule project.

## Estimated Costs of Compliance

For the purpose of the minor cost analysis required by the Regulatory Fairness Act (chapter 19.85 RCW), the CR 102 form includes estimated costs of compliance with the proposed rules. The proposed rules remove all reporting and payment requirements for distilleries and craft distilleries (by repealing WAC 314-28-070 and 314-28-080) and amend existing references to reporting and payment requirements in several other rule sections (WAC 314-28-010, 314-28-055, 314-28-090).

These proposed rule revisions are anticipated to reduce the reporting burden and compliance costs for distillery and craft distillery licensees. The agency anticipates that licensees will not incur additional compliance costs as a result of these rule revisions, although licensees may need to spend a small amount of time to familiarize themselves with the rule revisions in order to be aware that the reporting and payment requirements have been removed. The estimated costs of compliance and the relevant minor cost threshold estimates are described in the CR 102 form.

## Rule Necessity

The proposed rules are needed to revise the distillery reporting and payment rules to be consistent with the Court of Appeals decision in *Blue Spirits*. Specifically:

- *The following sections in chapter 314-28 WAC are repealed:*
  - 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 following sections in chapter 314-28 WAC are amended:*
  - WAC 314-28-010 “Records.”
  - WAC 314-28-055 “What are the requirements for contract production by craft distilleries?”
  - WAC 314-28-090 “Distilleries or craft distilleries—Selling out-of-state.”

## Description of Rule Changes

**Repealed section. WAC 314-28-070**, relating to monthly reporting and payment requirements for distilleries and craft distilleries. The proposed repeal of this section is necessary to remove all monthly reporting and payment requirements from rule. After the Court of Appeals decision in *Blue Spirits*, the agency no longer collects any payment from distilleries or craft distilleries, so there is no longer a reason or need to have any reporting requirements.

**Repealed section. WAC 314-28-080**, relating to penalties for failure of a distillery or craft distillery to report or pay, or for late reporting or payment. The proposed repeal of this section is necessary because the monthly reporting and payment requirements are being removed as part of the proposed revisions (through repeal of WAC 314-28-070), so there is no longer any need for the corresponding penalties.

**Amended section. WAC 314-28-010**, relating to records. The proposed revisions include removing a sentence in subsection (1)(a) that contains a reference to reporting requirements and removing references to monthly records throughout the section. These revisions are necessary because the monthly reporting and payment requirements are being removed as part of the proposed revisions (through repeal of WAC 314-28-070), so there is no longer any need for these corresponding references. The proposed revisions also make a technical change by shortening several references to the “liquor and cannabis board” to “the board” since that is a defined term. The general definition section for all of Title 314 WAC (WAC 314-01-005) applies, and that definition section cross-references RCW 66.04.010, where “board” is defined to mean the liquor and cannabis board.

**Amended section. WAC 314-28-055**, relating to requirements for contract production by craft distilleries. The proposed rule revisions include editing the caption and removing references to reporting requirements and monthly records throughout the section. These revisions are necessary because the monthly reporting and payment requirements are being removed as part of the proposed revisions (through repeal of WAC 314-28-070), so there is no longer any need for these corresponding references.

**Amended section. WAC 314-28-090**, requirements for distilleries or craft distilleries to sell out of state. The proposed rule revisions include editing the caption and removing a reference to monthly reporting requirements. These revisions are necessary because the monthly reporting and payment requirements are being removed as part of the proposed revisions (through repeal of WAC 314-28-070), so there is no longer any need for these corresponding references. Subsection (4), which contains a reference to Washington state liquor taxes, is also removed because the WSLCB does not collect any liquor taxes from distillery or craft distillery licensees regardless of whether they are selling in state or out of state.

**Attachments:**

Attachment A. GovDelivery message titled “WSLCB Seeks Input on Draft Distillery Reporting Rules” (March 1, 2021).

Attachment B. Table containing public feedback received February 17 through April 02, 2021 on the distillery reporting rule project.

# PROPOSED RULE MAKING



## CR-102 (December 2017) (Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

**Agency:** Washington State Liquor and Cannabis Board

**Original Notice**

**Supplemental Notice to WSR**

**Continuance of WSR** \_\_\_\_\_

**Preproposal Statement of Inquiry was filed as WSR 21-05-069 ; or**

**Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or**

**Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**

**Proposal is exempt under RCW \_\_\_\_\_.**

**Title of rule and other identifying information:** (describe subject) Distillery Reporting and Payment Rules. The Washington State Liquor and Cannabis Board (WSLCB) is proposing repealing WAC 314-28-070 and 314-28-080 and amending WAC 314-28-010, 314-28-055, and 314-28-090 to be consistent with the Court of Appeals decision in *Blue Spirits Distilling, LLC v. WSLCB*, 15 Wn. App. 2d 779, 478 P.3d 153 (2020).

**The following sections in chapter 314-28 WAC are repealed:** 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 following sections in chapter 314-28 WAC are amended:** WAC 314-28-010 "Records." WAC 314-28-055 "What are the requirements for contract production by craft distilleries?" WAC 314-28-090 "Distilleries or craft distilleries—Selling out-of-state."

### Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
May 26, 2021	10:00 am	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 <a href="https://lcb.wa.gov/Boardmeetings/Board_meetings">https://lcb.wa.gov/Boardmeetings/Board_meetings</a> .

**Date of intended adoption:** No earlier than June 9, 2021. (Note: This is **NOT** the **effective** date)

### Submit written comments to:

Name: Audrey Vasek

Address: 1025 Union Avenue, Olympia, WA 98501

Email: rules@lcb.wa.gov

Fax: 360-704-5027

Other:

By (date) May 26, 2021

**Assistance for persons with disabilities:**

Contact Claris Nhanabu, ADA Coordinator, Human Resources

Phone: 360-664-1642

Fax: 360-664-9689

TTY: 7-1-1 or 1-800-833-6388

Email: Claris.Nhanabu@lcb.wa.gov

Other:

By (date) May 19, 2021

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The purpose of this rule proposal is to revise the distillery reporting and payment rules to be consistent with the Court of Appeals decision in *Blue Spirits*. The rule proposal:

- Repeals **WAC 314-28-070**, relating to monthly reporting and payment requirements for distilleries and craft distilleries. The proposed repeal of this section is necessary to remove all monthly reporting and payment requirements from rule. After the Court of Appeals decision in *Blue Spirits*, the agency no longer collects any payment from distilleries or craft distilleries, so there is no longer a reason or need to have any reporting requirements.
- Repeals **WAC 314-28-080**, relating to penalties for failure of a distillery or craft distillery to report or pay, or for late reporting or payment. The proposed repeal of this section is necessary because the monthly reporting and payment requirements are being removed as part of the proposed revisions (through repeal of WAC 314-28-070), so there is no longer any need for the corresponding penalties.
- Amends **WAC 314-28-010**, relating to records. The proposed revisions include removing a sentence in subsection (1)(a) that contains a reference to reporting requirements and removing references to monthly records throughout the section. These revisions are necessary because the monthly reporting and payment requirements are being removed as part of the proposed revisions (through repeal of WAC 314-28-070), so there is no longer any need for these corresponding references. The proposed revisions also make a technical change by shortening several references to the "liquor and cannabis board" to "the board" since that is a defined term. The general definition section for all of Title 314 WAC (WAC 314-01-005) applies, and that definition section cross-references RCW 66.04.010, where "board" is defined to mean the liquor and cannabis board.
- Amends **WAC 314-28-055**, relating to requirements for contract production by craft distilleries. The proposed rule revisions include editing the caption and removing references to reporting requirements and monthly records throughout the section. These revisions are necessary because the monthly reporting and payment requirements are being removed as part of the proposed revisions (through repeal of WAC 314-28-070), so there is no longer any need for these corresponding references.
- Amends **WAC 314-28-090**, requirements for distilleries or craft distilleries to sell out of state. The proposed rule revisions include editing the caption and removing a reference to monthly reporting requirements. These revisions are necessary because the monthly reporting and payment requirements are being removed as part of the proposed revisions (through repeal of WAC 314-28-070), so there is no longer any need for these corresponding references. Subsection (4), which contains a reference to Washington state liquor taxes, is also removed because the WSLCB does not collect any liquor taxes from distillery or craft distillery licensees regardless of whether they are selling in state or out of state.

**Reasons supporting proposal:** The proposed rules are needed to amend the distillery reporting and payment rules to be consistent with the Court of Appeals decision in *Blue Spirits*. See purpose statement.

**Statutory authority for adoption:** RCW 66.08.030.

**Statute being implemented:** N/A

**Is rule necessary because of a:**

- Federal Law?  Yes  No
- Federal Court Decision?  Yes  No
- State Court Decision?  Yes  No

If yes, CITATION: *Blue Spirits Distilling, LLC v. WSLCB*, 15 Wn. App. 2d 779, 478 P.3d 153 (2020).

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** None.

**Name of proponent:** (person or organization) Washington State Liquor and Cannabis Board  Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting: Rules Coordinator	Audrey Vasek, Policy and	1025 Union Avenue, Olympia WA, 98501	360-664-1758
Implementation: Officer	Jim Morgan, Chief Financial	1025 Union Avenue, Olympia, WA. 98501	360-664-1690
Enforcement:	Chandra Brady, Director of the Enforcement and Education Division	1025 Union Avenue, Olympia, WA, 98501	360-664-1726

**Is a school district fiscal impact statement required under RCW 28A.305.135?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

**Is a cost-benefit analysis required under RCW 34.05.328?**

- Yes: A preliminary cost-benefit analysis may be obtained by contacting:  
Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:
- No: Please explain: 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 supplemental proposed rules do not qualify as significant legislative rules under RCW 34.05.328(5)(c).

**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.



This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- |   |  |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)<br>(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)<br>(Dictated by statute)   |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> RCW 34.05.310 (4)(f)<br>(Set or adjust fees)  |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> RCW 34.05.310 (4)(g)<br>((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under RCW .

Explanation of exemptions, if necessary:

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated.

*Estimated Cost of Compliance:* The proposed rule revisions remove all reporting and payment requirements for distilleries and craft distilleries (by repealing WAC 314-28-070 and 314-28-080) and amend existing references to reporting and payment requirements in several other rule sections (WAC 314-28-010, 314-28-055, 314-28-090). These proposed rule revisions are anticipated to reduce the reporting burden and compliance costs for distillery and craft distillery licensees.

The agency anticipates that licensees will not incur additional compliance costs as a result of these rule revisions. The reduction in reporting burden will happen automatically, and licensees will not have to interact with licensing, finance, enforcement and education, or other agency staff in order to receive and benefit from the reduction in reporting burden.

The agency anticipates that licensees may need to spend a small amount of time (less than 30 minutes of administrative time) to familiarize themselves with the rule revisions in order to be aware that the reporting and payment requirements have been removed. This would be a one-time cost.

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 activity of familiarization with the rule revisions is \$10.66 [ $\$21.31 \text{ avg. hourly wage} \times .5 \text{ hours} = \text{approximately } \$10.66$ ].

*Minor Cost Threshold Estimates:* The Board applied North American Industry Classification System (NAICS) codes 312140 for Distilleries to estimate the minor cost thresholds for distillery and craft distillery 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." There are no separate NAICS codes available for craft distilleries.

As shown in the table below, the estimated one-time cost of compliance for distilleries and craft distilleries (\$10.66) does not exceed the minor cost estimate for this industry (\$2,076.60), so a small business economic impact statement (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*AvgGBI)
312140	\$10.66	Distilleries	Distilleries	\$2,076.60	\$2,076.60 2018 Dataset pulled from ESD	\$1,471.28 2018 Dataset pulled from DOR

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

**Date:** April 14, 2021

**Name:** David Postman

**Title:** Chair

**Signature:**



AMENDATORY SECTION (Amending WSR 16-01-102, filed 12/16/15, effective 1/16/16)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) Product owned and produced by the craft distillery;
  - (b) Product owned and produced by the craft distillery for export from the state;
  - (c) Product owned by the craft distillery but produced by another craft distillery;
  - (d) Product produced by the craft distillery on behalf of another craft distillery;
  - (e) Product produced by the craft distillery under contract for another distillery, manufacturer, or grower.
- (5) ~~((Reporting and))~~ Recordkeeping.
- (a) The contractor must ~~((include))~~ submit, upon request by the board, records of all product produced including contract production ~~((when it reports its monthly production to the board))~~.
  - (b) The contractee must ~~((include))~~ submit, upon request by the board, records of 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.

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

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

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

(2) Product produced in-state and sold out-of-state counts toward a craft distillery licensee's one hundred fifty thousand proof gallons per calendar year production limit.

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

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-28-070	Monthly reporting and payment requirements for a distiller and craft distiller.
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WAC 314-28-080

What if a distillery or craft  
distillery licensee fails to report or  
pay, or reports or pays late?

CR 102 Memo—Distillery Reporting Rules  
Attachment A



Washington State  
Liquor and Cannabis Board

# WSLCB Seeks Input on Draft Distillery Reporting Rules

Washington State Liquor and Cannabis Board sent this bulletin at 03/01/2021 09:18 AM PST

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**March 1, 2021**

## WSLCB Seeks Input on Draft Distillery Reporting Rules

The Washington State Liquor and Cannabis Board (WSLCB) is seeking public feedback on conceptual draft rules related to distillery reporting and payment requirements.

### Background

On February 17, 2021, the WSLCB filed a preproposal statement of inquiry (CR 101) to consider revising WAC 314-28-070, 314-28-080, and other rules, if necessary, to be consistent with the Court of Appeals decision in *Blue Spirits Distilling, LLC v. WSLCB*, issued on December 22, 2020. For more information, see:

- [Notice to Stakeholders](#)
- [Memorandum](#)
- [CR-101 Filed as WSR 21-05-069 on February 17, 2021](#)

The WSLCB invites and encourages feedback on the conceptual draft rules ([linked here](#)). This is not a rule proposal. These conceptual draft rules are designed for discussion only.

All feedback will be reviewed and considered before a rule proposal (CR 102) is developed.

### How to Provide Feedback

Please email feedback to Audrey Vasek at [audrey.vasek@lcb.wa.gov](mailto:audrey.vasek@lcb.wa.gov) by **March 31, 2021**.

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**Distillery Reporting Rules—CR 101 Public Feedback Table**

Public feedback received February 17 through April 02, 2021 on the distillery reporting rule project ([CR-101 Filed as WSR 21-05-069 on February 17, 2021](#)) and conceptual draft rules (shared through [GovDelivery message](#) on March 1, 2021).

Source	Name	Date Received	Theme	Feedback
Email	Mhairi Voelsgen, WA Distillers Guild	3/1/2021 and 4/2/2021	WAC 314-28-090(4), last sentence	<p><u>Email received March 1, 2021—Direct quotation included below:</u></p> <p>“Thanks Audrey. I just took a quick look at the draft rules. One thing I noticed is that the last sentence of the rules is struck out. It says that no WA State taxes are due on product sold out of state. I was wondering why that was struck out?</p> <p>I’ll take a closer look as well, but that first item raised my eyebrows.</p> <p>We will send the email out to our members.</p> <p>All my best, Mhairi”</p> <p><u>Email received April 2, 2021—Direct quotation included below:</u></p> <p>“Hi Audrey,</p> <p>Hope you are doing well. My two cents on removing the sentence about no taxes being due on out of state shipments is that our membership will likely react to it. I get why you are removing it and it makes sense, but I sometimes see reactionary responses to things like this. You may get some emails or calls about it.</p> <p>Other than that, I didn’t receive any other significant emails in response to the request. So, I’d say it’s good to go.</p> <p>Thanks for your help.</p> <p>All my best, Mhairi”</p>



Email	Mark Walker, SusTrue	3/1/2021	General	<p><u>Email received March 1, 2021—Direct quotation included below:</u></p> <p>“Dear Rules Committee,</p> <p>It is a widely shared dogma that there are only three types of government rules. The predominant slice (80%) comes from early market share leaders who want to make it as difficult as possible for competition to follow their paths. They make donations, calls, political support and anything else necessary to get these rules to increasingly hinder competition.</p> <p>The second slice (19%) is where the bureaucracy sees paths to create revenue streams within new markets. This is needed in some part to support new infrastructure to support new commerce. But the predominance (75%) of this slice is again rules to hinder competition put forth by market leaders. This ploy has the double carrot for both the bureaucracy and market leaders as it advances both their interests and again supports the rules made in the first large slice’s hidden goals.</p> <p>The third very tiny slice (1%) are rules that genuinely benefit the public with no regard to the bureaucracy or market leaders goals. Things like child labor laws come to mind. It is truly difficult to find rules in this category.</p> <p>My challenge to this rules committee is to align your goals and requirements to make any rules in this category to fall into that very tiny slice. For craft distillers to flourish they need to be as unencumbered as possible. Having craft distillers pay retailer licensing fees is a rule that was crafted by market share leaders to hinder competition. This is graphically clear.</p> <p>Full disclosure : We are discussing a new craft distillery enterprise based on our farms products that we have shared with half a dozen craft distillers with a very warm reception. If you decide that craft distillers should pay retail licensing fees we see the path you have chosen for all future rules and will drop all efforts at this new enterprise.</p>

				<p>Sometimes I wonder if anyone models in government the financial unintended consequences of backing the market leaders in that first large slice? America was founded, and was succeeding, based on rampant innovation. Has the short sightedness of these decisions for a little largesse now potentially cost us huge markets that never made it out of the cradle?</p> <p>Please consider deeply your choices here. Craft distillery is almost pure innovation and is ready to explode in the state of Washington. Oregon and even Idaho are making better rules in this area and the new market leaders are going to go where there is a level playing field.</p> <p>My best,</p> <p>Mark Walker”</p>
Email	John Wohlfert	3/1/2021	WAC 314-29-055(1)(b)	<p><u>Email received March 1, 2021—Direct quotation included below:</u></p> <p>“WAC 314-28-055</p> <p>(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.</p> <p>What would be the reason that the contractee couldn’t pick it up at the contractors distillery or arrange for pickup? I guess I don’t understand what difference could it make? Assuming there is a good reason, it isn’t clear to me. Is the contractor supposed to use their own equipment for the physical delivery? Must the contactor be in physical possession during transport? Can a common carrier be used for the transport? Does the contractor have to pay for it?</p> <p>Thanks,</p> <p>John Wohlfert”</p>

Email	John Bourdon, Sandstone Distillery	3/17/2021	General	<p><u>Email received March 17, 2021—Direct quotation included below:</u></p> <p>“When the "Craft" distilling licence came to be in addition to the "General" distilling license there were advantages and disadvantages to each licence. The definitions were clear and so was the choice you had to make between the two or to have them both and abide by the rules of each. The Craft license was clearly created to support the Washington State agricultural industry. The incentive to choose the Craft license was that you could have a tasting room, sell bottles and not pay the 17% tax out of the tasting room. The General license did not have these incentives or rewards because they were not required to support the local Washington economy like the Craft license holders were required to. Craft license holders earned these rewards by supporting Washington farmers and the Agricultural industry in Washington State. This is how the law was written in regards to distilling licenses. Nothing to do with other retail outlets or restaurants. These slick lawyers have pulled a fast one on the courts when they have failed for years trying to do it the right way through the legislature where there was public comment and input.</p> <p>Over the years these privileges have been given to the general license holders. With this rule being approved there will be no difference at all between the two. Shouldn't the Craft license holders still receive some sort of incentive for what they do for the State in some way? To create 750 ml of vodka from Washington grown grains costs about \$11.00. To produce the same amount of vodka under the general licence buying the neutral grain spirit from out of state costs about .68 cents.</p> <p>Choosing the Craft license puts you at a huge disadvantage right out of the gate. It was the incentives that the State provided made it worthwhile. This ruling will make that disappear. The Craft license holders earned the incentives through choice and harder work. This will hurt Washington Agriculture. Craft license holders can buy grain in bulk from other states for less money.”</p>
Email	Justin Stiefel, Heritage Distilling	3/31/2021	General	<p><u>Email received March 31, 2021—Direct quotation included below:</u></p> <p>“Hello Audrey. I have had a chance to review the draft language and it looks fairly straight forward. I do not see any issues.</p>

				Thanks for the chance to review. Justin”
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**Note:** Responses were sent to all individuals who provided feedback thanking them for their comments. If the comments included questions that went beyond the scope of this rulemaking, the questions were forwarded to agency staff who could help provide an appropriate response.