



Washington State
Liquor and Cannabis Board

Date: June 9, 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
 Chandra Brady, Director of Enforcement and Education
 Becky Smith, Licensing Director
 Jim Morgan, Chief Financial Officer
 Kathy Hoffman, Policy and Rules Manager

Subject: Request for approval of final rules (CR 103) regarding distillery reporting and payment requirements (*Blue Spirits*).

The Policy and Rules Coordinator requests that the Board adopt final rules and approve the CR 103 for the rulemaking project related to distillery reporting and payment requirements.

The Board has been briefed on the rule development background and public comment received for this rulemaking project. A CR 103 memorandum, draft CR 103 form, and rule text are attached.

If approved, the Policy and Rules Coordinator will file the rules with the Office of the Code Reviser and send the concise explanatory statement concerning this rulemaking to all persons who provided comments. The effective date of the rules will be 31 days after filing, or July 10, 2021.

_____ Approve _____ Disapprove _____
 David Postman, Chair Date

_____ Approve _____ Disapprove _____
 Ollie Garrett, Board Member Date

_____ Approve _____ Disapprove _____
 Russ Hauge, Board Member Date

Attachment: CR 103 Memorandum
Concise Explanatory Statement



CR 103 Memorandum

Regarding Distillery Reporting and Payment Requirements (*Blue Spirits*).

Date: June 09, 2021
Presented by: Audrey Vasek, Policy and Rules Coordinator

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*,¹ 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*,² issued on August 8, 2017.

To develop potential rule language, a set of conceptual draft rules³ 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, 2021.⁴

Most of the feedback⁵ 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 before filing the proposed rules.

The rule proposal (CR 102) was filed as WSR # 21-09-042 on April 14, 2021, and the proposed rules included with the CR 102 were identical to the conceptual draft rules. Information about the rule proposal and how to provide comment was

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

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

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

⁴ See Attachment A to the CR 102 Memo, GovDelivery message titled "WSLCB Seeks Input on Draft Distillery Reporting Rules" (March 1, 2021).

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

shared publicly through a GovDelivery message and posted on the WSLCB webpage, including the Notice to Stakeholders, the CR 102 form with proposed rules, and the CR 102 memorandum.⁶

The public hearing on the proposed rules was held on May 26, 2021. No one testified at the public hearing. One written comment was received. The public comment received and the WSLCB response are contained in the Concise Explanatory Statement attached to this memorandum.

Rule Necessity

The adopted 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 repeal of this section is necessary to remove all distillery monthly reporting and payment requirements from rule. After the Court of Appeals decision in *Blue Spirits*, the WSLCB 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 repeal of this section is necessary because the distillery monthly reporting and payment requirements are removed as part of the adopted rules (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 revisions to this section include removing a sentence in subsection (1)(a) that contains a

⁶ See Attachment A to this CR 103 Memo, GovDelivery message titled “New rule project re: Enforcing governor's proclamations and Distillery reporting rule proposal” (April 14, 2021).

reference to reporting requirements, and removing references to monthly records throughout the section. These revisions are necessary because the distillery monthly reporting and payment requirements are removed as part of the adopted rules (through repeal of WAC 314-28-070), so there is no longer any need for corresponding references. The revisions also include making a technical change by shortening several references to the “liquor and cannabis board” to “the board.”⁷

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

Amended section. WAC 314-28-090, requirements for distilleries or craft distilleries to sell out of state. The revisions include editing the caption and removing a reference to monthly reporting requirements. These revisions are necessary because the distillery monthly reporting and payment requirements are removed as part of the adopted rules (through repeal of WAC 314-28-070), so there is no longer any need for corresponding references. Subsection (4), which contains a reference to Washington state liquor taxes, is also removed for clarity 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.

Changes from the Proposed Rules (CR 102) to the Final Rules:

There were no changes from the proposed rules to the final rules.

Rule Implementation

Informing and Educating Persons Impacted by the Rule

To help inform and educate persons impacted by the rule, the WSLCB will:

- Email notice with the adoption materials to persons who commented on the rules and to all GovDelivery subscribers;
- Post rule adoption materials, including final rule language, response to comments, final analysis (Concise Explanatory Statement), and any other relevant documents on the rulemaking webpage for public access.

⁷ The “board” is a defined term. The general definition section WAC 314-01-005 applies to this rule section, and WAC 314-01-005 cross-references RCW 66.04.010, where “board” is defined to mean the liquor and cannabis board.

- Provide information and training on request.

Promoting and Assisting Voluntary Compliance

The WSLCB will promote and assist voluntary compliance through technical assistance.

- WSLCB staff are available to respond to phone and email inquiries about the rules.
- The Licensing, Enforcement and Education, and Finance divisions have participated in the rule revision process and are familiar with the final product. Internal and external education efforts to share knowledge and assure consistent application of rule will be supported.
- Rule and guidance documents will be available on the WSLCB website.
- The WSLCB will use available and customary resources to disseminate materials and information to all persons impacted by the rules.

These actions are designed to inform and educate all persons impacted by the rules to support and promote voluntary compliance.

Training and Informing WSLCB Staff

Several WSLCB staff responsible for implementing these adopted rules work directly with impacted parties and are already familiar with the nuances of the rule changes. Additional internal guidance documents may be prepared as necessary. The WSLCB will also consider:

- Provision of internal and external training and education, as needed, potentially including webinars, training, and videos if appropriate;
- Coordinating and centrally locating decisions to assure consistency between agency, staff, and industry.

Rule Effectiveness Evaluation

The WSLCB will evaluate the effectiveness of these rules in the following ways, including but not limited to:

- Monitoring questions received after the effective date of these rules, and adjusting training and guidance accordingly;
- Monitoring the number of enforcement actions, including type, resolution, and final outcome;
- Monitoring the number of requests for rule language revisions or changes;
- Monitoring the number of requests for rule interpretation;
- Monitoring licensee feedback including, but not limited to, the number of requests for assistance.

Attachments:

Attachment A: GovDelivery message titled “New rule project re: Enforcing governor's proclamations and Distillery reporting rule proposal” (April 14, 2021).
Final Rules
Concise Explanatory Statement



RULE-MAKING ORDER

PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

Agency: Washington State Liquor and Cannabis Board

Effective date of rule:

Permanent Rules

- 31 days after filing.
 Other (specify) (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: The Washington State Liquor and Cannabis Board (WSLCB) has repealed WAC 314-28-070 and 314-28-080, and adopted amendments to WAC 314-28-010, 314-28-055, and 314-28-090, related to distillery reporting and payment requirements, 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), which held that WSLCB rules requiring distillers to pay spirits retailer licensing fees when they acted as spirits retailers were invalid.

Citation of rules affected by this order:

New:
 Repealed: WAC 314-28-070 and 314-28-080.
 Amended: WAC 314-28-010, 314-28-055, and 314-28-090.
 Suspended:

Statutory authority for adoption: RCW 66.08.030.

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

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 21-09-042 on April 14, 2021 (date).

Describe any changes other than editing from proposed to adopted version: There were no changes from the proposed rules to the adopted rules.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: Audrey Vasek
 Address: 1025 Union Avenue SE, Olympia WA 98501
 Phone: 360-664-1758
 Fax: 360-704-5027
 TTY:
 Email: rules@lcb.wa.gov
 Web site: www.lcb.wa.gov
 Other:

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New		Amended		Repealed	

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted on the agency's own initiative:

New		Amended	3	Repealed	2
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New		Amended	3	Repealed	2

Date Adopted: June 09, 2021

Name: David Postman

Title: Chair

Signature:

Place signature here

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?



Notice of Permanent Rules

Regarding Distillery Reporting and Payment Requirements.

This concise explanatory statement concerns the Washington State Liquor and Cannabis Board’s adoption of amendments to existing rules and repeal of existing rules related to distillery reporting and payment requirements (*Blue Spirits*).

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. The concise explanatory statement must be provided to any person upon request, or from whom the Board received comment.

The Washington State Liquor and Cannabis Board (Board) appreciates and encourages your involvement in the rule making process. If you have questions, please contact Audrey Vasek, Policy and Rules Coordinator, at (360) 664-1758 or by e-mail at rules@lcb.wa.gov.

Background and reasons for adopting these rules.

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*,¹ 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*,² issued on August 8, 2017.

To develop potential rule language, a set of conceptual draft rules³ was shared publicly through GovDelivery on March 1, 2021. As part of the collaborative rule development

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

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

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

process, the messaging asked for stakeholder feedback and suggestions for revisions to the conceptual draft rules by March 31, 2021.⁴

Most of the feedback⁵ 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 before filing the proposed rules.

The rule proposal (CR 102) was filed as WSR # 21-09-042 on April 14, 2021, and the proposed rules included with the CR 102 were identical to the conceptual draft rules. Information about the rule proposal and how to provide comment was shared publicly through a GovDelivery message and posted on the WSLCB webpage, including the Notice to Stakeholders, the CR 102 form with proposed rules, and the CR 102 memorandum.⁶

The public hearing on the proposed rules was held on May 26, 2021. No one testified at the public hearing. One written comment was received via email.

These 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.”

Rulemaking history for this adopted rule:

CR 101 – filed February 17, 2021 as WSR #21-05-069.

CR 102 – filed April 14, 2021 as WSR #21-09-042.

Public hearing held May 26, 2021. No one testified at the public hearing. One written comment was received.

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

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

⁶ See Attachment A to the CR 103 Memo, GovDelivery message titled “New rule project re: Enforcing governor’s proclamations and Distillery reporting rule proposal” (April 14, 2021).

Public comments received on the rule proposal

The following comment was received as indicated below. A response to the comment is provided, along with an indication regarding whether the comment was reflected in the adopted rule.

1. Email received April 14, 2021—Direct quotation included below:

From Josh Stottlemyer, Stottle Winery:

“The rules for all alcohol producers should be essentially the same. Having different rules for wineries, then breweries, then distilleries is quite frankly ridiculous. Taxing distilleries in a different way than wineries or breweries is just arbitrary. There should be a formula based on alcohol percent and volume, that’s it, doesn’t matter what type of alcohol, and all the other rules should be the same for tasting rooms, shipping, etc. The variation leads to confusion both in enforcement and compliance. It also creates undo hurdles for those who wish to participate in more than one type of alcohol production and sales. What works for one license type should work for the other, simplify and apply to everyone.”

Board response: The Board appreciates these comments and the demonstration of interest in collaborative participation in the rulemaking process. The purpose of these rule amendments is to make the distillery reporting and payment rules consistent with the Court of Appeals decision in *Blue Spirits Distilling, LLC v. WSLCB*, 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 invalid. The rules for wineries, breweries, and distilleries must be consistent with existing laws, and since the underlying laws for all alcohol producers are not the same, the Board lacks the authority to make the rules for all alcohol producers the same.

Was the comment reflected in the adopted rule? This comment is not reflected in the final rule.

Public Hearing on the CR 102 rule proposal, May 26, 2021:

No one provided comment regarding the rule proposal at the public hearing on May 26, 2021.

Changes from the Proposed Rules (CR 102) to the Rules as Adopted

There were no changes from the proposed rules to the final rules.

CR 103 Memo—Distillery Reporting Rules Attachment A**Washington State
Liquor and Cannabis Board**

WSLCB: New rule project re: Enforcing governor's proclamations and Distillery reporting rule proposal

Washington State Liquor and Cannabis Board sent this bulletin at 04/14/2021 02:11 PM PDT

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April 14, 2021

WSLCB Action: Distillery reporting rule proposal, New rule project re: enforcing governor's proclamations

Today, during a regularly scheduled meeting, the Washington State Liquor and Cannabis Board took the following action:

Approved a rule proposal (CR 102) regarding distillery reporting and payment 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 amending several other rule sections. The proposed rule changes are consistent with the Court of Appeals decision in *Blue Spirits Distilling, LLC v. WSLCB*, issued December 22, 2020.

- [Notice to Stakeholders](#)
- [Memorandum](#)
- [CR 102 Filed as WSR 21-09-042 on April 14, 2021](#)

Approved a preproposal statement of inquiry (CR 101) regarding summary license suspension and petition for stay provisions to enforce governor's proclamations. This new rule project will consider creating permanent rules to replace emergency rules WAC 314-12-250 and 314-12-275 filed as [WSR 21-07-077](#) on March 17, 2021, and future emergency rules. This rule applies to all licensees.

- [Notice to Stakeholders](#)
- [Memorandum](#)
- [CR 101 Filed as WSR 21-09-041 on April 14, 2021](#)

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