



Washington State
Liquor and Cannabis Board

Date: February 28, 2024

To: David Postman, Board Chair
Ollie Garrett, Board Member
Jim Vollendroff, Board Member

From: Daniel Jacobs, Rules Coordinator

Copy: Will Lukela, Director
Toni Hood, Deputy Director
Justin Nordhorn, Director of Policy and External Affairs
Becky Smith, Director of Licensing and Regulation
Chandra Wax, Director of Education and Enforcement
Cassidy West, Policy & Rules Manager

Subject: Request for approval of final rules (CR 103) regarding Trade Area.

The Rules Coordinator requests that the Board adopt the final rules and approve the CR 103 for amendments to [WAC 314-02-1071](#).

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

If approved, the concise explanatory statement will be sent to everyone who provided public comment or testimony, the CR 103 form and rule text will be filed with the Code Reviser, and the amended rule will be effective March 30, 2024.

_____ Approve _____ Disapprove _____
David Postman, Chair Date

_____ Approve _____ Disapprove _____
Ollie Garrett, Board Member Date

_____ Approve _____ Disapprove _____
Jim Vollendroff, Board Member Date

Attachments: CR 103 Memorandum
Concise Explanatory Statement



CR 103 Memorandum

Re: Trade Area Rulemaking.

Date: February 28, 2024
Presented by: Daniel Jacobs, Rules Coordinator

Background

[RCW 66.24.630\(3\)\(a\)](#) states that the Liquor & Cannabis Board (Board) may issue spirits retail licenses only for premises comprising at least 10,000 square feet of fully enclosed retail space within a single structure, subject to exceptions in subsection (3)(c). [RCW 66.24.630\(3\)\(c\)\(i\)](#) states that the Board may not deny a spirits retail license to an otherwise qualified applicant on the basis of the size of the premises if, among other things, there is no spirits retail license holder in the *trade area* that the applicant proposes to serve (emphasis added). Because there is no definition of the term “trade area” in statute, the Board defines it in [WAC 314-02-1071](#).

[WAC 314-02-1071\(1\)](#) defines a trade area as an area where there is no spirits retail license within a 20 mile travel distance at the time of application. When this rule was first created following the passage of Initiative 1183, there was discussion about the idea of exempting businesses on tribal land from the 20 mile requirement. See [WSR 13-11-026](#). While this proposal did not become part of the final rule, the Board’s Tribal partners have discussed this notion with the Board ever since, noting how exempting businesses on Tribal land from this requirement would recognize Tribal sovereignty in a manner that state and local governments have not always historically been known to do.

The CR 101 was [filed](#) in May 2023, with no public comment received on that filing. The goal of this rule project has been to address the historical omission of recognizing Tribal sovereignty and to try and address this through making the changes that were initially considered in 2013.

The CR 102 was [filed](#) on January 3, 2024, with the proposed rule changes identified in the table below. No comments were received on the CR 102 or proposed draft rule language. The Public hearing was held on February 14, 2024 and two individuals testified in opposition to the proposed rule language. No alternative rule language was proposed. The LCB’s response is detailed in the Concise Explanatory Statement. Therefore, the proposed rule language in the CR 102 is the same as the rule language filed as permanent with the CR 103.

Rule Necessity & Description of Rule Changes

Section	Current Rule Language	Proposed New Language	Rule Necessity
Title	What is "trade area"?	Trade Area.	Improving clarity without changing effect.
(2)	The board will use the following criteria when determining to accept a spirits retail license application where the proposed premises location is less than ten thousand square feet of fully enclosed retail space: (a) There is no spirits retail license holder or auction title holder within twenty travel miles at the time of license application; and (b) The board will determine travel distance by a publicly available mapping tool which may be accessed on the board's website. The web address of this site at the time of rule adoption is http://wslcb.maps.arcgis.com/home/ .	For a spirits retail license application where the proposed premises is less than 10,000 square feet of fully enclosed retail space, the board will determine if there is an existing spirits retailer within 20 travel miles at the time of license application.	Improving clarity without changing effect. Removing reference to outdated mapping technology. This is no longer necessary due to widespread availability of public mapping tools such as Google Maps, etc.
(3)	Former contract liquor stores and title holders by those who purchased a state store at auction are exempt from the ten thousand square foot minimum required by law. Should either choose to locate within an established trade area and they are in compliance with board relocation criteria, they may be issued a license.	Former contract or state liquor stores owners are exempt from the 10,000 square foot minimum required by law. If either entity chooses to locate within a trade area as defined in this section, they may be issued a licenses as long as they are in compliance with relocation criteria established by the board.	Improving clarity without changing effect.
(4)	The board may make an exception to the twenty mile travel distance for the following: A spirits retail license application is for a location where the significant mode of travel is other than by automobile.	[(5)] The board may make an exception to the 20-mile travel distance requirement for a spirits retail license application where access to the proposed location is by means of travel other than automobile.	Improving clarity without changing effect. This has been renumbered as section (5) with the new language being new section (4) to ease the flow and readability of the rule.
N/A	N/A	[(4)] Stores owned and operated by a Tribe or its tribal enterprise, located in Indian country as defined by 18 U.S.C. Sec. 1151, including reservation and all lands held in trust by the United States for the Tribe or its members, are exempt from the 20 mile travel distance requirement. (a) For purposes of this subsection, "Tribe" means a federally	Returning oversight of entities on tribal land to Tribes.

		recognized tribe as defined by 25 U.S.C. Sec. 4103(13)(B). (b) For purposes of this subsection, “tribal enterprise” means a wholly owned business enterprise of the Tribe.	
All	[Changed written numbers to numeric form.]		Improving clarity without changing effect.

Variance between proposed rule (CR 102) and final rule:

No changes have been made between the proposed rule and final rule language.

Rule Implementation (RCW 34.05.328(3)(a))

Informing and Educating Persons Impacted by the Rule (RCW 34.05.328(3)(b))

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

- Email notice with the adoption materials to persons who commented on the rules, the rule making and licensee distribution lists, and the general LCB GovDelivery list;
- 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.

Promoting and Assisting Voluntary Compliance (RCW 34.05.328(3)(c))

LCB will promote and assist voluntary compliance through technical assistance.

- LCB staff are available to respond to phone and email inquiries about the rules.
- Agency leadership and staff have actively participated in rule development and revisions 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 LCB website.
- LCB 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 LCB Staff

Several LCB 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 LCB 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 (RCW 34.05.328(3)(d))

After the rule becomes effective, the LCB will evaluate the effectiveness of this rule in the following ways, including but not limited to:

- Monitoring questions received after the effective date of this rule, and adjusting training and guidance accordingly;
- Monitoring the number of enforcement actions, including type, resolution, and the 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.



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 (Board) has adopted amendments to the rule as described in WSR 24-02-094 to amend WAC 314-02-1071 to clarify the language regarding exceptions to trade area requirements for spirits retailers in locations that are primarily accessed by boat, and to exempt businesses on Tribal land and owned by Tribal enterprises from the 20 mile travel distance requirement in WAC 314-02-1071(1). The proposed changes include defining the terms "Tribe" and "tribal enterprise", as well as moving around some of the language of existing WAC 314-02-1071 to enable better flow and readability of the rule language overall.

Citation of rules affected by this order:

New:
 Repealed:
 Amended: WAC 314-02-1071
 Suspended: _____

Statutory authority for adoption: RCW 66.08.030

Other authority: None.

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 24-02-094 on January 3, 2024_ (date).
 Describe any changes other than editing from proposed to adopted version: No changes.

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

Name: Daniel Jacobs, Rules & Policy Coordinator
 Address: 1025 Union Avenue SE, Olympia WA 98501
 Phone: 360-480-1238
 Fax: 360-664-3208
 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	1	Repealed	_____
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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	1	Repealed	

Date Adopted: February 28, 2024

Name: David Postman

Title: Chair

Signature:

Place signature here

WAC 314-02-1071 (~~(What is "trade area"?)~~) **Trade area.** (1)

"Trade area" as used in RCW 66.24.630 means an area where there is no spirits retail license within a (~~(twenty)~~) 20-mile travel distance at the time of license application.

(2) (~~The board will use the following criteria when determining to accept~~) For a spirits retail license application where the proposed premises (~~(location)~~) is less than (~~(ten thousand)~~) 10,000 square feet of fully enclosed retail space(

(a) There is no spirits retail license holder or auction title holder), the board will determine if there is an existing spirits retailer within (~~(twenty)~~) 20 travel miles at the time of license application(

(b) The board will determine travel distance by a publicly available mapping tool which may be accessed on the board's website. The web address of this site at the time of rule adoption is <http://wsleb.maps.aregis.com/home/>).

(3) Former contract or state liquor store(~~s and title holders by those who purchased a state store at auction~~) owners are exempt from the (~~(ten thousand)~~) 10,000 square foot minimum required by law. (~~(Should)~~) If either entity chooses to locate within (~~(an establish-~~) a trade area (~~(and)~~) as defined in this section, they may be issued a license as long as they are in compliance with (~~(board)~~) relocation criteria(~~(, they may be issued a license)~~) as established by the board.

(4) Spirits retailers owned and operated by a tribe or its tribal enterprise, located in Indian country as defined by 18 U.S.C. Sec. 1151, including reservation and all lands held in trust by the United States for the tribe or its members, are exempt from the 20-mile travel distance requirement.

(a) For purposes of this subsection, "tribe" means a federally recognized tribe as defined by 25 U.S.C. Sec. 4103(13)(B).

(b) For purposes of this subsection, "tribal enterprise" means a wholly owned business enterprise of the tribe.

(5) The board may make an exception to the (~~(twenty)~~) 20-mile travel distance requirement for (~~(the following)~~) a spirits retail license application (~~(is for a location)~~) where (~~(the significant mode)~~) access to the proposed location is by means of travel (~~(is)~~) other than (~~(by)~~) automobile.



Notice of Permanent Rules Regarding Trade Areas

Concise Explanatory Statement

This concise explanatory statement concerns the Washington State Liquor and Cannabis Board's (LCB) adoption of rule amendments that streamline the language of [WAC 314-02-1071](#) and exempt stores in Indian Country, owned or operated by a Tribe or Tribal enterprise from the 20 mile travel distance requirement in [WAC 314-02-1071](#).

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 LCB received comment.

The LCB appreciates and encourages your involvement in the rule making process. If you have questions, please e-mail at rules@lcb.wa.gov.

Background and reasons for adopting these rules:

[RCW 66.24.630\(3\)\(a\)](#) states that the Liquor & Cannabis Board (Board) may issue spirits retail licenses only for premises comprising at least 10,000 square feet of fully enclosed retail space within a single structure, subject to exceptions in subsection (3)(c). [RCW 66.24.630\(3\)\(c\)\(i\)](#) states that the Board may not deny a spirits retail license to an otherwise qualified applicant on the basis of the size of the premises if, among other things, there is no spirits retail license holder in the *trade area* that the applicant proposes to serve (emphasis added). Because there is no definition of the term "trade area" in statute, the Board defines it in [WAC 314-02-1071](#).

[WAC 314-02-1071\(1\)](#) defines a trade area as an area where there is no spirits retail license within a 20 mile travel distance at the time of application. When this rule was first created following the passage of Initiative 1183, there was discussion about the idea of exempting businesses on tribal land from the 20 mile requirement. See [WSR 13-11-026](#). While this proposal did not become part of the final rule, the Board's Tribal partners have discussed this notion with the Board ever since, noting how exempting businesses on Tribal land from this requirement would recognize Tribal sovereignty in a manner that state and local governments have not always historically been known to do.

The CR 101 was [filed](#) in May 2023, with no public comment received on that filing. The goal of this rule project has been to address the historical omission of recognizing Tribal sovereignty and to try and address this through making the changes that were initially considered in 2013.

The CR 102 was [filed](#) on January 3, 2024, with the proposed rule changes identified in the table below. No comments were received on the CR 102 or proposed draft rule language. The Public hearing was held on February 14, 2024 and two individuals testified at the hearing in opposition of the proposed rule language.

Rulemaking history for this adopted rule:

CR 101 – filed May 24, 2023 as WSR #23-11-160

CR 102 – filed January 3, 2024, as WSR #24-02-094
Public hearing held February 14, 2024

The effective date of this amended rule is March 30, 2024.

No Public comments were received on the rule proposal in the time leading up to the public hearing.

Oral testimony was received during the public hearing held on February 14, 2024.

1. Brad Tower, Washington Liquor Store Association

My name is Brad Tower. I'm here today on behalf of Washington liquor store association, speaking to the rule making proposal here at CR 102. We have some pretty serious concerns about the language that's proposed and I, well I would say that the, if the intent were to narrowly construe this particular measure, the effect of the measure is quite broad. And I've got four different points that I'd like to bring up about this.

The first is that the, the sale at auction of the state liquor stores was essentially the sale of trade areas. And the LCB conducted at auction on behalf of the state and received a significant amount of money from private citizens in Washington State for the right to operate within those trade areas with footprints of less than ten thousand square feet. So this proposed rule amendment to change the trade area to allow for a, uhh, new geographic location to come into one of the trade areas fundamentally undermines that value proposition that was part of the property tax, excuse me, the property certificate was sold to those citizens that I, I believe that Mr. Cho will speak more to that in just a bit.

But the second point I'd like to make is that, you know, Washington State still has, by far the highest spirits tax in the nation. And so to any extent to which a retailer might be, uhh, exempt from certain taxation in liquor sales, that creates a tremendous competitive advantage and could potentially pull away a significant amount of business from the tax paying, the full tax, paying entities. So we have some concern about that. I don't have specifics about you know, the application of that in terms of Tribal businesses.

What's more concerning to me though, is that when the citizen's initiative was initially proposed to get the state out of business of selling spirits in favor of private enterprises, it failed. And it failed because it didn't have a restriction on the ten thousand square foot minimum. The citizenry was very clear that they did not wish to see spirits sales in gas stations, in every convenience store and potentially in you know, smoke drive through smoke shops or coffee shops. This particular rulemaking doesn't preclude a specific tribe or tribal enterprise from having multiple geographic locations, of any size, footprint it would eliminate the LCB's ability to object to the proposal of any location of any size that is included in Tribal trust land. So I believe that there could be something as small as a drive through smoke shack down in the Nisqually Valley that could potentially receive this license to sell spirits along with the, the items that are being sold in the drive through.

And then the final uh, thing that I would bring the board's attention is that the way this is drafted is one sided. And I would say, so if a Tribal enterprise proposed to open in a geographic location that was inside the defined trade area of a non-Tribal entity, that would be exempt and therefore eligible to receive that license. But if a tribal entity already has an existing geographic location and a non-Tribal entity proposed to open up nearby. I believe they would be prohibited by the twenty mile trade area definition from, from opening that non-Tribal enterprise. So we haven't created a separate island of potential activity on Tribal reservations. What we have done is simply exempted them from the protections that have been afforded to those people that purchased those property rights. So with that, I will wrap up my comments and be open for any questions.

LCB response: The LCB believes it is appropriate to review a history of the timeline of how the current language of WAC 314-02-1071 came to be, and specifically, mapping that timeline in relation to when the former state liquor stores were auctioned.

Following passage of [Initiative 1183](#) in November 2011, the LCB [announced](#) that it would transition operation of the state liquor stores by June 2012. The stores that were not closed were auctioned in [May 2012](#), with the stores that did not get purchased during the May auction, re-auctioned by [end of June 2012](#).

While the CR 101 announcing that the rulemaking to define the term "trade area" was filed on May 24, 2012 ([WSR 12-12-013](#)), a proposed definition was not publicly disseminated until March 2013 ([WSR 13-07-031](#)), almost nine months after the last former state stores were auctioned off. As such, the bidders who bought the stores in May and June 2012 could not have relied on any proposed definition of trade area as none was available.

The auctioning of these stores in May and June 2012 could not have reasonably been interpreted as auctioning off trade areas because there was no way for anyone to know how big a trade area would be at that time, nor how a trade area would relate to liquor stores owned or operated by Tribes in Indian Country. The notion of twenty miles was not introduced until [March 2013](#) at the earliest. The two Board interim policies that were in

effect prior to the effective date of this rule regarding former state liquor stores ([BIP-01-2012](#), and [BIP-04-2012](#), both rescinded in December 2021), do not provide any proposed or interim definition of trade area. While the term “trade area” is in the language of Initiative 1183, what that specifically referred to was not defined at the time of the auction of the former state liquor stores.

The LCB retains the regulatory authority under [RCW 66.08.030](#) to do rulemaking related to this topic, and at no point provided any sort of assurances that further revisions to the definition of trade area would not be made.

Was the comment reflected in the adopted rule? No.

2. David Cho, Washington Liquor Store Association

Hi Chair. Thank you for the opportunity to speak today. My name is David Cho. I am the president of the Washington liquor store association. We represent the owners of the former state and contract stores, who operates stores less than ten thousand square feet. If you remember about twelve years ago, the states sold off the rights. At that time we numbered about three hundred and thirty and now we are down to about twenty percent of that. For a number of reasons, people left the business, they didn't survive, but nonetheless, I represent the entrepreneurs that made it through. So here we are.

I'm here to speak about the importance of trade area and how that influenced my decision and our members decisions to operate stores and to buy these a title certificates that the state sold.

As a group, we purchased these certificates from the LCB during liquor privatization, this process entailed learning and understanding and calculating all the rules that the LCB told us we would have to operate these liquor stores. And the biggest determinant was the notion of trade area and, and that was important because it protected our rights to operate liquor less than ten thousand square feet. We knew a Safeway could open up. We knew a Costco could open up, but we were protected and that had a value.

And as a result of the state received about thirty three million dollars from entrepreneurs like myself, who determined that I know the rules. The state gave me this contract and I am protected and I could operate and make this kind of money. That's how the state sold off these rights. And that was the actual process. And it is um, in our opinion unethical for the LCB to now say, we will rewrite this contract, we will redefine what trade area is after the LCB uh, collected all these millions from uh, entrepreneurs.

And uh, on a personal note. I uh have four title certificates, so I own a uh, a location in Tumwater I bought that right that is not open because uh, Costco right next door can sell items sometimes cheaper than I could buy them. But I

understand because I knew that Yeah, big company and they can get volume discount. So I understand. I also have the rights in Kirkland, i had a business, but that whole area was being redeveloped in Totem Lake. They did not want me to open up a liquor store there because they sold it to Whole Foods and other big companies. And I could not move within the one mile radius of my certificate. But I knew that rule going into it. That was a calculated risk so that store is not open.

I have a store in Woodinville, which does very well. We sell a lot of local spirits a lot of craft spirits. I have a store in Tacoma that does very well. We're very responsible. But the point is, I know the rules. I calculate my risks. I understand what the LCB did.

And us as members feel that is unethical because now they're saying, let's change rules. All of this money we received from you is now going to be the value will be going down tremendously. So that is what appears that I'm happy to take any questions.

LCB response: The LCB believes it is appropriate to review a history of the timeline of how the current language of WAC 314-02-1071 came to be, and specifically, mapping that timeline in relation to when the former state liquor stores were auctioned.

Following passage of [Initiative 1183](#) in November 2011, the LCB [announced](#) that it would transition operation of the state liquor stores by June 2012. The stores that were not closed were auctioned in [May 2012](#), with the stores that did not get purchased during the May auction, re-auctioned by [end of June 2012](#).

While the CR 101 announcing that the rulemaking to define the term “trade area” was filed on May 24, 2012 ([WSR 12-12-013](#)), a proposed definition was not publicly disseminated until March 2013 ([WSR 13-07-031](#)), almost nine months after the last former state stores were auctioned off. As such, the bidders who bought the stores in May and June 2012 could not have relied on any proposed definition of trade area as none was available.

The auctioning of these stores in May and June 2012 could not have reasonably been interpreted as auctioning off trade areas because there was no way for anyone to know how big a trade area would be at that time, nor how a trade area would relate to liquor stores owned or operated by Tribes in Indian Country. The notion of twenty miles was not introduced until [March 2013](#) at the earliest. The two Board interim policies that were in effect prior to the effective date of this rule regarding former state liquor stores ([BIP-01-2012](#), and [BIP-04-2012](#), both rescinded in December 2021), do not provide any proposed or interim definition of trade area. While the term “trade area” is in the language of Initiative 1183, what that specifically referred to was not defined at the time of the auction of the former state liquor stores.

The LCB retains the regulatory authority under [RCW 66.08.030](#) to do rulemaking related to this topic, and at no point provided any sort of assurances that further revisions to the definition of trade area would not be made.

Was the comment reflected in the adopted rule? No.

Were any changes made between the proposed and final adopted rules? No. No changes have been made between the proposed rules in the CR 102 and the final rules.

DRAFT