



CR 102 Memorandum

Regarding Distillery Reporting and Payment Rules.

Date: April 14, 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.

Stakeholder Engagement

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. The proposed rules are identical to the conceptual draft rules.

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 this CR 102 Memo, GovDelivery message titled "WSLCB Seeks Input on Draft Distillery Reporting Rules" (March 1, 2021).

⁵ 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.

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 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 contractor 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.