



## 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](mailto:rules@lcb.wa.gov).

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### 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*,<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.

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

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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.

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 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.<sup>6</sup>

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.

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

<sup>5</sup> 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.

<sup>6</sup> 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).

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## 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.

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### 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.