



RULE-MAKING ORDER PERMANENT RULE ONLY

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

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: June 09, 2021

TIME: 11:30 AM

WSR 21-13-026

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Purpose: The Washington State Liquor and Cannabis Board (WSLCB) has repealed WAC 314-28-070 and 314-28-080, and adopted amendments to WAC 314-28-010, 314-28-055, and 314-28-090, related to distillery reporting and payment requirements,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- Repealed: WAC 314-28-070 and 314-28-080.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| Federal statute: | New | _____ | Amended | _____ | Repealed | _____ |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 | _____ |
|-----|-------|---------|-------|----------|-------|

The number of sections adopted on the agency's own initiative:

| | | | | | |
|-----|--|---------|---|----------|---|
| New | | Amended | 3 | Repealed | 2 |
|-----|--|---------|---|----------|---|

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

| | | | | | |
|-----|-------|---------|-------|----------|-------|
| New | _____ | Amended | _____ | Repealed | _____ |
|-----|-------|---------|-------|----------|-------|

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:



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. |
|----------------|---|

WAC 314-28-080

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