



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

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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