



# PROPOSED RULE MAKING

**CR-102 (July 2022)**  
**(Implements RCW 34.05.320)**  
Do **NOT** use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: January 03, 2024

TIME: 10:22 AM

WSR 24-02-094

**Agency:** Washington State Liquor and Cannabis Board

- Original Notice**
- Supplemental Notice to WSR** \_\_\_\_\_
- Continuance of WSR** \_\_\_\_\_

- Preproposal Statement of Inquiry was filed as WSR 23-11-160 ; or**
- Expedited Rule Making--Proposed notice was filed as WSR** \_\_\_\_\_; **or**
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**
- Proposal is exempt under RCW** \_\_\_\_\_.

**Title of rule and other identifying information:** (describe subject) WAC 314-02-1071 - What is "trade area"?

**Hearing location(s):**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b> (be specific)	<b>Comment:</b>
February 14, 2024	10:00 AM	All public Board activity will be held in a "hybrid" environment. This means that the public will have options for in-person or virtual attendance. The Boardroom at the headquarters building in Olympia (1025 Union Avenue, Olympia, WA 98504) will be open for in-person attendance. The public may also login using a computer or device, or call-in using a phone, to listen to the meeting through the Microsoft Teams application. The public may provide verbal comments during the specified public comment and rules hearing segments. TVW also regularly airs these meetings. Please note that although the Boardroom will be staffed during a meeting, Board Members and agency participants may continue to appear virtually	For more information about Board meetings, please visit <a href="https://lcb.wa.gov/Boardmeetings/Board_meetings">https://lcb.wa.gov/Boardmeetings/Board_meetings</a>

**Date of intended adoption:** No earlier than February 28, 2024 (Note: This is **NOT** the **effective** date)

<b>Submit written comments to:</b> Name: Daniel Jacobs, Rules & Policy Coordinator Address: PO Box 43080, Olympia WA 98504-3080 Email: rules@lcb.wa.gov Fax: 360 704 5027 Other: By (date) February 7, 2024	<b>Assistance for persons with disabilities:</b> Contact Anita Bingham, ADA Coordinator, Human Resources Phone: 360 664 1739 Fax: 360 664 9689 TTY: 7-1-1 or 1-800-833-6388 Email: anita.bingham@lcb.wa.gov Other: By (date) February 7, 2024
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**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The purpose of the proposed amended language is to clarify the language in WAC 314-02-1071 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, as described below, define 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. It is anticipated to allow a small number of spirits retailers to open on Tribal land that have historically not been able to open due to regulatory requirements.

**Reasons supporting proposal:** WAC 314-02-1071 has not been revised since it was originally promulgated in 2013. The Board undertook the rule project to explore whether modernizing language was appropriate in the context of statewide demographic shifts and current socioeconomic factors. Extensive outreach to stakeholders and Tribal partners has been conducted, first in July 2023, and again in November 2023. After circulating draft language in July 2023, the Board received feedback from existing licensees and from several of the State’s Tribe’s and Tribal partners on suggestions to the rule language. Revised draft language was developed between July and November 2023, and feedback was gathered during two Tribal Engagement Sessions and a stakeholder engagement session in November. The proposed draft rule language was generally supported by the participants of the various rule workshops, and that is by and large the language that is being filed with this proposal. Some proposed edits received from industry groups have not been incorporated into the proposed rule language as they were viewed to be beyond the intentionally narrow scope of this rulemaking.

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 <a href="http://wslcb.maps.arcgis.com/home/">http://wslcb.maps.arcgis.com/home/</a> .	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	Returning oversight of entities on tribal land to Tribes.

		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.	
All	[Changed written numbers to numeric form.]		Improving clarity without changing effect.

<b>Statutory authority for adoption:</b> RCW 66.08.030			
<b>Statute being implemented:</b> RCW 66.24.630			
<b>Is rule necessary because of a:</b>			
Federal Law?		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If yes, CITATION:			
<b>Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:</b> None			
<b>Type of proponent:</b> <input type="checkbox"/> Private <input type="checkbox"/> Public <input checked="" type="checkbox"/> Governmental			
<b>Name of proponent:</b> (person or organization) Washington State Liquor and Cannabis Board			
<b>Name of agency personnel responsible for:</b>			
	Name	Office Location	Phone
Drafting: Coordinator	Daniel Jacobs, Rules & Policy	1025 Union Avenue, Olympia WA, 98504	360-480-1238
Implementation: Licensing	Becky Smith, Director of	1025 Union Avenue, Olympia WA, 98504	360-664-1753
Enforcement: Enforcement & Education	Chandra Wax, Director of	1025 Union Avenue, Olympia WA, 98504	360-664-1726
<b>Is a school district fiscal impact statement required under <a href="#">RCW 28A.305.135</a>?</b>			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes, insert statement here:			
The public may obtain a copy of the school district fiscal impact statement by contacting:			
Name:			
Address:			
Phone:			
Fax:			
TTY:			
Email:			
Other:			
<b>Is a cost-benefit analysis required under <a href="#">RCW 34.05.328</a>?</b>			
<input type="checkbox"/> Yes: A preliminary cost-benefit analysis may be obtained by contacting:			
Name:			
Address:			
Phone:			
Fax:			
TTY:			
Email:			
Other:			
<input checked="" type="checkbox"/> No: Please explain: The proposed amended rules do not qualify as a type of rule requiring a cost-benefit analysis under RCW 34.05.328(5). The LCB is not a listed agency under RCW 34.05.328(5)(a)(i), so the cost-benefit analysis			

requirements in RCW 34.05.328 are not applicable to the proposed rules unless voluntarily applied or made applicable by the joint administrative rules review committee under RCW 34.05.328(5)(a)(ii).

**Regulatory Fairness Act and Small Business Economic Impact Statement**

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

**(1) Identification of exemptions:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:

- |   |   |
|---|---|
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(b)<br>(Internal government operations) | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e)<br>(Dictated by statute)  |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f)<br>(Set or adjust fees)   |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g)<br>(i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#) (does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW

Explanation of how the above exemption(s) applies to the proposed rule:

**(2) Scope of exemptions:** *Check one.*

The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.

The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):

The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

**(3) Small business economic impact statement:** *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. Agencies are required to consider costs imposed on business and costs associated with compliance with proposed rules. Agencies are not required under chapter 19.85 RCW to consider indirect costs not associated with compliance. Here, the agency considered potential administrative costs that a licensee may incur complying with the proposed rules.

LCB applied the North American Industry Classification System (NAICS) codes 445310 for Beer, Wine, and Liquor Stores. This is defined by the NAICS as follows: establishments primarily engaged in retailing packaged alcoholic beverages, such as ale, beer, wine and liquor. The industry description for this code is presented in the table below, and can be accessed at <https://www.census.gov/naics/>

LCB applied a default estimated compliance cost when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). This reflects a generously estimated 2 hours of administrative time at \$50 per hour, for a total of \$100. The agency assumes this activity would involve reviewing the revised rules and considering the implications when applying for a spirits retail license. Existing spirits retail licensees have no reason or need to review the revised rules, but if they decide to, they too will expend no more than \$100.

<u>2022 Industry NAICS Code</u>	<u>Estimated Cost of Compliance</u>	<u>Industry Description</u>	<u>NAICS Code Title</u>	<u>Minor Cost Estimate</u>	<u>1% of Avg Annual Payroll (Threshold)</u>	<u>0.3% of Avg Annual Gross Business Income (Threshold)</u>
445310	\$100	Beer, Wine, and Liquor Stores	Beer, Wine, and Liquor Stores	\$2,645.36	\$1,970.63 2021 Dataset pulled from ESD	\$2,645.36 2021 Dataset pulled from DOR


As the table demonstrates, the estimated cost of compliance does not exceed the threshold for spirits retailers, classified by NAICS as beer, wine and liquor stores. Therefore, implementation of this amended rule is not anticipated to result in more than minor costs on businesses as defined in RCW 19.85.020(2).

ESD – Washington State Employment Security Department  
DOR – Washington State Department of Revenue

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name: Daniel Jacobs, Rules & Policy Coordinator  
Address: PO Box 43080, Olympia WA 98504-3080  
Phone: 360-480-1238  
Fax: 360 704 5027  
TTY:  
Email: rules@lcb.wa.gov  
Other:

<b>Date:</b> January 3, 2024	<b>Signature:</b> 
<b>Name:</b> David Postman	
<b>Title:</b> Chair	

**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.