

WSR 21-09-042
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed April 14, 2021, 10:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-05-069.

Title of Rule and Other Identifying Information: Distillery reporting and payment rules, the Washington state liquor and cannabis board (WSLCB) is proposing repealing WAC 314-28-070 and 314-28-080; and amending WAC 314-28-010, 314-28-055, and 314-28-090 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).

Repealing WAC 314-28-070 Monthly reporting and payment requirements for a distiller and craft distiller and 314-28-080 What if a distillery or craft distillery licensee fails to report or pay, or reports or pays late?

Amending WAC 314-28-010 Records, 314-28-055 What are the requirements for contract production by craft distilleries?, and 314-28-090 Distilleries or craft distilleries—Selling out-of-state.

Hearing Location(s): On May 26, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Board members, presenters, and staff will all participate remotely. The public may login using a computer or device, or call-in using a phone, to listen to the meeting through the Webex [WebEx] application. The public may provide verbal comments during the specified public comment and rules hearing segments. For more information about board meetings, please visit <https://lcb.wa.gov/Boardmeetings/Boardmeetings>.

Date of Intended Adoption: No earlier than June 9, 2021.

Submit Written Comments to: Audrey Vasek, 1025 Union Avenue, Olympia, WA 98501, email rules@lcb.wa.gov, fax 360-704-5027, by May 26, 2021.

Assistance for Persons with Disabilities: Contact Claris Nhanabu, ADA coordinator, human resources, phone 360-664-1642, fax 360-664-9689, TTY 711 or 1-800-833-6388, email Claris.Nhanabu@lcb.wa.gov, by May 19, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule proposal is to revise the distillery reporting and payment rules to be consistent with the court of appeals decision in *Blue Spirits*. The rule proposal:

- Repeals 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.
- Repeals 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.

- Amends 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.
- Amends 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.
- Amends 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.

Reasons Supporting Proposal: The proposed rules are needed to amend the distillery reporting and payment rules to be consistent with the court of appeals decision in *Blue Spirits*. See purpose statement.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: Not applicable.

Rule is necessary because of state court decision, *Blue Spirits Distilling, LLC v. WSLCB*, 15 Wn. App. 2d 779, 478 P.3d 153 (2020).

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Audrey Vasek, Policy and Rules Coordinator, 1025 Union Avenue, Olympia, WA 98501, 360-664-1758; Implementation: Jim Morgan, Chief Financial Officer, 1025 Union Avenue, Olympia, WA 98501, 360-664-1690; and Enforcement: Chandra Brady, Director of the Enforcement and Education Division, 1025 Union Avenue, Olympia, WA 98501, 360-664-1726.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Consistent with RCW 34.05.328 (5)(a), these proposed rules are not subject to cost-benefit analysis requirements unless requested by the joint administrative rules review committee or voluntarily applied.

Additionally, these supplemental proposed rules do not qualify as significant legislative rules under RCW 34.05.328 (5) (c).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated.

Estimated Cost of Compliance: The proposed rule revisions 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. The reduction in reporting burden will happen automatically, and licensees will not have to interact with licensing, finance, enforcement and education, or other agency staff in order to receive and benefit from the reduction in reporting burden.

The agency anticipates that licensees may need to spend a small amount of time (less than thirty minutes of administrative time) to familiarize themselves with the rule revisions in order to be aware that the reporting and payment requirements have been removed. This would be a one-time cost.

According to the 2019 Occupational Employment Statistics Databook available in the employment security department (ESD) labor market report library (<https://esd.wa.gov/labormarketinfo/report-library>), the average hourly wage in Washington state for Secretaries and Administrative Assistants, Except Legal, Medical, and Executive (using the Standard Occupational Classification Code 43-6014) is \$21.31. Based on that data, the estimated cost for the administrative activity of familiarization with the rule revisions is \$10.66 (\$21.31 avg. hourly wage x .5 hours = approximately \$10.66).

Minor Cost Threshold Estimates: The board applied North American Industry Classification System (NAICS) codes 312140 for distilleries to estimate the minor cost thresholds for distillery and craft distillery licensees. According to the 2017 NAICS Manual (<https://www.census.gov/library/publications/2017/econ/2017-naics-manual.html>), the distillery industry (312140) "comprises establishments primarily engaged in one or more of the following: (1) distilling potable liquors (except brandies); (2) distilling and blending liquors; and (3) blending and mixing liquors and other ingredients." There are no separate NAICS codes available for craft distilleries.

As shown in the table below, the estimated one-time cost of compliance for distilleries and craft distilleries (\$10.66) does not exceed the minor cost estimate for this industry (\$2,076.60), so a small business economic impact statement is not required under RCW 19.85.030.

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate - Max of 1%Pay, 0.3%Rev, and \$100	1% of Avg Annual Payroll. (0.01*AvgPay)	0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)
312140	\$10.66	Distilleries	Distilleries	\$2,076.60	\$2,076.60 2018 Dataset pulled from ESD	\$1,471.28 2018 Dataset pulled from DOR

April 14, 2021

OTS-2955.1

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.

[Statutory Authority: RCW 66.08.030. WSR 16-01-102, § 314-28-010, filed 12/16/15, effective 1/16/16. Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, and 66.24.640. WSR 12-12-065, § 314-28-010, filed 6/5/12, effective 7/6/12. Statutory Authority: RCW 66.24.145 and 66.08.030. WSR 10-19-066, § 314-28-010, filed 9/15/10, effective 10/16/10; WSR 09-02-011, § 314-28-010, filed 12/29/08, effective 1/29/09. Statutory Authority: RCW 66.08.030. WSR 86-07-022 (Order 172, Resolution No. 181), § 314-28-010, filed 3/13/86; Order 14, § 314-28-010, filed 12/1/70, effective 1/1/71; Rule 84, filed 6/13/63.]

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 man-

ufacturers' 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.

[Statutory Authority: RCW 66.24.145, and 66.08.030. WSR 14-20-047, § 314-28-055, filed 9/24/14, effective 10/25/14; WSR 10-19-066, § 314-28-055, filed 9/15/10, effective 10/16/10.]

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.))~~

[Statutory Authority: RCW 66.24.170, 66.24.640, 66.24.695, and 66.08.030. WSR 18-02-006, § 314-28-090, filed 12/20/17, effective 1/20/18. Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, and 66.24.640. WSR 12-12-065, § 314-28-090, filed 6/5/12, effective 7/6/12. Statutory Authority: RCW 66.24.145 and 66.08.030. WSR 10-19-066, § 314-28-090, filed 9/15/10, effective 10/16/10; WSR 09-02-011, § 314-28-090, filed 12/29/08, effective 1/29/09.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

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|----------------|--|
| 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? |