



Washington State Liquor and Cannabis Board

Date: March 17, 2021

To: David Postman, Board Chair
Ollie Garrett, Board Member
Russ Hauge, Board Member

From: Audrey Vasek, Policy and Rules Coordinator

Copy: Rick Garza, Agency Director
Megan Duffy, Deputy Director
Chandra Brady, Director of Enforcement and Education
Becky Smith, Licensing Director
Jim Morgan, Chief Financial Officer
Kathy Hoffman, Policy and Rules Manager

Subject: **Supplemental CR 102 for Implementation of 2020 Legislation – E2SSB 5549 (Distilleries).**

The Policy and Rules Coordinator requests approval to file a supplemental rule proposal (CR 102) for the rule making described in the CR 102 Memorandum attached to this order and presented at the Board meeting on March 17, 2021.

If approved for filing, the tentative timeline for this rule proposal is as follows:

March 17, 2021	Board is asked to approve filing proposed rules (CR 102). CR 102 filed with the Office of the Code Reviser. LCB webpage updated and notice circulated by GovDelivery distribution list. Formal comment period begins.
April 7, 2021	Notice published in the Washington State Register.
April 28, 2021	Public hearing held and formal comment period ends.
No earlier than May 12, 2021	Board is asked to adopt rules if no substantive changes are made (CR 103). Concise Explanatory Statement provided to individuals who offered written or oral comment at the public hearing, and during the formal comment period, consistent with RCW 34.05.325. CR 103 and adopted rules are filed with the Office of the Code Reviser. LCB webpage updated and notice circulated by GovDelivery distribution list.
June 12, 2021	Rules are effective 31 days after filing (unless otherwise specified), consistent with RCW 34.05.380(2).

☒ Approve ☐ Disapprove



David Postman, Chair

3.17.2021
Date

☒ Approve ☐ Disapprove



Ollie Garrett, Board Member

3.17.2021
Date

☒ Approve ☐ Disapprove



Russ Hauge, Board Member

3.17.2021
Date

Attachments: CR 102 Memorandum



Supplemental CR 102 Memorandum

Regarding Implementation of 2020 Legislation – E2SSB 5549 (Distilleries).

Date: March 17, 2021
Presented by: Audrey Vasek, Policy and Rules Coordinator

Background

The Board initiated a formal rule inquiry under WSR # 20-16-150 on August 5, 2020 to consider revisions to implement 2020 legislation, Engrossed Second Substitute Senate Bill (E2SSB) 5549 (chapter 238, Laws of 2020), related to distilleries.¹

E2SSB 5549 modified the privileges and requirements for distillery and craft distillery licenses,² and established a new off-site tasting room license available to distillery and craft distillery licensees beginning January 1, 2021.³ E2SSB 5549 also authorized jointly operated off-site tasting rooms and jointly operated conjoined consumption areas for certain licensees.⁴

A virtual Listen and Learn session was held on November 17, 2020, to engage any interested members of the public in the rulemaking process and gather feedback and suggestions for revisions to conceptual draft rules. Messaging for the Listen and Learn session was sent to GovDelivery subscriber lists two weeks prior to the event.⁵ At a peak, there were over forty people in attendance.

The feedback received during the Listen and Learn session was incorporated into the proposed rules and original CR 102 filed as WSR # 21-01-211 on December 23, 2020. A description of the changes made based on this feedback was provided in the original CR 102 Memorandum and in a follow-up email sent to Listen and Learn session attendees after the original CR 102 was filed.⁶

¹ E2SSB 5549 is largely codified in RCW 66.24.140 through 66.24.148.

² See RCW 66.24.140, 66.24.145, and 66.24.1471.

³ See RCW 66.24.146 and 66.24.1473.

⁴ See RCW 66.24.1472.

⁵ See Attachment B to the original CR 102 Memo—E2SSB 5549 Distilleries ([linked here](#)).

⁶ See the “Stakeholder Engagement” section of the original CR 102 Memo—E2SSB 5549 Distilleries ([linked here](#)). The feedback received during the Listen and Learn Session was provided in Attachment A to the CR 102 Memo. A follow-up email containing information about

The public hearing on the proposed rules was held on February 3, 2021. One person testified at the February 3, 2021, public hearing, and two written comments were received.⁷

Based on the impact from a Court of Appeals decision to the distillery monthly reporting and payment requirements (*Blue Spirits Distilling, LLC v. WSLCB* ⁸), and a public comment related to the distinctly marked glassware requirement in jointly operated conjoined consumption areas, the Board reconsidered the original rule proposal and made substantive changes. RCW 34.05.340 provides that an agency may not adopt a rule that is substantially different from the rule proposed in the published notice of proposed rule adoption or a supplemental notice in the proceeding. If an agency contemplates making a substantial variance from a proposed rule described in a published notice, it may file a supplemental notice with the Code Reviser meeting the requirements of RCW 34.05.320 and reopen the proceedings for public comment on the proposed variance.

The supplemental CR 102 rule proposal, as compared to the original rule proposal, includes the following changes:

- Replaces the monthly reporting requirement on revenue from tasting room sales of adulterated spirits for on-premises consumption in proposed new rule section WAC 314-28-065(1)(c) with an annual reporting requirement consistent with RCW 66.24.140(2)(c)(ii) and 66.24.145(3)(b), reducing the reporting burden on licensees.
- Revises the penalty schedule in WAC 314-29-035 to include penalties corresponding to failure to file the annual report on revenue from tasting room sales of adulterated spirits for on premises consumption. The proposed penalties are consistent with the existing penalties for failure to file tax/shipment reports.
- Clarifies that the distinctive glassware markings required by RCW 66.24.1472 for licensees sharing a jointly operated conjoined consumption area may be permanent or temporary by adding language to proposed new rule section WAC 314-28-320(1)(d)(ii).

Estimated Costs of Compliance

For the purpose of the minor cost analysis required by the Regulatory Fairness Act in chapter 19.85 RCW, the supplemental CR 102 includes revised estimated

the CR 102 rule proposal, the December 23 Board activity, and notice of the February 3, 2021, public hearing was sent on December 23, 2020, to the Listen and Learn session attendees.

⁷ See Attachment C to this supplemental CR 102 Memo—E2SSB 5549, containing comments received during the public comment period for the original CR 102 rule proposal filed as WSR # 21-01-211 on December 23, 2020.

⁸ *Blue Spirits Distilling, LLC v. WSLCB*, No. 53341-3-II, slip op. (Wash. Ct. App. Dec. 22, 2020). See [CR 101](#) related to distillery monthly reporting and payment rules filed as WSR 21-05-069 on February 17, 2021.

costs of compliance with the supplemental proposed rules. The original CR 102 included estimates of administrative costs related to recordkeeping and filing monthly production and sales summary fee reports. Since the supplemental rule proposal no longer requires distilleries and craft distilleries to submit monthly reports, these cost estimates have been removed from the supplemental CR 102 and the estimated cost of compliance has decreased. The estimated costs of compliance and the relevant minor cost threshold estimates are described in detail in the CR 102 form.

Rule Necessity

The proposed rules are needed to align existing rules with and implement the law as established by E2SSB 5549. The provisions of E2SSB 5549 relating to distillery, craft distillery, and off-site tasting room license privileges and requirements are largely codified in RCW 66.24.140 through 66.24.148, as described below:

- RCW 66.24.140 contains distillery license privileges and requirements;
- RCW 66.24.145 contains craft distillery license privileges and requirements;
- RCW 66.24.146 contains the distillery and craft distillery off-site tasting room license privileges and requirements;
- RCW 66.24.1471 contains the distillery, craft distillery, and off-site tasting room food offerings requirements;
- RCW 66.24.1472 contains the jointly operated off-site tasting room and jointly operated conjoined consumption area privileges and requirements;
- RCW 66.24.1473 contains the one hundred fifty limit on the total number of off-site tasting room licenses;
- RCW 66.24.1474 states that nothing prohibits a distillery, craft distillery, or off-site tasting room from obtaining a spirits, beer, and wine restaurant license; and
- RCW 66.24.148 provides the Board with rulemaking authority to implement E2SSB 5549.

Specifically:

- *The following sections in chapter 314-28 WAC are amended:*
 - WAC 314-28-005 “Definitions.” [RCW Authority: RCW 66.24.148, 66.08.030, and 66.24.146.] ;
 - WAC 314-28-030 “What does a distillery license allow?” [RCW Authority: RCW 66.24.148, 66.08.030, 66.24.140, and 66.24.1474]; and
 - WAC 314-28-050 “What does a craft distillery license allow?” [RCW Authority: RCW 66.24.148, 66.08.030, 66.24.145, and 66.24.1474].
- *The following sections in chapter 314-28 WAC are new:*
 - WAC 314-28-065 “Sampling, service, and sales requirements for distillery and craft distillery licensees—Annual report on revenue from tasting room sales of adulterated spirits for on-premises

- consumption.” [RCW Authority: RCW 66.24.148, 66.08.030, 66.24.140, and 66.24.145];
- WAC 314-28-066 “Tasting room age restrictions for distillery and craft distillery licensees.” [RCW Authority: RCW 66.24.148, 66.08.030, 66.24.140, and 66.24.145];
- WAC 314-28-067 “Food offerings requirements.” [RCW Authority: RCW 66.24.148, 66.08.030, and 66.24.1471];
- WAC 314-28-300 “Off-site tasting room license.” [RCW Authority: RCW 66.24.148, 66.08.030, 66.24.146, 66.24.1473, and 66.24.1474];
- WAC 314-28-310 “Jointly operated off-site tasting rooms.” [RCW Authority: RCW 66.24.148, 66.08.030, and 66.24.1472]; and
- WAC 314-28-320 “Jointly operated conjoined consumption areas.” [RCW Authority: RCW 66.24.148, 66.08.030, and 66.24.1472]
- *The following section in chapter 314-28 WAC is repealed:* WAC 314-28-095 “Farmer’s market spirits sales.” [RCW Authority: RCW 66.24.148 and 66.08.030.]
- *The following section in chapter 314-29 WAC is amended:* WAC 314-29-035 “Group 4 nonretail violations.” [RCW Authority: RCW 66.24.148, 66.08.030, 66.24.140, 66.24.145, and 66.24.1471.]

Description of Rule Changes

Amended section. WAC 314-28-005, relating to definitions. The proposed revisions include adding a definition of “off-site tasting room,” a cross-reference to RCW 66.24.146, and a definition of “tasting room.” An introductory sentence is added as a technical update, stating that the definitions apply throughout chapter 314-28 RCW unless the context clearly requires otherwise.

Amended section. WAC 314-28-030, relating to distillery licenses. The proposed revisions include removing language in subsection (1) that corresponds to language that was deleted or amended by E2SSB 5549 and adding a cross-reference to the authorizing statute, RCW 66.24.140. A new subsection (2) is added containing cross-references to applicable laws and rules. A new subsection (4) is added containing language related to obtaining a spirits, beer, and wine restaurant license consistent with RCW 66.24.1474.

Amended section. WAC 314-28-050, relating to craft distillery licenses. The proposed revisions include removing language in subsection (1) that corresponds to language that was deleted or amended by E2SSB 5549 and adding a cross-reference to the authorizing statute, RCW 66.24.145. A new subsection (2) is added containing cross-references to applicable laws and rules. A cross-reference to RCW 66.24.140 is added to subsection (3) to provide context for the one hundred fifty thousand proof gallon limit for craft distilleries, and cross-references to RCW 66.24.1474 and 66.24.400 are added to subsection (4) related to obtaining a spirits, beer, and wine restaurant license.

New section. WAC 314-28-065, relating to sampling, service, and sales requirements and the annual report on revenue from tasting room sales of adulterated spirits for on-premises consumption. The proposed rule section implements the statutory requirements in RCW 66.24.140 and 66.24.145 applicable to distillery and craft distillery licensees that sell spirits and other authorized alcohol products (such as vermouth or sparkling wine) for off-premises or on-premises consumption, or sell servings of adulterated spirits (mixed drinks) for on-premises consumption. These statutory requirements include, but are not limited to, the alcohol stock-keeping unit requirement⁹ and the thirty percent annual limit on revenue derived from sales of adulterated spirits for on-premises consumption.¹⁰

New section. WAC 314-28-066, relating to tasting room age restrictions. The proposed rule section implements the statutory requirements related to tasting room age restrictions in RCW 66.24.140 and 66.24.145 applicable to distillery and craft distillery licensees. For example, the requirement that persons under the age of twenty-one be accompanied by their parent or legal guardian in order to enter a tasting room, and that tasting rooms include a designated area for persons under the age of twenty-one.

New section. WAC 314-28-067, relating to food offerings requirements. The proposed rule section implements RCW 66.24.1471 by describing the food offerings requirements applicable to distilleries, craft distilleries, and off-site tasting rooms.¹¹

New section. WAC 314-28-300, relating to off-site tasting room licenses. The proposed rule section implements RCW 66.24.146, which creates the new off-site tasting room license available to distillery or craft distillery licensees, and includes a reference to the annual fee for the new license, which is set by law at \$2000. The proposed rule section also includes a cross-reference to the limit on the total number of off-site tasting room licenses under RCW 66.24.1473, and includes cross-references to other applicable laws and rules.

New section. WAC 314-28-310, relating to jointly operated off-site tasting rooms. The proposed rule section implements the statutory requirements in RCW 66.24.1472 related to jointly operated off-site tasting rooms. These requirements

⁹ At any one time, no more than twenty-five percent of a licensee's total alcohol stock-keeping units may be vermouth, sparkling wine, or spirits produced by another licensee. However, if a distillery sells fewer than twenty alcohol stock-keeping units of products of its own production, it may sell up to five stock-keeping units of vermouth, sparkling wine, or spirits produced by another licensee. RCW 66.24.140(3)(a) and 66.24.145(4)(a).

¹⁰ Revenue derived from sales of adulterated spirits (mixed drinks) for on-premises consumption must not comprise more than thirty percent of the overall gross revenue earned in the tasting room during the calendar year. RCW 66.24.140(2)(c)(ii) and 66.24.145(3)(b).

¹¹ RCW 66.24.1471(5) states: "Requirements for food offerings shall be determined by the board in rule."

are applicable to any distillery, craft distillery, or winery, or any combination of these licenses, who choose to jointly operate an off-site tasting room location. Cross-references to applicable laws and rules are included.

New section. WAC 314-28-320, relating to jointly operated conjoined consumption areas. The proposed rule section implements the statutory requirements in RCW 66.24.1472 related to jointly operated conjoined consumption areas, including the distinctly marked glassware requirement. These requirements are applicable to breweries, microbreweries, wineries, distilleries, or craft distilleries, or any combination of these licensees, whose property parcels or buildings are located in direct physical proximity to one another. Cross-references to applicable laws and rules are included.

Amended section. WAC 314-29-035, relating to penalties—Group 4 nonretail violations. The proposed revisions to this rule section implement E2SSB 5549 by updating the penalty schedule to include violations of the new statutory requirements. Penalties corresponding to violations of the requirements related to food offerings, alcohol stock-keeping units, filing the annual report on revenue from tasting room sales of adulterated spirits for on-premises consumption, and maintaining the thirty percent annual limit on revenue derived from sales of adulterated spirits (mixed drinks) for on-premises consumption, are added to the penalty schedule, along with cross-references to the appropriate RCWs and WACs.

Repealed section. WAC 314-28-095, relating to farmer's market spirits sales. The proposed repeal of this section is necessary to implement E2SSB 5549, which deleted the statutory language creating the distillery and craft distillery farmer's market spirits sales endorsement.¹²

Attachments:

Attachment A. (Table containing public feedback received during Listen and Learn Session on November 17, 2020.)

Attachment B. (GovDelivery Messaging re Listen and Learn Session.)

Attachment C. (Table containing comments received during the public comment period for the original CR 102 rule proposal, filed as WSR # 21-01-211 on December 23, 2020).

¹² See RCW 66.24.145(4) as it existed prior to the June 11, 2020, effective date of the amendments made by E2SSB 5549 to this section.



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Washington State Liquor and Cannabis Board

☐ Original Notice

☒ Supplemental Notice to WSR 21-01-211

☐ Continuance of WSR _____

☒ Preproposal Statement of Inquiry was filed as WSR 20-16-150 ; 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) The Washington State Liquor and Cannabis Board (Board) proposes new rule sections and amendments to existing rule sections to align existing rules with and implement the law as established by Engrossed Second Substitute Senate Bill (E2SSB) 5549 (chapter 238, Laws of 2020).

The following sections in chapter 314-28 WAC are amended: WAC 314-28-005 "Definitions."; 314-28-030 "What does a distillery license allow?"; and 314-28-050 "What does a craft distillery license allow?".

The following sections in chapter 314-28 WAC are new: WAC 314-28-065 "Sampling, service, and sales requirements for distillery and craft distillery licensees."; 314-28-066 "Tasting room age restrictions for distillery and craft distillery licensees."; 314-28-067 "Food offerings requirements."; 314-28-300 "Off-site tasting room license."; 314-28-310 "Jointly operated off-site tasting rooms."; and 314-28-320 "Jointly operated conjoined consumption areas."

The following section in chapter 314-28 WAC is repealed: WAC 314-28-095 "Farmer's market spirits sales."

The following section in chapter 314-29 WAC is amended: WAC 314-29-035 "Group 4 nonretail violations."

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
April 28, 2021	10:00 am	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 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/Board_meetings .

Date of intended adoption: No earlier than May 12, 2021. (Note: This is **NOT** the effective date)

Submit written comments to:

Name: Audrey Vasek

Address: 1025 Union Avenue, Olympia, WA 98501

Email: rules@lcb.wa.gov

Fax: 360-704-5027

Other:

By (date) April 28, 2021

Assistance for persons with disabilities:

Contact Claris Nhanabu, ADA Coordinator, Human Resources

Phone: 360-664-1642

Fax: 360-664-9689

TTY: 7-1-1 or 1-800-833-6388

Email: Claris.Nhanabu@lcb.wa.gov

Other:

By (date) April 21, 2021

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of this supplemental rule proposal is to align existing rule language with changes made to the law by E2SSB 5549 and establish new rule sections needed to implement the law. Specifically, the supplemental rule proposal:

- Amends **WAC 314-28-005**, relating to definitions. The proposed revisions include adding a definition of “off-site tasting room,” a cross-reference to RCW 66.24.146, and a definition of “tasting room.” An introductory sentence is added as a technical update, stating that the definitions apply throughout chapter 314-28 RCW unless the context clearly requires otherwise.
- Amends **WAC 314-28-030**, relating to distillery licenses. The proposed revisions include removing language in subsection (1) that corresponds to language that was deleted or amended by E2SSB 5549 and adding a cross-reference to the authorizing statute, RCW 66.24.140. A new subsection (2) is added containing cross-references to applicable laws and rules. A new subsection (4) is added containing language related to obtaining a spirits, beer, and wine restaurant license consistent with RCW 66.24.1474.
- Amends **WAC 314-28-050**, relating to craft distillery licenses. The proposed revisions include removing language in subsection (1) that corresponds to language that was deleted or amended by E2SSB 5549 and adding a cross-reference to the authorizing statute, RCW 66.24.145. A new subsection (2) is added containing cross-references to applicable laws and rules. A cross-reference to RCW 66.24.140 is added to subsection (3) to provide context for the one hundred fifty thousand proof gallon limit for craft distilleries, and cross-references to RCW 66.24.1474 and 66.24.400 are added to subsection (4) related to obtaining a spirits, beer, and wine restaurant license.
- Creates a new section **WAC 314-28-065**, relating to sampling, service, and sales requirements, and the annual report on revenue from tasting room sales of adulterated spirits for on-premises consumption. The proposed rule section implements the statutory requirements in RCW 66.24.140 and 66.24.145 applicable to distillery and craft distillery licensees that sell spirits and other authorized alcohol products (such as vermouth or sparkling wine) for off-premises or on-premises consumption, or sell servings of adulterated spirits (mixed drinks) for on-premises consumption. These statutory requirements include, but are not limited to, the alcohol stock-keeping unit requirement and the thirty percent annual limit on revenue derived from sales of adulterated spirits for on-premises consumption.
- Creates a new section **WAC 314-28-066**, relating to tasting room age restrictions. The proposed rule section implements the statutory requirements related to tasting room age restrictions in RCW 66.24.140 and 66.24.145 applicable to distillery and craft distillery licensees. For example, the requirement that persons under the age of twenty-one be accompanied by their parent or legal guardian in order to enter a tasting room, and that tasting rooms include a designated area for persons under the age of twenty-one.
- Creates a new section **WAC 314-28-067**, relating to food offerings requirements. The proposed rule section implements RCW 66.24.1471 by describing the food offerings requirements applicable to distilleries, craft distilleries, and off-site tasting rooms.
- Creates a new section **WAC 314-28-300**, relating to off-site tasting room licenses. The proposed rule section implements RCW 66.24.146, which creates the new off-site tasting room license available to distillery or craft distillery licensees, and includes a reference to the annual fee for the new license, which is set by law at \$2000. The proposed rule section also includes a cross-reference to the limit on the total number of off-site tasting room licenses under RCW 66.24.1473, and includes cross-references to other applicable laws and rules.
- Creates a new section **WAC 314-28-310**, relating to jointly operated off-site tasting rooms. The proposed rule section implements the statutory requirements in RCW 66.24.1472 related to jointly operated off-site tasting rooms. These requirements are applicable to any distillery, craft distillery, or winery, or any combination of these licenses, who choose to jointly operate an off-site tasting room location. Cross-references to applicable laws and rules are included.
- Creates a new section **WAC 314-28-320**, relating to jointly operated conjoined consumption areas. The proposed rule section implements the statutory requirements in RCW 66.24.1472 related to jointly operated conjoined consumption areas, including the distinctly marked glassware requirement. These requirements are applicable to breweries, microbreweries, wineries, distilleries, or craft distilleries, or any combination of these licensees, whose property parcels or buildings are located in direct physical proximity to one another. Cross-references to applicable laws and rules are included.
- Amends **WAC 314-29-035**, relating to penalties—Group 4 nonretail violations. The proposed revisions to this rule section implement E2SSB 5549 by updating the penalty schedule to include violations of the new statutory requirements. Penalties corresponding to violations of the requirements related to food offerings, alcohol stock-

<p>keeping units, filing the annual report on revenue from tasting room sales of adulterated spirits for on-premises consumption, and maintaining the thirty percent annual limit on revenue derived from sales of adulterated spirits (mixed drinks) for on-premises consumption, are added to the penalty schedule, along with cross-references to the appropriate RCWs and WACs.</p> <ul style="list-style-type: none">Repeals WAC 314-28-095, relating to farmer’s market spirits sales. The proposed repeal of this section is necessary to implement E2SSB 5549, which deleted the statutory language creating the distillery and craft distillery farmer’s market spirits sales endorsement.																			
Reasons supporting proposal: The supplemental proposed rules are needed to align existing rules with and implement the law as established by E2SSB 5549. See purpose statement.																			
Statutory authority for adoption: RCW 66.24.148, 66.24.1471, and 66.08.030.																			
Statute being implemented: E2SSB 5549 (chapter 238, Laws of 2020); RCW 66.24.140, 66.24.145, 66.24.146, 66.24.1471, 66.24.1472, 66.24.1473, 66.24.1474.																			
Is rule necessary because of a: <table><tr><td>Federal Law?</td><td><input type="checkbox"/> Yes</td><td><input checked="" type="checkbox"/> No</td></tr><tr><td>Federal Court Decision?</td><td><input type="checkbox"/> Yes</td><td><input checked="" type="checkbox"/> No</td></tr><tr><td>State Court Decision?</td><td><input type="checkbox"/> Yes</td><td><input checked="" type="checkbox"/> No</td></tr></table> <p>If yes, CITATION:</p>				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							
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																	
Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None.																			
Name of proponent: (person or organization) Washington State Liquor and Cannabis Board		<input type="checkbox"/> Private <input type="checkbox"/> Public <input checked="" type="checkbox"/> Governmental																	
Name of agency personnel responsible for: <table><thead><tr><th></th><th>Name</th><th>Office Location</th><th>Phone</th></tr></thead><tbody><tr><td>Drafting:</td><td>Audrey Vasek, Policy and Rules Coordinator</td><td>1025 Union Avenue, Olympia WA, 98501</td><td>360-664-1758</td></tr><tr><td>Implementation:</td><td>Becky Smith, Director of Licensing</td><td>1025 Union Avenue, Olympia, WA. 98501</td><td>360-664-1753</td></tr><tr><td>Enforcement:</td><td>Justin Nordhorn, Chief of Enforcement</td><td>1025 Union Avenue, Olympia, WA, 98501</td><td>360-664-1726</td></tr></tbody></table>					Name	Office Location	Phone	Drafting:	Audrey Vasek, Policy and Rules Coordinator	1025 Union Avenue, Olympia WA, 98501	360-664-1758	Implementation:	Becky Smith, Director of Licensing	1025 Union Avenue, Olympia, WA. 98501	360-664-1753	Enforcement:	Justin Nordhorn, Chief of Enforcement	1025 Union Avenue, Olympia, WA, 98501	360-664-1726
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Enforcement:	Justin Nordhorn, Chief of Enforcement	1025 Union Avenue, Olympia, WA, 98501	360-664-1726																
Is a school district fiscal impact statement required under RCW 28A.305.135?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No																	
<p>If yes, insert statement here:</p> <p>The public may obtain a copy of the school district fiscal impact statement by contacting:</p> <p>Name: Address: Phone: Fax: TTY: Email: Other:</p>																			
Is a cost-benefit analysis required under RCW 34.05.328? <p><input type="checkbox"/> Yes: A preliminary cost-benefit analysis may be obtained by contacting:</p> <p>Name: Address:</p>																			

Phone:
Fax:
TTY:
Email:
Other:

☒ No: Please explain: Consistent with RCW 34.05.328(5)(a), these supplemental 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), and are exempt from cost-benefit analysis requirements under RCW 34.05.328(5)(b):

- The rule proposal creates new rule sections and amends or repeals existing rule sections to implement and align the rules with the law as established and dictated by E2SSB 5549 consistent with RCW 34.05.328(5)(b)(v).
- The rule proposal also revises and incorporates references to statutory language where necessary and appropriate consistent with RCW 34.05.328(5)(b)(iii).

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). 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"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
((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(3) by way of RCW 34.05.310 (4) (c) and (e)).

Explanation of exemptions, if necessary: The revisions made to WAC 314-28-005, 314-28-030, 314-28-050, and 314-29-035, the repeal of WAC 314-28-095, and the new rules added as WAC 314-28-065, 314-28-066, 314-28-067, 314-28-300, 314-28-310, and 314-28-320, are exempt from the Regulatory Fairness Act's (RFA) Small Business Economic Impact Statement (SBEIS) requirement under RCW 34.05.310(4)(c) and (e). The supplemental proposed rules incorporate by reference or explicitly restate statute where appropriate consistent with RCW 34.05.310(4)(c), and create or amend rule sections to implement and align existing rule language with the law as established and dictated by E2SSB 5549 consistent with RCW 34.05.310(4)(e).

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If 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 analysis showing how costs were calculated.

Estimated Cost of Compliance: The Board applied the following estimated costs of compliance when analyzing whether the supplemental proposed rules to implement E2SSB 5549 impose more than "minor costs" as defined in RCW 19.85.020(2) on businesses potentially impacted by the proposed rules:

(1) Estimated annual cost of compliance for distilleries and craft distilleries: \$0 to \$65. E2SSB 5549 permits a wide range of new activities that distillery or craft distillery licensees may choose to engage in, and creates new requirements that licensees must comply with. For example, a combination of indoor and outdoor seating is allowed at the distillery or craft distillery premises, food offerings are required during public service hours, and tasting rooms must include designated

areas for minors. Licensees have the option of applying for up to two off-site tasting room licenses, and have the option of jointly operating off-site tasting rooms and conjoined consumption areas. These requirements and optional activities are described in the proposed rules. However, the proposed rules implementing E2SSB 5549 are largely exempt from the minor-cost analysis under the RFA to the extent that these new requirements are explicitly dictated by statute. For example, the \$2000 off-site tasting room license fee required by RCW 66.24.146 is not included in the estimated cost of compliance because it is legislatively mandated and therefore exempt from inclusion in the minor cost analysis under RCW 19.85.025(3) by way of RCW 34.05.310(4)(e). Similarly, the annual report on revenue derived from sales of adulterated spirits for on-premises consumption is required by RCW 66.24.140(2)(c)(ii) and 66.24.145(3)(b), the food offerings requirements are explicitly dictated by RCW 66.24.1471, and the designated area requirements are dictated by RCW 66.24.140(3)(c)(ii) and 66.24.145(7)(b), so the costs associated with complying with these rules are exempt from analysis.

Portions of the rules not explicitly dictated by statute, but necessary to implement E2SSB 5549, include licensing requirements. A breakdown of the estimated costs of compliance associated with these requirements is provided below.

Licensing—Administrative costs.

A distillery or craft distillery licensee that chooses to apply for the new off-site tasting room license under RCW 66.24.146 will have additional administrative costs related to licensing. The Board estimates that applicants will spend approximately three hours in order to complete an initial application for an off-site tasting room license (which includes ninety minutes for the applicant to complete the application and answer follow up questions, and roughly ninety minutes for interactions with Board staff on required information and an investigator interview). For renewals of the license in subsequent years, the Board estimates that applicants will spend fifteen to twenty minutes on the licensing process (which includes the online renewal application process and inputting financial information for payment of the fee).

According to the 2019 Occupational Employment Statistics (OES) 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 (SOC) Code 43-6014) is \$21.31. Based on that data, the estimated cost for these administrative activities during the initial application year is \$63.93 [$\$21.31 \text{ avg. hourly wage} \times 3 \text{ hours} = \63.93], and the estimated cost during subsequent renewal years is \$7.10 [$\$21.31 \text{ avg. hourly wage} \times 0.3 \text{ hour} = \text{approximately } \7.10]. For the purpose of the minor cost calculations, these estimated administrative costs are rounded up to \$65 and \$10, respectively.

A distillery or craft distillery that chooses to jointly operate an off-site tasting room will not have any additional licensing costs beyond those associated with the underlying license types.

A distillery or craft distillery that chooses to jointly operate a conjoined consumption area at an existing licensed location will have licensing costs related to an alteration request. The Board estimates that the time needed for an alteration request is forty minutes (twenty minutes to submit the request, and twenty minutes for interaction with Board staff for follow-up questions). According to the 2019 OES Databook, the average hourly wage in Washington State for Secretaries and Administrative Assistants, Except Legal, Medical, and Executive (using the SOC Code 43-6014) is \$21.31. Based on that data, the estimated cost for these administrative activities during is a one-time cost of \$14.21 [$\$21.31 \text{ avg. hourly wage} \times 0.6 \text{ hour} = \text{approximately } \14.21]. For the purpose of the minor cost calculations, this estimated administrative cost is rounded up to \$15.

Total estimated annual cost of compliance.

For the reasons described above, the Board estimates that the total annual cost of compliance for distillery or craft distillery licensees will range between \$0 to \$65. Licensees that choose not to open an off-site tasting room will not have any additional costs (\$0). For licensees that choose to apply for an off-site tasting room license, the estimated annual cost of compliance is \$65 for licensing in the initial application year and \$10 for licensing in subsequent renewal years. For licensees that wish to jointly operate a conjoined consumption area at an existing licensed location where an alteration request is needed, a one-time compliance cost of \$15 should be added to these estimated costs of compliance.

Note: The original CR 102 included estimates of administrative costs related to recordkeeping and filing monthly production and sales summary fee reports. Since the supplemental rule proposal no longer requires distilleries and craft distilleries to submit monthly reports, these cost estimates have been removed from the supplemental CR 102 and the estimated cost of compliance has decreased.

(2) Estimated annual cost of compliance for wineries: \$0 to \$65. There are no new costs for winery licensees that continue operating without engaging in any of the new privileges allowed by E2SSB 5549, such as jointly operating an off-site tasting room or a conjoined consumption area.

A winery licensee that wishes to jointly operate an off-site tasting room with a distillery or craft distillery licensee will have the same administrative costs related to licensing for the off-site tasting room as described above for distilleries and craft distilleries (\$65 during the initial application year and \$10 in subsequent renewal years).

A winery licensee that wishes to jointly operate a conjoined consumption area at an existing licensed location will have the same administrative costs related to an alteration request as described above for distilleries and craft distilleries (a one-time cost of \$15).

(3) Estimated annual cost of compliance for breweries or microbreweries: \$0 to \$15. There are no new costs for brewery or microbrewery licensees that continue operating without engaging in any of the new privileges allowed by E2SSB 5549, such as jointly operating a conjoined consumption area. A brewery or microbrewery licensee that wishes to jointly operate a conjoined consumption area at an existing licensed location will have the same administrative costs related to an alteration request as described above for distilleries and craft distilleries (a one-time cost of \$15).

Minor Cost Threshold Estimates: The Board applied North American Industry Classification System (NAICS) codes 312140 for Distilleries, 312130 for Wineries, and 312120 for Breweries to estimate the minor cost thresholds for distillery, craft distillery, winery, brewery, and microbrewery 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.” The winery industry (312130) “comprises establishments primarily engaged in one or more of the following: (1) growing grapes and manufacturing wines and brandies; (2) manufacturing wines and brandies from grapes and other fruits grown elsewhere; and (3) blending wines and brandies.” The brewery industry (312120) “comprises establishments primarily engaged in brewing beer, ale, lager, malt liquors, and nonalcoholic beer.” There are no separate NAICS codes available for craft distilleries or microbreweries.

As shown in the table below, the highest estimated cost of compliance for each of these industries (\$65 for Distilleries, \$65 for Wineries, and \$15 for Breweries) does not exceed the minor cost estimate for these industries (\$2,076.60 for Distilleries, \$3,453.63 for Breweries, and \$3,581.58 for Wineries), so a small business economic impact statement (SBEIS) 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	\$65	Distilleries	Distilleries	\$2,076.60	\$2,076.60 2018 Dataset pulled from ESD	\$1,471.28 2018 Dataset pulled from DOR
312130	\$65	Wineries	Wineries	\$3,581.58	\$3,581.58 2018 Dataset pulled from ESD	\$3,369.76 2018 Dataset pulled from DOR
312120	\$15	Breweries	Breweries	\$3,453.63	\$3,244.72 2018 Dataset pulled from ESD	\$3,453.63 2018 Dataset pulled from DOR

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

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

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: March 17, 2021	Signature: 
Name: David Postman	
Title: Chair	

AMENDATORY SECTION (Amending WSR 14-20-047, filed 9/24/14, effective 10/25/14)

WAC 314-28-005 Definitions. ~~The ((following definition applies to distilleries)) definitions in this section apply throughout this chapter unless the context clearly requires otherwise.~~

(1) "Craft distillery" means any distillery licensed under RCW 66.24.145 and located in the state of Washington.

(2) "Domestic distillery" means any distillery licensed under RCW 66.24.140 and located in the state of Washington.

(3) "Off-site tasting room" means an off-site tasting room licensed under RCW 66.24.146.

(4) "Tasting room" includes both off-site tasting rooms operated by, and on-site tasting rooms operated at, a licensed distillery or craft distillery premises.

AMENDATORY SECTION (Amending WSR 18-02-006, filed 12/20/17, effective 1/20/18)

WAC 314-28-030 ((What does a)) Distillery license ((allow?)).

(1) A distillery license allows the licensee to(~~+~~

~~(a) Sell spirits of their own production directly to a licensed spirits distributor in the state of Washington and to a licensed spirits retailer in the state of Washington;~~

~~(b) Sell spirits of its own production for consumption off the premises. A distiller selling spirits under this subsection must comply with the applicable laws and rules relating to retailers;~~

~~(c) Provide free or for a charge one-half ounce or less samples of spirits of its own production to persons on the premises of the distillery under the following conditions:~~

~~(i) Samples may be altered with nonalcoholic mixers, mixers with alcohol of the distiller's own production, ice, and/or water.~~

~~(ii) The maximum amount of alcohol per person per day is two ounces.~~

~~(iii) Every person who participates in any manner in the service of samples must obtain a class 12 alcohol server permit.~~

~~(d) Contract distilled spirits for, and sell contract distilled spirits to, holders of distillers' or manufacturers' licenses, including licenses issued under RCW 66.24.520, or for export)) engage in activities authorized in RCW 66.24.140.~~

(2) A distillery licensee must comply with all applicable laws and rules including, but not limited to, the sampling, service, and sales requirements in WAC 314-28-065, the tasting room age restrictions in WAC 314-28-066, and the food offerings requirements in WAC 314-28-067. For information on local city or county requirements, licensees need to contact their local government offices.

(3) (a) Contract production is when one distillery, referred to as the "contractor," produces distilled spirits for and sells contract distilled spirits to holders of a distillery license, or manufacturers' license 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))~~ (i) The contractee is the product owner. The contractee may handle the product under its license as the Revised Code of Washington and the Washington Administrative Code allow.

~~((b))~~ (ii) The contractor is required to physically transport all contracted product to the contractee. The contractor is not allowed to distribute or retail the product.

~~((3))~~ (b) 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.

~~((4))~~ (c) The contractor and contractee are required to obtain any federal approvals.

(4) Consistent with RCW 66.24.1474, a distillery licensee may add a spirits, beer, and wine restaurant license as authorized in RCW 66.24.400 at the distillery premises. The licensee must complete an application and submit the application and applicable fees to the board for processing. For more information about spirits, beer, and wine restaurant license requirements, see WAC 314-02-015.

AMENDATORY SECTION (Amending WSR 18-02-006, filed 12/20/17, effective 1/20/18)

WAC 314-28-050 ~~((What does a))~~ **Craft distillery license** ~~((allow?))~~.

~~(1) A craft distillery license allows a licensee to~~
~~(a)) engage in activities authorized in RCW 66.24.145.~~

(2) A craft distillery licensee must comply with all applicable laws and rules including, but not limited to, the sampling, service, and sales requirements in WAC 314-28-065, the tasting room age restrictions in WAC 314-28-066, and the food offerings requirements in WAC 314-28-067. For information on local city or county requirements, licensees need to contact their local government offices.

(3) Consistent with RCW 66.24.140, a craft distillery licensee may produce one hundred fifty thousand proof gallons or less of spirits per calendar year. A "proof gallon" is one liquid gallon of spirits that is fifty percent alcohol at sixty degrees Fahrenheit

~~(b) Sell spirits of its own production directly to a customer for off-premises consumption, provided that the sale occurs when the customer is physically present on the licensed premises. A craft distiller may not sell liquor products of someone else's production;~~

~~(c) Sell spirits of its own production to a licensed spirits distributor;~~

~~(d) Sell spirits of its own production to a licensed spirits retailer in the state of Washington;~~

~~(e) Sell to out-of-state entities;~~

~~(f) Provide, free or for a charge, samples of spirits of its own production to persons on the distillery premises subject to the following conditions:~~

~~(i) The maximum amount of alcohol per person per day is two ounces.~~

~~(ii) Samples may be altered with nonalcoholic mixers, mixers with alcohol of the distiller's own production, ice, and/or water.~~

~~(iii) Anyone involved in the serving of such samples must have a valid Class 12 alcohol server permit.~~

~~(iv) Samples must be in compliance with RCW 66.28.040;~~

~~(g) Provide samples of spirits of its own production to retailers. Samples must be unaltered, and in compliance with RCW 66.28.040, 66.24.310 and WAC 314-64-08001. Samples are considered sales and are subject to taxes;~~

~~(h) Contract produce spirits for holders of a distiller or manufacturer license)).~~

((+2)) (4) Consistent with RCW 66.24.1474, a craft distillery licensee may add a spirits, beer, and wine restaurant license as authorized in RCW 66.24.400 at the craft distillery premises. The licensee must complete an application and submit the application and applicable fees to the board for processing. For more information about spirits, beer, and wine restaurant license requirements, see WAC 314-02-015.

NEW SECTION

WAC 314-28-065 Sampling, service, and sales requirements for distillery and craft distillery licensees—Annual report on revenue from tasting room sales of adulterated spirits for on-premises consumption. Consistent with RCW 66.24.140 and 66.24.145:

(1) Distillery and craft distillery licensees may engage in the following sampling, service, and sales activities:

(a) Sell, for off-premises consumption:

(i) Spirits of their own production;

(ii) Spirits produced by another distillery or craft distillery licensed in Washington, subject to the alcohol stock-keeping unit requirements in subsection (2) of this section; and

(iii) Vermouth and sparkling wine produced by a licensee in Washington, subject to the alcohol stock-keeping unit requirements in subsection (2) of this section.

(b) Serve or sell, for on-premises consumption, samples of spirits of their own production or samples of spirits produced by another distillery or craft distillery licensed in Washington, subject to the alcohol stock-keeping unit requirements in subsection (2) of this section and the following requirements:

(i) Samples may be free or for a charge;

(ii) Each sample must be one-half ounce or less of spirits;

(iii) Spirits samples may be adulterated with water, ice, other alcohol allowed to be sold on-site, or nonalcoholic mixers; and

(iv) A licensee may not allow an individual person to receive more than a cumulative total of two ounces of unadulterated spirits for on-premises consumption. Additional spirits purchased for on-premises consumption must be adulterated.

(c) Sell, for on-premises consumption, servings of spirits of their own production or servings of spirits produced by another distillery or craft distillery licensed in Washington, subject to the alcohol stock-keeping unit requirements in subsection (2) of this section and the following requirements:

(i) Servings must be adulterated with water, ice, other alcohol permitted to be sold at the location, or nonalcoholic mixers; and

(ii)(A) The revenue derived from the sale of adulterated spirits for on-premises consumption under (c) of this subsection must not com-

prise more than thirty percent of the overall gross revenue earned in the tasting room during the calendar year.

(B) The thirty percent limit described in this subsection is an annual limit. As long as the thirty percent limit is not exceeded on an annual basis, revenue that exceeds the thirty percent limit in any one month does not violate the limit.

(C) Consistent with RCW 66.24.140 (2)(c)(ii) and 66.24.145 (3)(b), distilleries and craft distilleries that sell adulterated spirits for on-premises consumption under (c) of this subsection must file an annual report summarizing their revenue sources. The annual report on revenue from tasting room sales of adulterated spirits for on-premises consumption must be filed on a form furnished by the board or in a format approved by the board. The annual report must be submitted to the board by January 25th following the end of the calendar year for the reporting period. (For example, an annual report listing revenue sources for 2021 is due by January 25, 2022.)

(d) Sell, for on-premises consumption, servings of vermouth or sparkling wine produced by a licensee in this state, subject to the alcohol stock-keeping unit requirements in subsection (2) of this section.

(e) Sell nonalcoholic products at retail.

(2) A distillery or craft distillery licensee that provides or sells, for on-premises or off-premises consumption, spirits, sparkling wine, or vermouth produced by another licensee in this state, must meet the following alcohol stock-keeping unit requirements:

(a) Except as provided in (b) of this subsection, at any one time no more than twenty-five percent of a distillery or craft distillery licensee's total alcohol stock-keeping units, offered or sold at the distillery or craft distillery premises and at any off-site tasting rooms, may be vermouth, sparkling wine, or spirits produced by another licensee in this state.

(b) If a distillery or craft distillery licensee sells fewer than twenty different alcohol stock-keeping units of its own production at any one time, it may sell up to five alcohol stock-keeping units of vermouth, sparkling wine, or spirits that are produced by another licensee in this state.

(3) Any person serving or selling spirits or other alcohol authorized to be served or sold by a distillery or craft distillery licensee must obtain a class 12 alcohol server permit.

NEW SECTION

WAC 314-28-066 Tasting room age restrictions for distillery and craft distillery licensees. Consistent with RCW 66.24.140 and 66.24.145:

(1) A distillery or craft distillery licensee must not allow any person under the age of twenty-one to enter a tasting room unless they are accompanied by their parent or legal guardian.

(2)(a) Every tasting room must include a designated area where persons under the age of twenty-one are allowed to enter.

(b) The designated area may be in a separate room or within the tasting room.

(c) The designated area must be separated from the remainder of the tasting room space by a clear demarcation. "Demarcation" has the same meaning and options as provided in WAC 314-02-025(3).

(3) Persons under the age of twenty-one are not allowed on the premises of a licensed distillery, craft distillery, or off-site tasting room past 9:00 p.m., unless:

(a) They are on the premises during an event where a private party has secured a banquet permit (see chapter 314-18 WAC); or

(b) They are the children of owners, operators, or managers of the licensed distillery, craft distillery, or off-site tasting room, and they are under direct supervision of their parent or legal guardian while on the premises.

NEW SECTION

WAC 314-28-067 Food offerings requirements. (1) Consistent with RCW 66.24.1471, licensed distilleries, craft distilleries, and off-site tasting rooms must comply with the food offerings requirements in this section. "Food offerings" has the same meaning as provided in RCW 66.24.1471.

(a) Food offerings may be prepackaged for individual sale and consumption.

(b) Food offerings may be preprepared off-site for plating for the customer.

(c) Food offerings are not required to be warmed, cooked, or heated off-site or on-site prior to service.

(d) Food heating devices or preparation apparatuses are not required to be installed, maintained, or used to prepare any food offerings.

(2) In addition to the food offerings requirements in this section, licensed distilleries, craft distilleries, and off-site tasting rooms must comply with all applicable requirements in RCW 66.24.1471 including, but not limited to, requirements related to posting lists of local restaurants or food trucks and any local city or county health requirements. For information on local city or county health requirements, licensees need to contact their local health department.

NEW SECTION

WAC 314-28-300 Off-site tasting room license. (1) Distillery and craft distillery licensees may apply for an off-site tasting room license as authorized in RCW 66.24.146.

(2) Consistent with RCW 66.24.146:

(a) A distillery or craft distillery licensee is eligible for up to two off-site tasting room licenses located in this state, subject to the limit on the total number of off-site tasting room licenses under RCW 66.24.1473.

(b) Off-site tasting rooms may be indoors, outdoors, or a combined indoor and outdoor area. For requirements related to outside alcohol service, see WAC 314-03-200.

(c) The fee for each off-site tasting room license is two thousand dollars per year.

(3) An off-site tasting room must comply with all applicable requirements in RCW 66.24.146 and any other applicable laws and rules including, but not limited to, the sampling, service, and sales requirements in WAC 314-28-065, the tasting room age restrictions in WAC 314-28-066, and the food offerings requirements in WAC 314-28-067. For information on local city or county requirements, licensees need to contact their local government offices.

(4) RCW 66.24.146 allows an off-site tasting room to have a section identified and separated as a federally bonded space for the storage of bulk or packaged spirits, and allows products of the licensee's own production to be bottled or packaged in the space. A licensee engaging in this activity at an off-site tasting room must comply with all applicable federal laws and regulations and obtain any required federal approvals.

(5) Consistent with RCW 66.24.1474, an off-site tasting room licensee may add a spirits, beer, and wine restaurant license as authorized in RCW 66.24.400 at the off-site tasting room premises. The licensee must complete an application and submit the application and applicable fees to the board for processing. For more information about spirits, beer, and wine restaurant license requirements, see WAC 314-02-015.

NEW SECTION

WAC 314-28-310 Jointly operated off-site tasting rooms. (1) Jointly operated off-site tasting rooms are allowed as authorized in RCW 66.24.1472. Consistent with RCW 66.24.1472:

(a) Any licensed distillery, craft distillery, or domestic winery, or any combination of these licensees, may jointly occupy and co-operate up to two off-site tasting room locations described in WAC 314-28-300. The limit of four winery additional locations in WAC 314-24-161 and RCW 66.24.170 does not apply to the two jointly operated off-site tasting room locations allowed under this section.

(b)(i) At a jointly operated off-site tasting room, distillery and craft distillery licensees may sample, serve, and sell products subject to the requirements in WAC 314-28-065, and domestic winery licensees may sample, serve, and sell products subject to the requirements in chapter 314-24 WAC.

(ii) Consistent with RCW 66.24.140 and 66.24.145, a licensee may not allow an individual person to receive more than a cumulative total of two ounces of unadulterated spirits for on-premises consumption at a jointly operated off-site tasting room, regardless of the number of licensees operating at a jointly operated off-site tasting room.

(c) At a jointly operated off-site tasting room, licensees must:

(i) Maintain separate storage of products and separate financial records. If licensees share any point of sale system, the licensees must keep complete documentation and records for the shared point of sale system showing clear separation as to what sales items and categories belong to each respective licensee;

(ii) Comply with the applicable laws and rules relating to retailers; and

(iii) Share staffing resources under a written plan. The written plan should demonstrate in general how responsibility for staffing the premises is shared among the licensees. Licensees are not required to submit the written plan to the board at the time of application or alteration but must keep documentation of an up-to-date written plan available for inspection on premises.

(2) In addition to the requirements in this section, jointly operated off-site tasting rooms must comply with all applicable requirements in RCW 66.24.1472 and any other applicable laws and rules including, but not limited to, the tasting room age restrictions in WAC 314-28-066 and the food offerings requirements in WAC 314-28-067. For information on local city or county requirements, licensees need to contact their local government offices.

(3) Responsibility for violations or enforcement issues will be determined consistent with RCW 66.24.1472(5).

NEW SECTION

WAC 314-28-320 Jointly operated conjoined consumption areas.

(1) Jointly operated conjoined consumption areas are allowed as authorized in RCW 66.24.1472. Consistent with RCW 66.24.1472:

(a) Any domestic brewery, microbrewery, domestic winery, distillery, or craft distillery, or any combination of these licensees, whose property parcels or buildings are located in direct physical proximity to one another may share a jointly operated conjoined consumption area. "Direct physical proximity" means that the property parcels or buildings are physically connected or touching each other along a boundary or at a point.

(b) The jointly operated conjoined consumption area may be a standing or seated tasting area for patrons to use, which may be indoors, outdoors, or a combined indoor and outdoor area. For requirements related to outside alcohol service, see WAC 314-03-200.

(c)(i) Each licensee may sample, serve, and sell products as authorized under the terms of their respective licenses for on-premises consumption in the jointly operated conjoined consumption area. For the requirements applicable to:

(A) Distillery and craft distillery licensees, see WAC 314-28-065.

(B) Domestic winery licensees, see chapter 314-24 WAC.

(C) Domestic brewery and microbrewery licensees, see chapter 314-20 WAC.

(ii) Consistent with RCW 66.24.140 and 66.24.145, a licensee may not allow an individual person to receive more than a cumulative total of two ounces of unadulterated spirits for on-premises consumption at a jointly operated conjoined consumption area, regardless of the number of licensees operating at a jointly operated conjoined consumption area.

(iii) Consistent with WAC 314-11-065, a licensee may not permit the removal of liquor in an open container from the jointly operated conjoined consumption area, except to reenter the licensed premises where the liquor was purchased. Signage prohibiting the removal of liquor in an open container must be visible to patrons in the jointly operated conjoined consumption area.

(d) In a jointly operated conjoined consumption area, licensees must:

(i) Maintain separate storage of products and separate financial records. If licensees share any point of sale system, the licensees must keep complete documentation and records for the shared point of sale system showing clear separation as to what sales items and categories belong to each respective licensee;

(ii) Use distinctly marked glassware or serving containers to identify the source of any product being consumed. The distinctive markings may be either permanent or temporary. Any temporary markings must remain on the glassware or serving containers through the duration of use by the customer;

(iii) Comply with the applicable laws and rules relating to retailers; and

(iv) Share staffing resources under a written plan. The written plan should demonstrate in general how responsibility for staffing the premises is shared among the licensees. Licensees are not required to submit the written plan to the board at the time of application or alteration but must keep documentation of an up-to-date written plan available for inspection on premises.

(2) In addition to the requirements in this section, licensees at jointly operated conjoined consumption areas must comply with all requirements in RCW 66.24.1472 and any other applicable laws and rules including, but not limited to:

(a) For distillery and craft distillery licensees, the tasting room age restrictions in WAC 314-28-066 and the food offerings requirements in WAC 314-28-067.

(b) For domestic winery licensees, see chapter 314-24 WAC.

(c) For domestic brewery and microbrewery licensees, see chapter 314-20 WAC.

(d) For information on local city or county requirements, licensees need to contact their local government offices.

(3) Responsibility for violations or enforcement issues will be determined consistent with RCW 66.24.1472(5).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 314-28-095 Farmer's market spirits sales.

WAC 314-29-035 Group 4 nonretail violations. Group 4 violations are violations involving the manufacture, supply, and/or distribution of liquor by nonretail licensees and prohibited practices between a nonretail licensee and a retail licensee.

Violation type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Providing credit to a retail licensee. RCW 66.28.010 WAC 314-12-140 WAC 314-12-145 WAC 314-13-015 WAC 314-13-020	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Quantity discount. RCW 66.28.170 RCW 66.28.180	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Giving away liquor in violation of liquor law or rule. RCW 66.28.040 WAC 314-64-080 WAC 314-64-08001	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Consignment sales/ return of product in violation of liquor law or rule. RCW 66.28.010 WAC 314-12-140 WAC 314-13-015 WAC 314-20-070 WAC 314-20-090 WAC 314-24-210	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Advertising violations involving prohibited practices between a nonretail and a retail licensee. RCW 66.28.010 RCW 66.24.570 WAC 314-05-030 WAC 314-52-040 WAC 314-52-070 WAC 314-52-080 WAC 314-52-090 WAC 314-52-113	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option

Violation type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Price lists/labeling/ packaging violations. RCW 66.24.145 RCW 66.28.100 RCW 66.28.110 RCW 66.28.120 RCW 66.28.180 WAC 314-20-020 WAC 314-20-030 WAC 314-20-100 WAC 314-20-130 WAC 314-24-003 WAC 314-24-006 WAC 314-24-040 WAC 314-24-080 WAC 314-24-090 WAC 314-24-190 WAC 314-28-090	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Agents violations: Nonretail licensee employing an unlicensed agent. RCW 66.24.310 RCW 66.28.050 WAC 314-44-005	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option

Violation type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Unauthorized product/unapproved storage or delivery. RCW 66.24.140 RCW 66.24.160 RCW 66.24.170 RCW 66.24.185 RCW 66.24.200 RCW 66.24.203 RCW 66.24.206 RCW 66.24.240 RCW 66.24.244 RCW 66.24.250 RCW 66.24.261 RCW 66.24.395 RCW 66.28.010 RCW 66.44.140 RCW 66.44.150 RCW 66.44.160 RCW 66.44.170 WAC 314-20-015 WAC 314-20-017 WAC 314-20-055 WAC 314-20-095 WAC 314-20-120 WAC 314-20-160 WAC 314-20-170 WAC 314-24-070 WAC 314-24-115 WAC 314-24-120 WAC 314-24-140 WAC 314-24-160 ((WAC 314-24-161 [WAC 314-24-161])) <u>WAC 314-24-161</u> WAC 314-24-220 WAC 314-25-020 WAC 314-25-030 WAC 314-25-040 WAC 314-28-050	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
<u>Sampling/tasting/food offerings violations.</u> RCW 66.20.010 <u>RCW 66.24.140</u> RCW 66.24.145 <u>RCW 66.24.1471</u> RCW 66.24.170 RCW 66.28.040 RCW 66.28.150 WAC 314-20-015 WAC 314-24-160 <u>WAC 314-28-065</u> <u>WAC 314-28-067</u> WAC 314-45-010 Chapter 314-64 WAC	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option

Violation type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Entertainment/instruction/meeting/trade show violations. RCW 66.20.010 RCW 66.28.010 RCW 66.28.042 RCW 66.28.043 RCW 66.28.150 RCW 66.28.155 WAC 314-45-010	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Providing/accepting money or money's worth: Goods or services worth up to \$1,500. RCW 66.28.010 WAC 314-12-140 WAC 314-44-005	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Providing/accepting money or money's worth: Goods or services worth over \$1,500. RCW 66.28.010 WAC 314-12-140 WAC 314-44-005	Cost of item or service provided plus: 3 day suspension or \$1,000 monetary option	Cost of item or service provided plus: 5 day suspension or \$2,500 monetary option	Cost of item or service provided plus: 10 day suspension or \$5,000 monetary option	Cost of item or service provided plus: 20 day suspension or \$10,000 monetary option
Providing/accepting exclusive or contingency agreements. RCW 66.28.010 RCW 66.24.570 WAC 314-12-140 WAC 314-05-030	3 day suspension or \$1,000 monetary option	10 day suspension or \$6,000 monetary option	20 day suspension or \$12,000 monetary option	30 day suspension or \$20,000 monetary option
Unauthorized interest or ownership in retail license. RCW 66.28.010 WAC 314-12-030	3 day suspension or \$1,000 monetary option	30 day suspension or \$20,000 monetary option	Cancellation of license	
<u>Failure to follow stock-keeping unit requirements.</u> RCW 66.24.140 RCW 66.24.145 WAC 314-28-065	<u>3 day suspension or \$500 monetary option</u>	<u>5 day suspension or \$2,500 monetary option</u>	<u>10 day suspension or \$5,000 monetary option</u>	<u>20 day suspension or \$10,000 monetary option</u>
<u>Failure to file annual report on revenue from tasting room sales of adulterated spirits for on-premises consumption.</u> RCW 66.24.140 RCW 66.24.145 WAC 314-28-065	<u>3 day suspension or \$250 monetary option</u>	<u>5 day suspension or \$500 monetary option</u>	<u>10 day suspension or \$1,000 monetary option</u>	

Violation type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
<u>Failure to maintain 30% annual limit on overall gross revenue per tasting room derived from sales of adulterated spirits for on-premises consumption.</u> RCW 66.24.140 RCW 66.24.145 WAC 314-28-065	<u>3 day suspension or monetary option of \$100 per percentage point over the 30% limit</u>	<u>5 day suspension or monetary option of \$200 per percentage point over the 30% limit</u>	<u>10 day suspension or monetary option of \$300 per percentage point over the 30% limit</u>	
Failure to obtain surety bond/savings account, if required by the board. RCW 66.24.210 RCW 66.24.290 WAC 314-19-020	Immediate suspension of license until surety bond has been obtained and all missing reports are filed and late taxes are paid.			
Failure to file tax/shipment report. RCW 66.24.210 RCW 66.24.290 WAC 314-19-005 WAC 314-19-010 WAC 314-19-020	3 day suspension or \$250 monetary option	5 day suspension or \$500 monetary option	10 day suspension or \$1,000 monetary option	20 day suspension or \$2,000 monetary option
Certificate of approval (COA) and/or authorized representative violations. RCW 66.24.206 WAC 314-19-005 WAC 314-19-010 WAC 314-19-020	15 day suspension or \$100 monetary option	30 day suspension or \$500 monetary option	180 day suspension or \$1,000 monetary option	Cancellation of license

CR 102 Memo—E2SSB 5549 Distilleries

Attachment A

Table containing a summary of public feedback received in connection with the virtual Listen and Learn Session held on November 17, 2020.

Source	Date	Name	Theme	Feedback
Webex Live	11/17/2020	Beverly Heising	Definitions (WAC 314-28-005)	Definition of "distillery" is unclear.
Webex Live	11/17/2020	Mitch Nickolds	References to local laws (WAC 314-28-030, 314-28-050, throughout)	Suggested including a reference to local laws throughout the proposed rules wherever there is a reference to "all applicable state laws and rules" (e.g. "all applicable state <u>and</u> local laws and rules")
Webex Live & Chat	11/17/2020	Justin Stiefel	Thirty percent annual limit on revenue derived from sales of adulterated spirits (mixed drinks) for on-premises consumption (WAC 314-28-065)	Suggested adding the following underlined language regarding the thirty percent annual limit on revenue derived from sales of adulterated spirits (mixed drinks) for on-premises consumption in conceptual draft WAC 314-28-065 to clarify that even if a distillery is above the thirty percent limit for a single month, a violation is not triggered: (ii) The revenue derived from the sale of adulterated products for on-premises consumption under this subsection (1)(c) must not comprise more than thirty percent of the overall gross revenue earned in the tasting room during the calendar year. The annual reporting requirement for tasting room sales of adulterated products is satisfied through cumulative monthly reporting under WAC 314-28-070. <u>Gross revenue from on-premises consumption that exceeds the thirty percent test in any one month shall not trigger any violation so long as the thirty percent annual cap is not exceeded on an annual basis.</u>
Webex Live	11/17/2020	Jason Parker	Distillery and craft distillery reporting forms	Interested in participating in the process of developing the distillery and craft distillery reporting forms (e.g. Craft Distillery Production and Sales Summary Fee Report (LIQ-112) and Distillery Production and Sales Summary Fee Report (LIQ-160) forms).
Webex Live	11/17/2020	Mhairi Voelsgen	Distillery and craft distillery reporting forms	Would like to provide input on the preliminary distillery and craft distillery reporting forms.
Webex Live	11/17/2020	Jason Parker	Stock-keeping unit requirements (WAC 314-28-065)	Suggested that the twenty-five percent stock-keeping unit requirement should take seasonal swings into account. Concerned about inadvertently setting monthly limits.
Webex Live	11/17/2020	Justin Stiefel	Stock-keeping unit requirements (WAC 314-28-065)	Intent of the twenty-five percent stock-keeping unit requirement is to be a point in time snapshot, not an annual requirement.

CR 102 Memo—E2SSB 5549 Distilleries

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Webex Live	11/17/2020	Mhairi Voelsgen	Stock-keeping unit requirements (WAC 314-28-065)	Agreed with Justin and that the intent of the twenty-five percent stock-keeping unit limit in the law was to provide a limit on the products on the shelf <i>at any one time</i> , not annually. This gives flexibility to change product seasonally as needed.
Email	11/14/2020	Mitch Nickolds	Employment of young adults (18-21) at distilleries (WAC 314-28-066)	In reading the Engrossed Substitute Senate Bill 5549 I see that (ref. Section 2 (7)) in the age limitations there is no consideration for a distillery, winery or brewery to hire under age employees to prepare and serve food, stock the bar or provide entertainment. We have a large number of young adults in Washington between the ages of 18 and 21 that would benefit from part time employment in this industry, and who can be licensed as food servers or who play in bands for weddings and events, but who would be ineligible for employment as legislated in this well-regulated family-operated craft industry. Any chance the Board would open these employment opportunities up for our young adults?
Webex Live	11/17/2020	Mitch Nickolds	Employment of young adults (18-21) at distilleries (WAC 314-28-066)	Limiting distillery employees to those 21 years of age or older is overly restrictive
Webex Live	11/17/2020	Justin Stiefel	Employment of young adults (18-21) at distilleries (WAC 314-28-066)	In response to Mitch Nickolds: other existing WACs, outside of this rule set, don't allow distilleries to employ people under 21.
Webex Live	11/17/2020	Beverly Heising	Designated area in tasting room for persons under the age of 21 (WAC 314-28-066)	She has a rural, one door tasting room (400 sq ft?--no room for a bar). Would like to make things more family friendly, for kids to be able to sit down with their parents. Does not like the current designated area language, thinks (2)(c)needs clarification to make it operational for small distilleries
Webex Live	11/17/2020	Jason Parker	Designated area in tasting room for persons under the age of 21 (WAC 314-28-066)	In response to Beverly Heising: one way to structure it—the area by the bar is marked as 21+, the whole rest of the tasting room area is marked as the designated area for persons under 21 ; this layout would also be consistent with the way 21+ areas work for e.g. SBW restaurants
Webex Live	11/17/2020	Mhairi Voelsgen	Designated area in tasting room for persons under the	In response to Beverly Heising and Jason Parker: Agrees, with Jason, the intent of the "designated area" language in the law was to provide parity with SBW restaurants

CR 102 Memo—E2SSB 5549 Distilleries

Attachment A

Table containing a summary of public feedback received in connection with the virtual Listen and Learn Session held on November 17, 2020.

			age of 21 (WAC 314-28-066)	
Webex Live	11/17/2020	Mitch Nickolds	Designated area in tasting room for persons under the age of 21 (WAC 314-28-066)	Suggested that performance areas could be demarcated as designated areas for persons under 21 years of age
Webex Live & Chat	11/17/2020	Justin Stiefel	Designated area in tasting room for persons under the age of 21 (WAC 314-28-066)	Suggested that in small tasting room spaces, no demarcation should be required, or a commercially reasonable standard should be applied: Proposed language in [] underlined below: (c) The designated area must be separated from the remainder of the tasting room space by a clear demarcation. “Demarcation” has the same meaning and options as provided in WAC 314-02-025(3). <u>[For tasting rooms where it is not physically possible or commercially unreasonable to create a clearly demarcated separation area the licensee may propose specific seating or service areas where minors are not allowed.]</u>
Webex Live	11/17/2020	Mhairi Voelsgen	Food offerings (WAC 314-28-067)	Gave kudos on the food offerings requirements
Webex Live	11/17/2020	Josh McDonald	Jointly operated off-site tasting rooms and winery additional locations (WAC 314-28-310)	Question: Wineries are currently allowed to have up to four additional locations (RCW 66.24.170(4)(a)(ii) and WAC 314-24-161). Would the LCB view these off-site tasting room locations where a winery is involved as an additional location counting toward that limit? Perhaps would be helpful to clarify in rule.
Webex Live & Chat	11/17/2020	Justin Stiefel	Share staffing resources (WAC 314-28-310 and WAC 314-28-320)	Although (1)(c)(iii) mirrors language in statute, additional work may be needed to flesh out the parameters around sharing staffing resources. What would that look like/ minimum requirements? Proposed language: Share staffing resources <u>[under a written plan in which the licensees demonstrate they are reasonably sharing in the cost of staffing the premises. A shared staffing resource plan shall not create an implied employment agreement, relationship or obligation where one does not otherwise explicitly exist between a particular licensee and an employee].</u>
Webex Live	11/17/20	Mitch Nickolds	Conflict with local requirements (WAC 314-28-320)	Concerned about potential conflict in these type of arrangements with local ordinance, fire code, etc. With respect to shared consumption areas, if there were incubators for distilleries, they may benefit from that type of occupancy. Need to

CR 102 Memo—E2SSB 5549 Distilleries

Attachment A

Table containing a summary of public feedback received in connection with the virtual Listen and Learn Session held on November 17, 2020.

				be careful about fire-sprinkler requirements or occupant loads of 99+. Suggestion to make reference to size limitations on those areas? This is an area where local ordinance could conflict with the states intent to license these facilities. Limitations on occupant loads would add costs.
Webex Chat	11/17/2020	Justin Stiefel	Conflict with local requirements (WAC 314-28-320)	In response to Mitch: I believe the issue raised earlier about limiting the size or occupancy of a tasting room or consumption space does not need to be addressed in these rules. Each locality and the fire code will set the standard for a particular location, so nothing in the RCW or WAC from this rulemaking would override a city or county fire or building code.
Webex Live	11/17/2020	Justin Stiefel	Penalties (WAC 314-29-035)	Current penalties for failure to maintain the 30% annual sales limit are too aggressive and should be revised to be more in line with the existing penalty schedule. Instead of two categories (one up to 40%, and one over 40%) there should just be one category. The monetary penalty should be much lower and should be similar/ somewhere between the "Providing/accepting money or money's worth" and the "Providing/accepting exclusive or contingency agreements" penalties. Since it is a two-year window, there should be no third column.
Webex Live & Chat	11/17/2020	Mhairi Voelsgen	Penalties (WAC 314-29-035)	Agreed with Justin. It seems especially egregious to penalize what will basically be a math error, especially the Gross Revenue section, and seems out of scope, the Guild would not support something at that level. One category is better and easier to manage.
Webex Live & Chat	11/17/2020	Jason Parker	Penalties (WAC 314-29-035)	Agreed with Justin. I agree with Justin's comments about keeping penalties for the 30% test in line with the rest of the penalties in the chart.
Webex Live	11/17/2020	Mhairi Voelsgen	Taxation/ Spirits Retail fee	Taxation hasn't been addressed in these rules, but is a hot topic among guild members. Concerned about the tax structure being proposed for cocktails served in tasting rooms, which is similar to ready to drink (RTD) structure, versus the current structure being used at bars/restaurants/retail. The liquor that is served from other distilleries is being taxed at a higher rate than it would normally be taxed at. The cocktail is being taxed, versus the bottle is being taxed. Taxation for products from other distilleries that are being served in cocktails, or bottles sold, being taxed in a way that gave us parity to the existing industries taxation now. That translates to bottles sold coming into a distillery being allocated for on or off premise use, and taxed at that entry point versus being taxed as used. Some of the

CR 102 Memo—E2SSB 5549 Distilleries**Attachment A**

Table containing a summary of public feedback received in connection with the virtual Listen and Learn Session held on November 17, 2020.

				biggest distilleries in the state are in agreement that they will pursue legal action if the tax structure does not follow the existing structure for bars/restaurants/retailers.
Webex Chat	11/17/2020	Justin Stiefel	Taxation/ Spirits Retail fee	Agreed with Mhairi on the taxation issue. There is no statutory authority for the LCB to create a tax on cocktails where the Legislature has not created it.
Webex Chat	11/17/2020	Jason Parker	Penalties (WAC 314-29-035)	Agreed with Justin's and Mhairi's comments on penalties and taxation.
Webex Chat	11/17/2020	Justin Stiefel	Timing of rules/ implementation	Do you have an estimate on timing? Will LCB allow licensing to start on off-site tasting rooms now so that we can be ready on Jan 1 under interim rules while the final rules are being worked on?

**CR 102 Memo—E2SSB 5549 Distilleries
Attachment B****Washington State
Liquor and Cannabis Board**

Listen and Learn Session for E2SSB 5549 Distilleries Conceptual Draft Rules

Washington State Liquor and Cannabis Board sent this bulletin at 11/03/2020 02:50 PM PST

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November 3, 2020

Listen and Learn Session for E2SSB 5549 Distilleries Conceptual Draft Rules

The Washington State Liquor and Cannabis Board (WSLCB) is hosting a virtual Listen and Learn session to gather feedback on conceptual draft rules for implementation of [Engrossed Second Substitute Senate Bill \(E2SSB\) 5549 \(chapter 238, Laws of 2020\)](#) related to distilleries. The conceptual draft rules are provided [here](#).

The preproposal statement of inquiry (CR 101) was filed as [WSR 20-16-150](#) on August 05, 2020. More background information on this rules project is available in the [CR 101 memo](#).

We welcome your feedback on these conceptual draft rules and hope you can join us virtually on Tuesday, November 17, 2020, from 1:00 p.m. until 4:30 p.m. on Webex Events. To help you prepare for this Listen and Learn session, please review the [agenda](#) and this [guidance document](#).

****Please plan to attend on time at 1 p.m. to ensure your feedback is heard. This meeting could end earlier than the scheduled time of 4:30 p.m. depending on the amount of feedback offered by participants.****

If you plan to join us virtually, we'd like to offer the following reminders:

- For the best virtual participation experience, please connect to WebEx using a web browser.
- Virtual participation will be structured to allow one speaker at a time though a hand-raising feature on WebEx.

- The hand-raising feature is not available if you connect to WebEx using the call-in number.

If you plan to attend the event, please [register on Webex today!](#)

To join or register for the WebEx Event:

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MTID=ec4736c3e8645a41960fc76e1586b3c04](https://watech.webex.com/watech/onstage/g.php?MTID=ec4736c3e8645a41960fc76e1586b3c04)

Event number: 133 462 8622

Event password: 5549Rules

To attend by phone:

Toll: 1-415-655-0001

Toll Free: 1-855-929-3239

Access code: 133 462 8622

Have questions? Would you like to provide written feedback before the Listen and Learn session?

Email: audrey.vasek@lcb.wa.gov

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**Supplemental CR 102 Memo—E2SSB 5549 Distilleries
Attachment C**

Table containing comments received during the public comment period for the original CR 102 rule proposal (filed as WSR # 21-01-211 on December 23, 2020).

Source	Date	Name	Theme	Comment
Email	12/22/2020	Josh McDonald, Washington Wine Institute	General	<p><u>Email received December 22, 2020—Direct quotation included below:</u></p> <p>“Hi Board Chair Rushford and Commissioners Garrett and Hauge</p> <p>I am not able to join you tomorrow virtually to provide public comment, so please accept this email as the Washington Wine Institute’s comments on the proposed CR 102 for 2020 legislation SB 5549 you are considering approving at tomorrow’s board meeting.</p> <p>The Washington Wine Institute is supportive of the CR 102 as drafted. We want to extend a big “Thank You” to LCB Rules Coordinator Audrey Vasek and her team for including us in the process from the very beginning and diligently checked in with our association throughout the process to make sure we had an opportunity to provide comments and possible edits to improve this rule making effort. The inclusivity and partnership throughout the rule making process with the WSLCB continues to make meaningful improvements throughout my six years as the Director of the Washington Wine Institute, and the final product is a much better result due to this effort.</p> <p>Thank you to the entire WSLCB and continue the tremendous work you do to support the industries you license and regulate.</p> <p>Stay Safe</p> <p>Josh McDonald Executive Director WA Wine Institute”</p>
Email	12/22/2020	Mhairi Voelsgen, Washington Distillers Guild	Penalty schedule, fourth violation related to stock keeping	<p><u>Email received December 22, 2020—Direct quotation included below:</u></p> <p>“Hi Audrey,</p> <p>Sorry-I have been busy with distillery needs over the past week.</p>

**Supplemental CR 102 Memo—E2SSB 5549 Distilleries
Attachment C**

Table containing comments received during the public comment period for the original CR 102 rule proposal (filed as WSR # 21-01-211 on December 23, 2020).

			units (WAC 314-29-035)	<p>I had a chance to look at the draft rules and the only thing I saw was that the fourth violation on stock keeping units seemed a little steep. It's on page 28, and given that it isn't a life safety or public safety issue, I would suggest dropping the fourth violation. The third one is steep enough to attract attention from a licensee.</p> <p>Everything else seemed fine.</p> <p>Thanks! All my best, Mhairi"</p>
Oral Testimony	2/03/2021	Caitlin Braam, Founder of Wise Fool Spirits Distillery and Yonder Cider	Distinctly marked glassware (proposed new WAC 314-28-320)	<p><u>Oral testimony provided during the public hearing held February 3, 2021, as transcribed directly from the meeting recording:</u></p> <p>From Caitlin Braam, Founder of Wise Fool Spirits Distillery and Yonder Cider:</p> <p>"We are taking advantage of this Senate Bill 5549 in our new tasting room in Seattle which we are very excited about. The distillery will be sharing the tasting room with Yonder Cider as well Bale Breaker Brewing, so we have a distillery, a winery, and a brewery. The question I have is regarding Section 5(2), which is regarding glassware. In that section it does say that you need to use distinctly marked glassware for each entity. Now we're running into a bit of a problem trying to figure out how to make this happen, as the brewery has five different glassware styles, if you include taster flights, the cidery has four, and the distillery has two which makes it rather challenging for the bar staff. Also, we have found, based on our other tasting rooms, that marked glassware tends to disappear very very quickly, whether it's a logo or otherwise, from a tasting room because patrons do tend to steal it. So we are trying to figure out how to address this to see if there's any wiggle room with the marked glassware or get some additional clarification on it."</p>

**Supplemental CR 102 Memo—E2SSB 5549 Distilleries
Attachment C**

Table containing comments received during the public comment period for the original CR 102 rule proposal (filed as WSR # 21-01-211 on December 23, 2020).

				<p>[Chair Rushford: “Thank you very much. Your comments will be entered into the record. Do you have anything additionally?”]</p> <p>“Nope I just thank you for the opportunity to have this joint tasting room, it will make for a really great experience and we’re excited for it. But yes, it’s just the glassware portion that we’re struggling a little bit with, so I appreciate the opportunity to share my thoughts.”</p>
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