



Washington State  
**Liquor and Cannabis Board**

---

**Date:** May 12, 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  
Chandra Brady, Director of Enforcement and Education  
Becky Smith, Licensing Director  
Jim Morgan, Chief Financial Officer  
Kathy Hoffman, Policy and Rules Manager

**Subject:** **Request for approval of final rules (CR 103) regarding implementation of 2020 legislation – E2SSB 5549 (Distilleries).**

The Policy and Rules Coordinator requests that the Board adopt final rules and approve the CR 103 to implement 2020 legislation, Engrossed Second Substitute Senate Bill 5549 (chapter 238, Laws of 2020), related to distilleries.

The Board has been briefed on the rule development background and public comment received for this rulemaking project. A CR 103 memorandum, draft CR 103 form, and rule text are attached.

If approved, the Policy and Rules Coordinator will file the rules with the Office of the Code Reviser and send the concise explanatory statement concerning this rulemaking to all persons who provided comments. The effective date of the rules will be 31 days after filing, or June 12, 2021.

_____ Approve	_____ Disapprove	_____	_____
		David Postman, Chair	Date

_____ Approve	_____ Disapprove	_____	_____
		Ollie Garrett, Board Member	Date

_____ Approve	_____ Disapprove	_____	_____
		Russ Hauge, Board Member	Date

Attachment: CR 103 Memorandum  
Concise Explanatory Statement



## CR 103 Memorandum

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

Date: May 12, 2021  
Presented by: Audrey Vasek, Policy and Rules Coordinator

---

#### Background

The Washington State Liquor and Cannabis Board (WSLCB) initiated a formal rule inquiry under WSR # 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.<sup>1</sup>

E2SSB 5549 modified the privileges and requirements for distillery and craft distillery licenses,<sup>2</sup> and established a new off-site tasting room license available to distillery and craft distillery licensees beginning January 1, 2021.<sup>3</sup> E2SSB 5549 also authorized jointly operated off-site tasting rooms and jointly operated conjoined consumption areas for certain licensees.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup>

---

<sup>1</sup> E2SSB 5549 is largely codified in RCW 66.24.140 through 66.24.148.

<sup>2</sup> See RCW 66.24.140, 66.24.145, and 66.24.1471.

<sup>3</sup> See RCW 66.24.146 and 66.24.1473.

<sup>4</sup> See RCW 66.24.1472.

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

<sup>6</sup> 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 CR 103 Memo – E2SSB 5549 Distilleries

The public hearing on the original rule proposal was held on February 3, 2021. One person testified at the February 3, 2021, public hearing, and two written comments were received.<sup>7</sup>

Based on a public comment related to the distinctly marked glassware requirement in jointly operated conjoined consumption areas and the impact from the Court of Appeals decision in *Blue Spirits Distilling, LLC v. WSLCB*<sup>8</sup> to the distillery reporting and payment requirements, the WSLCB filed a supplemental CR 102 rule proposal<sup>9</sup> on March 17, 2021, making substantive changes to the original rule proposal.

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

- Replaced the monthly reporting requirement on revenue from tasting room sales of adulterated spirits for on-premises consumption in 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.
- Revised 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 penalties are consistent with the existing penalties for failure to file tax/shipment reports.
- Clarified 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 new rule section WAC 314-28-320(1)(d)(ii).

The public hearing on the supplemental rule proposal was held on April 28, 2021. No one testified at the public hearing, and no written comments were received. The public comments received on the original rule proposal and the WSLCB responses are contained in the Concise Explanatory Statement attached to this memorandum.

---

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.

<sup>7</sup> 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.

<sup>8</sup> *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.

<sup>9</sup> See Supplemental CR 102 Rule Proposal filed as WSR 21-07-078 on March 17, 2021.

CR 103 Memo – E2SSB 5549 Distilleries

05/12/2021

## Rule Necessity

The adopted 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 WSLCB 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 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 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 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. This 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<sup>10</sup> and the thirty percent annual limit on revenue derived from sales of adulterated spirits for on-premises consumption.<sup>11</sup>

**New section. WAC 314-28-066**, relating to tasting room age restrictions. This 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. This rule section implements RCW 66.24.1471 by describing the food offerings requirements applicable to distilleries, craft distilleries, and off-site tasting rooms.<sup>12</sup>

**New section. WAC 314-28-300**, relating to off-site tasting room licenses. This 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. This 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. This 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.

**New section. WAC 314-28-320**, relating to jointly operated conjoined consumption areas. This 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

---

<sup>10</sup> 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).

<sup>11</sup> 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).

<sup>12</sup> RCW 66.24.1471(5) states: "Requirements for food offerings shall be determined by the board in rule."

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 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 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.<sup>13</sup>

## **Changes from the Supplemental Proposed Rules (CR 102) to the Final Rules:**

There were no changes from the supplemental proposed rules to the final rules.

## **Rule Implementation**

### **Informing and Educating Persons Impacted by the Rule**

To help inform and educate persons impacted by the rule, the WSLCB will:

- Email notice with the adoption materials to persons who commented on the rules and to all GovDelivery subscribers;
- Post rule adoption materials, including final rule language, response to comments, final analysis (Concise Explanatory Statement), and any other relevant documents on the rulemaking webpage for public access.
- Provide information and training on request.

### **Promoting and Assisting Voluntary Compliance**

The WSLCB will promote and assist voluntary compliance through technical assistance.

---

<sup>13</sup> 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.



- WSLCB staff are available to respond to phone and email inquiries about the rules.
- The Licensing, Enforcement and Education, and Finance divisions have participated in the rule revision process and are familiar with the final product. Internal and external education efforts to share knowledge and assure consistent application of rule will be supported.
- Rule and guidance documents will be available on the WSLCB website.
- The WSLCB will use available and customary resources to disseminate materials and information to all persons impacted by the rules.

These actions are designed to inform and educate all persons impacted by the rules to support and promote voluntary compliance.

### **Training and Informing WSLCB Staff**

Several WSLCB staff responsible for implementing these adopted rules work directly with impacted parties and are already familiar with the nuances of the rule changes. Additional internal guidance documents may be prepared as necessary. The WSLCB will also consider:

- Provision of internal and external training and education, as needed, potentially including webinars, training, and videos if appropriate;
- Coordinating and centrally locating decisions to assure consistency between agency, staff, and industry.

### **Rule Effectiveness Evaluation**

The WSLCB will evaluate the effectiveness of these rules in the following ways, including but not limited to:

- Monitoring questions received after the effective date of these rules, and adjusting training and guidance accordingly;
- Monitoring the number of enforcement actions, including type, resolution, and final outcome;
- Monitoring the number of requests for rule language revisions or changes;
- Monitoring the number of requests for rule interpretation;
- Monitoring licensee feedback including, but not limited to, the number of requests for assistance.

Attachments: Final Rules  
Concise Explanatory Statement



# RULE-MAKING ORDER

## PERMANENT RULE ONLY

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

CODE REVISER USE ONLY

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

**Effective date of rule:**

**Permanent Rules**

- ☒ 31 days after filing.  
☐ Other (specify) (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

- ☐ Yes ☒ No If Yes, explain:

**Purpose:** The Washington State Liquor and Cannabis Board (Board) has adopted new rule sections and revised existing rule sections in chapter 314-28 and 314-29 WAC to implement the law as established by Engrossed Second Substitute Senate Bill (E2SSB) 5549 (chapter 238, Laws of 2020), related to distilleries.

**Citation of rules affected by this order:**

New: WAC 314-28-065, 314-28-066, 314-28-067, 314-28-300, 314-28-310, 313-28-320, and 314-29-035.  
Repealed: WAC 314-28-095.  
Amended: WAC 314-28-005, 314-28-030, and 314-28-050.  
Suspended:

**Statutory authority for adoption:** RCW 66.24.148, 66.24.1471, and 66.08.030.

**Other authority:** RCW 66.24.140, 66.24.145, 66.24.146, 66.24.1471, 66.24.1472, 66.24.1473, and 66.24.1474.

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 21-07-078 on March 17, 2021 (date).

Describe any changes other than editing from proposed to adopted version: There were no changes from the proposed rules to the adopted rules.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: Audrey Vasek

Address: 1025 Union Avenue SE, Olympia WA 98501

Phone: 360-664-1758

Fax: 360-704-5027

TTY:

Email: rules@lcb.wa.gov

Web site: www.lcb.wa.gov

Other:

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	6	Amended	4	Repealed	1

**The number of sections adopted at the request of a nongovernmental entity:**

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

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

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

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

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

**The number of sections adopted using:**

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	6	Amended	4	Repealed	1

**Date Adopted:** May 12, 2021

**Name:** David Postman

**Title:** Chair

**Signature:**

Place signature here

**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.

<b>Violation type</b>	<b>1st Violation</b>	<b>2nd Violation in a two-year window</b>	<b>3rd Violation in a two-year window</b>	<b>4th Violation in a two-year window</b>
<b>Providing credit to a retail licensee.</b> 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
<b>Quantity discount.</b> 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
<b>Giving away liquor in violation of liquor law or rule.</b> 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
<b>Consignment sales/ return of product in violation of liquor law or rule.</b> 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
<b>Advertising violations involving prohibited practices between a nonretail and a retail licensee.</b> 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

<b>Violation type</b>	<b>1st Violation</b>	<b>2nd Violation in a two-year window</b>	<b>3rd Violation in a two-year window</b>	<b>4th Violation in a two-year window</b>
<b>Price lists/labeling/ packaging violations.</b> 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
<b>Agents violations:</b> 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

<b>Violation type</b>	<b>1st Violation</b>	<b>2nd Violation in a two-year window</b>	<b>3rd Violation in a two-year window</b>	<b>4th Violation in a two-year window</b>
<b>Unauthorized product/unapproved storage or delivery.</b> 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
<b>Sampling/tasting/food offerings violations.</b> 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

<b>Violation type</b>	<b>1st Violation</b>	<b>2nd Violation in a two-year window</b>	<b>3rd Violation in a two-year window</b>	<b>4th Violation in a two-year window</b>
<b>Entertainment/instruction/meeting/trade show violations.</b> 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
<b>Providing/accepting money or money's worth: Goods or services worth up to \$1,500.</b> 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
<b>Providing/accepting money or money's worth: Goods or services worth over \$1,500.</b> 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
<b>Providing/accepting exclusive or contingency agreements.</b> 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
<b>Unauthorized interest or ownership in retail license.</b> 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	
<b><u>Failure to follow stock-keeping unit requirements.</u></b> <u>RCW 66.24.140</u> <u>RCW 66.24.145</u> <u>WAC 314-28-065</u>	<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>
<b><u>Failure to file annual report on revenue from tasting room sales of adulterated spirits for on-premises consumption.</u></b> <u>RCW 66.24.140</u> <u>RCW 66.24.145</u> <u>WAC 314-28-065</u>	<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>	

<b>Violation type</b>	<b>1st Violation</b>	<b>2nd Violation in a two-year window</b>	<b>3rd Violation in a two-year window</b>	<b>4th Violation in a two-year window</b>
<b><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></b> 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>	
<b>Failure to obtain surety bond/savings account, if required by the board.</b> 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.			
<b>Failure to file tax/shipment report.</b> 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
<b>Certificate of approval (COA) and/or authorized representative violations.</b> 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



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.





## **Notice of Permanent Rules**

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

**This concise explanatory statement concerns the Washington State Liquor and Cannabis Board's adoption of amendments to existing rules and creation of new rule sections to implement 2020 legislation E2SSB 5549, related to distilleries.**

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. The concise explanatory statement must be provided to any person upon request, or from whom the Board received comment.

The Washington State Liquor and Cannabis Board (Board) appreciates and encourages your involvement in the rule making process. If you have questions, please contact Audrey Vasek, Policy and Rules Coordinator, at (360) 664-1758 or by e-mail at [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov).

---

### **Background and reasons for adopting these rules.**

The Washington State Liquor and Cannabis Board (WSLCB) 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.<sup>1</sup>

E2SSB 5549 modified the privileges and requirements for distillery and craft distillery licenses,<sup>2</sup> and established a new off-site tasting room license available to distillery and craft distillery licensees beginning January 1, 2021.<sup>3</sup> E2SSB 5549 also authorized jointly operated off-site tasting rooms and jointly operated conjoined consumption areas for certain licensees.<sup>4</sup>

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

---

<sup>1</sup> E2SSB 5549 is largely codified in RCW 66.24.140 through 66.24.148.

<sup>2</sup> See RCW 66.24.140, 66.24.145, and 66.24.1471.

<sup>3</sup> See RCW 66.24.146 and 66.24.1473.

<sup>4</sup> See RCW 66.24.1472.

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.<sup>5</sup> 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.<sup>6</sup>

The public hearing on the original rule proposal was held on February 3, 2021. One person testified at the February 3, 2021, public hearing, and two written comments were received.<sup>7</sup>

Based on a public comment related to the distinctly marked glassware requirement in jointly operated conjoined consumption areas and the impact from the Court of Appeals decision in *Blue Spirits Distilling, LLC v. WSLCB*<sup>8</sup> to the distillery reporting and payment requirements, the WSLCB filed a supplemental CR 102 rule proposal<sup>9</sup> on March 17, 2021, making substantive changes to the original rule proposal.

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

- Replaced the monthly reporting requirement on revenue from tasting room sales of adulterated spirits for on-premises consumption in 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.
- Revised 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 penalties are consistent with the existing penalties for failure to file tax/shipment reports.
- Clarified that the distinctive glassware markings required by RCW 66.24.1472 for licensees sharing a jointly operated conjoined consumption area may be

---

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

<sup>6</sup> 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 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.

<sup>7</sup> 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.

<sup>8</sup> *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.

<sup>9</sup> See Supplemental CR 102 Rule Proposal filed as WSR 21-07-078 on March 17, 2021.

permanent or temporary by adding language to new rule section WAC 314-28-320(1)(d)(ii).

The public hearing on the supplemental rule proposal was held on April 28, 2021. No one testified at the public hearing, and no written comments were received.

The adopted 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 WSLCB with rulemaking authority to implement E2SSB 5549.

#### **Rulemaking history for this adopted rule:**

**CR 101** – filed August 5, 2020 as WSR #20-16-150.

**CR 102** – filed December 23, 2020 as WSR #21-01-211.

Public hearing held February 3, 2021. One person testified at the February 3, 2021, public hearing. Two written comments were received.

**Supplemental CR 102** – filed March 17, 2021 as WSR #21-07-078.

Public hearing held April 28, 2021. No one testified at the April 28, 2021, public hearing. No written comments were received.

---

#### **Public comment received on the rule proposal**

The following comments were received as indicated below. A response to each comment is provided, along with an indication regarding whether the comment was reflected in the adopted rule.

---

1. **Email received December 22, 2020—Direct quotation included below:**

From Josh McDonald, Washington Wine Institute:

“Hi Board Chair Rushford and Commissioners Garrett and Hauge

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.

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.

Thank you to the entire WSLCB and continue the tremendous work you do to support the industries you license and regulate.

Stay Safe

Josh McDonald  
Executive Director  
WA Wine Institute”

**Board response:** The Board appreciates these comments and the demonstration of interest in collaborative participation in the rulemaking process.

**Was the comment reflected in the adopted rule?** This comment is not reflected in the final rule.

---

2. **Email received December 22, 2020—Direct quotation included below:**

From Mhairi Voelsgen, Washington Distillers Guild:

“Hi Audrey,

Sorry-I have been busy with distillery needs over the past week.

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.

Everything else seemed fine.

Thanks!  
All my best,  
Mhairi"

**Board response:** The Board appreciates these comments and the demonstration of interest in collaborative participation in the rulemaking process. The fourth violation in a two-year window for failure to follow stock keeping unit requirements is a "20 day suspension or \$10,000 monetary option." This is consistent with the majority of other Group 4 nonretail violations provided for a fourth violation in a two-year window in [WAC 314-29-035](#), as it existed before this rulemaking.

**Was the comment reflected in the adopted rule?** This comment is not reflected in the final rule.

---

**3. Oral testimony provided during the public hearing held February 3, 2021, as transcribed directly from the meeting recording:**

From Caitlin Braam, Founder of Wise Fool Spirits Distillery and Yonder Cider:

"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."

[Chair Rushford: "Thank you very much. Your comments will be entered into the record. Do you have anything additionally?"]

"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."

**Board response:** The Board appreciates these comments and the demonstration of interest in collaborative participation in the rulemaking process. The glassware identification requirements contained in section 5(2) of E2SSB 5549, codified as [RCW 66.24.1472\(2\)](#), are part of existing law and cannot be changed by the Board in rule. However, in response to these concerns, the Board clarified in the supplemental rule proposal 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 new rule section WAC 314-28-320(1)(d)(ii).

**Was the comment reflected in the adopted rule?** This comment is reflected in the final rule.

### **Public Hearing on Original CR 102, February 3, 2021:**

One person provided comment regarding the original rule proposal as noted above.

### **Public Hearing on Supplemental CR 102, April 28, 2021:**

No one provided comment regarding the supplemental rule proposal.

### **Changes from the Supplemental Proposed Rules (CR 102) to the Rules as Adopted**

There were no changes from the supplemental proposed rules to the rules as adopted.