



## Supplemental CR 102 Memorandum

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

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

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#### 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.<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>

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<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

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.<sup>7</sup>

Based on the impact from a Court of Appeals decision to the distillery monthly reporting and payment requirements (*Blue Spirits Distilling, LLC v. WSLCB*<sup>8</sup>), 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

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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.

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 requirement<sup>9</sup> and the thirty percent annual limit on revenue derived from sales of adulterated spirits for on-premises consumption.<sup>10</sup>

**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.<sup>11</sup>

**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

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<sup>9</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>10</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>11</sup> 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.<sup>12</sup>

**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).

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<sup>12</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.

**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.

<b>Source</b>	<b>Date</b>	<b>Name</b>	<b>Theme</b>	<b>Feedback</b>
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 local</u> 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.

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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**

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				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

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				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!](#)***

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<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](mailto: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**

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			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>

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				<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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