



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.

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.¹

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

A virtual Listen and Learn session was held on November 17, 2020, to engage any interested members of the public in the rulemaking process and gather feedback and

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

² See RCW 66.24.140, 66.24.145, and 66.24.1471.

³ See RCW 66.24.146 and 66.24.1473.

⁴ See RCW 66.24.1472.

suggestions for revisions to conceptual draft rules. Messaging for the Listen and Learn session was sent to GovDelivery subscriber lists two weeks prior to the event.⁵ At a peak, there were over forty people in attendance.

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

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.⁷

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*⁸ to the distillery reporting and payment requirements, the WSLCB filed a supplemental CR 102 rule proposal⁹ 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

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

⁶ See the “Stakeholder Engagement” section of the original CR 102 Memo—E2SSB 5549 Distilleries ([linked here](#)). The feedback received during the Listen and Learn Session was provided in Attachment A to the CR 102 Memo. A follow-up email containing information about the CR 102 rule proposal, the December 23 Board activity, and notice of the February 3, 2021, public hearing was sent on December 23, 2020, to the Listen and Learn session attendees.

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

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

⁹ 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.

CR 103 – filed May 12, 2021 as WSR #21-11-034. The effective date of the rules will be 31 days after filing, or June 12, 2021.

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 first 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 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.