



## 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.

## 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