

Report on Brewery, Winery and Distillery Study

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Brewery, Winery and Distillery Study

2142(1), Wineries – all operations

2142(2), Distilling – N.O.C.

2121, Breweries – including bottling or canning

I. Executive Summary

Objective

The WCIRB performed a review of select *Food Packaging and Processing* Industry Group classifications to clarify the procedures for classifying brewery, winery and distillery employers who provide facility tours and product tastings, sell products to retail customers, or prepare and serve alcoholic beverages or hot food in addition to manufacturing operations. These operations are currently only addressed by Classification 2142(1), *Wineries – all operations*, which indicates that the classification includes employees who provide tours and that store, tasting room and restaurant or tavern operations are separately classified in accordance with the provisions of the *Multiple Enterprises* rule. No directives currently exist for store, tasting room or food and beverage operations that may be performed in connection with Classification 2142(2), *Distilling – N.O.C.*, or Classification 2121, *Breweries – including bottling or canning*. The objective of this study is to provide clear direction for employers engaged in these operations at breweries, wineries and distilleries.

Findings

Based on staff's review, the WCIRB determined:

1. Some breweries provide facility tours that may include product tastings where employees are exposed to the general hazards of the beer brewing operations. It is also common for some breweries to operate a taproom that is intended to promote the purchase of beer for consumption on the premises. Taprooms or taverns at breweries have historically been assigned to Classification 9079(1), *Restaurants or Taverns*. In addition, some breweries may operate a retail store or an on-site restaurant or otherwise prepare and serve hot foods.
2. Some wineries provide facility tours that may include product tastings where employees are exposed to the general hazards of the wine making operations. It is also common for some wineries to operate a tasting room that is intended to promote the retail sale of wine for consumption away from the premises. In addition, some wineries may operate a retail store or an on-site restaurant or otherwise prepare and serve hot foods.
3. Some distilleries provide facility tours that may include product tastings where employees are exposed to the general hazards of the distilling operations. It is also common for some distilleries to provide product tastings in connection with facility tours. Providing tasting samples to customers in connection with facility tours has historically been assigned to the applicable beverage manufacturing classification. In addition, some distilleries may operate a tasting room, retail store or an on-site restaurant or tavern or otherwise prepare and serve hot foods.
4. Some retail stores operating under an "off-sale" license issued by the California Department of Alcoholic Beverage Control provide product tastings that are intended to promote the retail sale of alcoholic beverages for consumption away from the premises. Stores engaged in the sale of alcoholic beverages to the general public for consumption away from the premises, including product tastings performed by store employees, have historically been assigned to Classification 8060, *Stores – wine, beer or spirits – retail*. Classification 8060 has also been assigned to tasting operations and beverage sales for consumption away from the premises performed at winery tasting rooms.
5. The sale of alcoholic beverages to the general public for consumption on the premises has historically been assigned to Classification 9079(1), *Restaurants or Taverns*. Classification 9079(1) has also been assigned to tasting operations and beverage sales for consumption on the premises performed at brewery taprooms.

6. Restaurants that brew beer on-site that is primarily to be served within the restaurant, commonly known as brewpub restaurants, have become increasingly popular and differ from brewery operations that are not restaurant-based, as beer brewing is ancillary to the more labor-intensive restaurant operations and the majority of payroll is consistently developed in the restaurant operations.

Recommendation

Based on these findings, the WCIRB recommends the following:

1. Amend Classification 2121, *Breweries*, to (a) clarify that it includes the provision of product tasting samples to customers in connection with facility tours; (b) direct that the operation of retail stores should be separately classified, the operation of restaurants or taverns and the preparation and serving of hot food should be separately classified as 9079(1), *Restaurants or Taverns*, and the operation of taprooms should be separately classified as 9079(1); and (c) direct that beer making operations at restaurants where the beer brewed on-site is primarily sold to restaurant customers for on-site consumption should be classified as 9079(1).
2. Amend Classification 2142(1), *Wineries*, to clarify that it includes the provision of product tasting samples to customers in connection with facility tours; and direct that the operation of retail stores should be separately classified, the operation of restaurants and the preparation and serving of hot food should be separately classified as 9079(1), *Restaurants or Taverns*, and the operation of tasting room facilities should be separately classified as 8060, *Stores – wine, beer or spirits – retail*.
3. Amend Classification 2142(2), *Distilling*, to clarify that it includes the provision of product tasting samples to customers in connection with facility tours; and direct that the operation of retail stores should be separately classified, the operation of tasting rooms, restaurants or taverns and the preparation and serving of hot food should be separately classified as 9079(1), *Restaurants or Taverns*.
4. Amend Classification 8060, *Stores – wine, beer or spirits – retail*, to clarify that it applies to product tasting in connection with retail store sales and direct that it also applies to winery tasting rooms.
5. Amend Classification 9079(1), *Restaurants or Taverns*, to clarify that it also applies to brewery taproom operations and on-site beer making operations performed by restaurants where the beer brewed on-site is primarily sold to the general public for consumption on the premises.

II. Introduction

As part of a multi-year effort to enhance the classifications contained in the *California Workers' Compensation Uniform Statistical Reporting Plan—1995* (USRP), the WCIRB proposed, and the Insurance Commissioner approved, clarifying changes to the *Food Packaging and Processing* Industry Group classifications effective January 1, 2016. At that time, Classification 2142(1), *Wineries*, was revised to clarify that it includes employees who provide tours of the winery operations, and direct that retail store, tasting room and restaurant or tavern operations that are commonly performed in the winemaking industry should be separately classified in accordance with the provisions of the *Multiple Enterprises* rule. Classification 2142(1) did not specify the classifications applicable to these retail store, tasting room and restaurant or tavern operations.

The operations performed at some craft distilleries and breweries in California have also expanded to include retail store, tasting room and restaurant or tavern operations. Additionally, some restaurants that are licensed as brewpubs engage in beer making operations.¹

Currently, no directives exist for the classification of store, tasting room or food and beverage operations that may be performed in connection with Classification 2142(2), *Distilling*, or Classification 2121, *Breweries*,² and no specific classification procedure has been established for brewpub restaurants.

¹ Section 23396.3 of the California Alcoholic Beverage Control Act provides for the licensing of brewpub restaurants.

² Although additional operations, such as concerts, corporate or private events, and hotel or bed and breakfast operations may be performed at some breweries, wineries and distilleries, this review focuses on facility tours and product tastings, product sales to retail customers, the preparation and serving of hot foods or the preparation, pouring or serving of alcoholic beverages as these operations are performed at many breweries, wineries and distilleries.

Classifications 2142(2) and 2121 each specify that they include employees who provide tours of the distilling or brewing operations.

While the retail store, tasting room and restaurant or tavern operations are not necessary or integral to the alcoholic beverage manufacturing operations, they are commonly performed by many employers engaged in winery, distillery and brewery operations. Where no direction exists for the classification of these operations, the *Multiple Enterprises* rule is applied. The rule, however, can be difficult to administer because physical separation is often not present. Therefore, it is advantageous to provide clear directives for the classification of these commonly performed operations to ensure that employers in these industries can be consistently classified and that the data reported for breweries, wineries and distilleries is representative of the operations performed in each industry.

Classification History

A chronological summary of the history of Classifications 2121, *Breweries*, 2142(1), *Wineries*, and 2142(2), *Distilling*, as well as relevant legislation is in Appendix I of this study.

III. Breweries, Wineries and Distilleries

Description of Operations

Classification 2121, *Breweries*, applies to the production and bottling or canning of beer, including but not limited to ale, lager, porter, stout and malt liquor. This classification also includes the production and bottling or canning of sake and the sale of brewing by-products, including but not limited to wet or dry feed grains and brewer's yeast. The classification directs that it includes employees who provide facility tours.

Classification 2142(1), *Wineries*, applies to the production of wine and champagne. The core operations described by Classification 2142(1) include the production of wine typically from grape juice that is allowed to ferment. The classification directs that it includes employees who provide facility tours, and that the operation of retail stores, wine tasting rooms and restaurants or taverns shall be separately classified in accordance with the provisions of the *Multiple Enterprises* rule.

Classification 2142(2), *Distilling*, applies to the production of distilled spirits, including but not limited to vodka, rum, whiskey, brandy, tequila and liqueurs. The classification directs that it includes employees who provide facility tours. Currently, there are 75 licensed distilleries in California.

Tours of the manufacturing facilities are commonly provided and normally prevail at breweries, wineries and distilleries and thus do not constitute multiple enterprises. The classification phraseologies for these operations direct that employees who provide facility tours at breweries, wineries and distilleries be assigned to the applicable manufacturing classification.

In addition, many alcoholic beverage manufacturers engage in product tastings, the sale of products to retail customers, including alcoholic beverages for off-site consumption, the preparation and serving of hot foods, and the preparation, pouring and serving of alcoholic beverages for on-site consumption.³ These operations have been classified using the *Multiple Enterprises* rule as *distinct operations that do not normally prevail in the business described by a single classification*. However, although these operations are not necessary or integral to brewing, winemaking or distilling, they are commonly performed at many breweries, wineries and distilleries.

Product Tasting

Product tasting operations involve employees pouring small quantities of beer, wine or distilled spirits for customers to taste or sample. The employees describe the merits of different beverage varieties and assist customers in making selections to taste or purchase. Tastings allow employers to promote their

³ A table showing the combinations of assigned classifications for breweries, wineries and distilleries is included in Appendix II.

products, educate consumers, build product or brand loyalty and encourage the purchase of products while customers are on-site.

In accordance with the *Single Enterprise* rule, product tasting operations that are provided in connection with facility tours have been included in the applicable manufacturing classification. In accordance with the *Multiple Enterprises* rule, product tasting operations that are performed in connection with retail store, restaurant or tavern operations have been separately classified and included in the store or restaurant and tavern classification.

Product Sales

Some alcoholic beverage manufacturers may also operate retail stores engaged in the sale of goods to the general public. In addition to potentially selling alcoholic beverages to the public for carry-out or off-site consumption, these locations may also sell additional items such as souvenirs, clothing, glassware, gift items, kitchen accessories, specialty food items and similar merchandise. Merchandise is received and placed on display for customer viewing and selection, and employees are retained to answer questions, assist customers in product selection and complete sales transactions. Although the sale of alcoholic beverages at these stores typically exceeds 50% of gross receipts, resulting in the assignment of Classification 8060, *Stores – wine, beer or spirits – retail*, this is not always true, so store classifications other than Classification 8060 can also apply.

Food and Beverage Preparation and Service

On-site restaurants, taverns or food preparation departments are operated at some breweries, wineries and distilleries for the preparation and serving of hot food or the preparation, pouring and serving of alcoholic beverages. Employees may also engage in food and beverage preparation for special events such as parties, corporate events, weddings and similar types of events, even where the employer does not otherwise operate a restaurant. In some cases, these operations are performed by separate catering concerns. As indicated above, when these operations are performed, Classification 9079(1), *Restaurants or Taverns*, has been assigned in accordance with the *Multiple Enterprises* rule.

Classification Analysis

Physical Separation

Currently, a footnote in Classification 2142(1), *Wineries*, directs that retail stores, wine tasting rooms and restaurant or tavern operations shall be separately classified in accordance with the *Multiple Enterprises* rule. The brewing and distilling classifications do not currently contain directives for the assignment of these operations but they have historically been classified using the *Multiple Enterprises* rule and corresponding analysis.

A review of WCIRB Inspection Reports indicates that retail stores, tasting rooms and restaurant or tavern operations are often not physically separated from the manufacturing operations. For this reason, classifying these operations using the *Multiple Enterprises* rule can be difficult to administer and can lead to inconsistent classification assignments for similar operations. Under a *Multiple Enterprises* rule analysis, if the tasting room, retail store, and restaurant or tavern operations are not physically separated from the governing manufacturing operations, the operations may be assignable to the highest rated classification which may change when the rate relativities between potentially applicable classifications fluctuate from year-to-year.⁴

Where 50% or more of the gross receipts from tasting rooms are generated from the sale of food or beverages for on premises consumption, the operations have historically been assigned to Classification 9079(1), *Restaurants or Taverns*, as they resemble bar or tavern operations. This is consistent with the footnote in Classification 9079(1) indicating that the classification applies to the preparation and serving of

⁴ The rates applicable to manufacturing operations are generally, but not consistently, higher than the rates for store or restaurant and tavern classifications. For purposes of this analysis, the WCIRB will presume that payroll has been segregated for each operation, as this can only be determined when each employer is audited. Therefore, interchange of labor due to individual employees that engage in multiple operations is not accounted for in this review.

hot and cold food items for consumption on or away from the premises or the preparation, pouring and serving of alcoholic beverages for consumption on the premises. This is most often the case at brewery taprooms.

Additionally, Classification 8060, *Stores – wine, beer or spirits – retail*, contains a footnote indicating that it applies to retail stores that are principally (in excess of 50% of gross receipts) engaged in the sale of alcoholic beverages to the general public for consumption away from the store premises. On this basis, Classification 8060 has been assigned to tasting operations that are principally engaged in the sale of alcoholic beverages for consumption away from the premises.⁵ This is most often the case at winery tasting rooms.

Common Operational Configurations

Retail store, product tasting and restaurant or tavern operations performed at breweries, wineries and distilleries have identifiable distinctions when comparing the context or purpose of these operations.

A review of Inspection Reports found that tasting room operations⁶ at wineries are provided for the purpose of promoting the retail sale of wine for off-site consumption. As the purpose of these product tastings is to promote the retail sale of wine, these operations should be consistently assigned to Classification 8060, *Stores – wine, beer or spirits – retail*.

Unlike wineries, distilleries do not commonly operate separate tasting rooms or taverns for the sale of alcoholic beverages for consumption off the premises. Product tastings at distilleries are primarily performed in connection with facility tours, and if a distillery does have a tasting room or tavern, the sale of alcoholic beverages is for consumption on the premises. When tastings are performed in connection with tours, they should be included in the distilling classification as tours include exposure to the manufacturing facility. If a distillery has a tasting room or tavern, it should be separately classified as 9079(1), *Restaurants or Taverns*.

Although product tastings at breweries may also be performed in connection with facility tours, they are often performed at product tasting areas known as taprooms. Unlike tasting rooms at wineries, brewery taprooms primarily serve to promote the purchase of beer for on-site consumption. Although bottled or packaged beer may be purchased for consumption off premises, a review of Inspection Reports indicates that the majority of breweries operate a taproom that serves beer for on-site consumption. In this manner, a brewery taproom operates similar to a bar or tavern in that the majority of beer is poured and sold for consumption on premises and should, therefore, be consistently assigned to Classification 9079(1), *Restaurants or Taverns*.

To the extent that breweries, wineries and distilleries engage in the operation of restaurants, taverns or retail stores, these operations should consistently be separately classified using footnote directives to the appropriate classifications, as discussed above, and not through the application of the *Multiple Enterprises* rule.

Findings

Based on staff's review, the WCIRB determined:

1. Some breweries provide facility tours that may include product tastings where employees are exposed to the general hazards of the beer brewing operations. It is also common for some breweries to operate a taproom that is intended to promote the purchase of beer for consumption on the premises. Taprooms or taverns at breweries have historically been assigned to Classification 9079(1),

⁵ Although it is not uncommon for stores at breweries, wineries and distilleries to sell additional merchandise, including but not limited to souvenirs, clothing, glassware, gift items, kitchen accessories, specialty food items and similar merchandise, the sale of alcoholic beverages typically exceeds 50% of gross receipts and results in the assignment of Classification 8060.

⁶ When considering the use of product tasting fees in this Study, WCIRB staff considered whether charging tasting fees would be determinative of classification assignments. Staff found that tasting fees vary by industry, are charged inconsistently and do not necessarily correlate to operational differences between employers. As such, staff concluded that charging fees for product tastings would not be determinative for classification purposes.

Restaurants or Taverns. In addition, some breweries may operate a retail store or an on-site restaurant or otherwise prepare and serve hot foods.

2. Some wineries provide facility tours that may include product tastings where employees are exposed to the general hazards of the wine making operations. It is also common for some wineries to operate a tasting room that is intended to promote the retail sale of wine for consumption away from the premises. In addition, some wineries may operate a retail store or an on-site restaurant or otherwise prepare and serve hot foods.
3. Some distilleries provide facility tours that may include product tastings where employees are exposed to the general hazards of the distilling operations. It is also common for some distilleries to provide product tastings in connection with facility tours. Providing tasting samples to customers in connection with facility tours has historically been assigned to the applicable beverage manufacturing classification. In addition, some distilleries may operate a tasting room, retail store or an on-site restaurant or tavern or otherwise prepare and serve hot foods.
4. Some retail stores operating under an “off-sale” license issued by the California Department of Alcoholic Beverage Control provide product tastings that are intended to promote the retail sale of alcoholic beverages for consumption away from the premises. Stores engaged in the sale of alcoholic beverages to the general public for consumption away from the premises, including product tastings performed by store employees, have historically been assigned to Classification 8060, *Stores – wine, beer or spirits – retail*. Classification 8060 has also been assigned to tasting operations and beverage sales for consumption away from the premises performed at winery tasting rooms.
5. The sale of alcoholic beverages to the general public for consumption on the premises has historically been assigned to Classification 9079(1), *Restaurants or Taverns*. Classification 9079(1) has also been assigned to tasting operations and beverage sales for consumption on the premises performed at brewery taprooms.

Recommendations

Based on the findings, the WCIRB recommends the following:

1. Amend Classification 2121, *Breweries*, to (a) clarify that it includes the provision of product tasting samples to customers in connection with facility tours; (b) direct that the operation of retail stores should be separately classified, the operation of restaurants or taverns and the preparation and serving of hot food should be separately classified as 9079(1), *Restaurants or Taverns*, and the operation of taprooms should be separately classified as 9079(1); and (c) direct that beer making operations at restaurants where the beer brewed on-site is primarily sold to restaurant customers for on-site consumption should be classified as 9079(1).
2. Amend Classification 2142(1), *Wineries*, to clarify that it includes the provision of product tasting samples to customers in connection with facility tours, and direct that the operation of retail stores should be separately classified, the operation of restaurants and the preparation and serving of hot food should be separately classified as 9079(1), *Restaurants or Taverns*, and the operation of tasting room facilities should be separately classified as 8060, *Stores – wine, beer or spirits – retail*.
3. Amend Classification 2142(2), *Distilling*, to clarify that it includes the provision of product tasting samples to customers in connection with facility tours; and direct that the operation of retail stores should be separately classified, the operation of tasting rooms, restaurants or taverns and the preparation and serving of hot food should be separately classified as 9079(1), *Restaurants or Taverns*.
4. Amend Classification 8060, *Stores – wine, beer or spirits – retail*, to clarify that it applies to product tasting in connection with retail store sales and direct that it also applies to winery tasting rooms.
5. Amend Classification 9079(1), *Restaurants or Taverns*, to clarify that it also applies to brewery taproom operations and on-site beer making operations performed by restaurants where the beer brewed on-site is primarily sold to the general public for consumption on the premises.

IV. Restaurants with On-Site Brewing Operations

Description of Operations

In California, brewery operations are performed at a variety of locations, including large-scale manufacturing plants, smaller breweries producing specialty or craft beers known as microbreweries,⁷ and restaurants with on-site beer brewing operations known as brewpubs. In contrast with most commercial breweries where the primary operation is the manufacturing of alcoholic beverages, the primary function of a brewpub is to operate as a restaurant. The on-site beer brewing operations performed at brewpub restaurants are secondary to the integral restaurant operations and the majority of payroll is consistently developed in the restaurant operations. Because of this, brewpubs are a type of restaurant and should be classified as such.

Based on current California Department of Alcoholic Beverage Control licensing requirements, a “brewpub-restaurant license is an on-sale retail license which may be issued to a bona fide public eating place.”⁸ These establishments specialize in the preparation and service of beverages and hot food for on-site consumption. The license does not allow on-site retail store operations for the sale of alcoholic beverages to customers for consumption off premises.

Classification Analysis

At brewpubs, beer brewing operations often are not physically separated from the restaurant operations. For example, many brewpubs utilize a “long draft system” in which beer is drawn directly from brewery storage tanks to be served in the restaurant. The brewing equipment and tanks are often visible from the restaurant or tavern area and contribute to the ambience of the venue. However, the majority of payroll is typically developed in the more labor-intensive restaurant operations and relatively few employees are needed for the beer making operations.

If beer making operations at brewpub restaurants are not included in the restaurant classification and are instead subject to the *Multiple Enterprises* rule, inconsistent classification assignments for similar operations could result, especially when the rate relativities between potentially applicable classifications fluctuate from year-to-year. For example, given that there may not always be physical separation, the restaurant and beer making operations may be separately classified at times when the advisory pure premium rate for Classification 2121, *Breweries*, exceeds that of Classification 9079(1), *Restaurants or Taverns*.⁹ Conversely, brewing operations may be assigned to Classification 9079(1) at times when it is the higher rated classification. The application of the *Multiple Enterprises* rule to these operations and year-to-year changes in applicable classifications has resulted in inconsistent classification assignments for employers performing the same combination of operations even when an employer’s operations have not changed.

As referenced in Section V, the National Council of Compensation Insurance, Inc. (NCCI) specifically excludes brewery operations performed at brewpubs from assignment to Classification 2121 and assigns these operations to the appropriate restaurant classification as “[t]he preparation of beer by the restaurant is considered analogous to any other consumable that the restaurant may prepare for consumption by the restaurant’s customers.”¹⁰

⁷ A microbrewery is defined as a beer manufacturer that produces no more than 60,000 U.S. beer barrels (7,040,865.9 liters; 1,860,000 U.S. gallons) annually.

⁸ Section 23396.3 of the California Alcoholic Beverage Control Act. A Brewpub is required to have a Type 75 License. This license authorizes the sale of beer, wine and distilled spirits for consumption at a bona fide eating place. A Brewpub shall produce not less than 100 barrels nor more than 5,000 barrels of beer annually on the licensed premises. This license does not authorize the sale of alcoholic beverages for consumption off the premises where sold.

⁹ The rate relativities for Classifications 2121 and 9079(1) have inverted four times between 1995 and 2018.

¹⁰ Classification 2121, Scopes Manual, National Council on Compensation Insurance, Inc.

Findings

Based on staff's review, the WCIRB determined:

1. Restaurants that brew beer on-site that is primarily to be served within the restaurant, commonly known as brewpub restaurants, have become increasingly popular and differ from brewery operations that are not restaurant-based, as beer brewing is ancillary to the more labor-intensive restaurant operations and the majority of payroll is consistently developed in the restaurant operations.

Recommendation

Based on the findings, the WCIRB recommends the following:

1. Amend Classification 9079(1), *Restaurants or Taverns*, to clarify that it also applies to on-site beer making operations performed by restaurants where the beer brewed on-site is primarily sold to the general public for consumption on the premises.

V. Classification Procedures in Other Jurisdictions

Below is a comparison between WCIRB classifications and those maintained by NCCI jurisdictions for the following select classifications in the *Food Packaging and Processing* Industry:

WCIRB	NCCI
2121, <i>Breweries</i>	2121 <i>Brewery & Drivers</i>
2142(1), <i>Wineries</i>	2143, <i>Winery & Drivers</i>
2142(2), <i>Distilling</i>	2130, <i>Spirituous Liquor Distillery</i>

Like the WCIRB, NCCI retains classifications for brewery, winery and distillery operations. For brewery operations, NCCI includes warehouses and distribution stations that are maintained by the brewery. Although the WCIRB does not explicitly mention these operations, they are generally included in the classification as they are an integral part of the brewery operation. NCCI specifically excludes “brewpubs” from Classification 2121 as “[t]he preparation of beer by the restaurant is considered analogous to any other consumable that the restaurant may prepare for consumption by the restaurant’s customers” and is assignable to the appropriate restaurant classification.

For winery operations, the WCIRB and NCCI use similar classification phraseology and appear to administer the classification similarly.

For distillery operations, NCCI excludes warehousing operations performed in connection with the distillery operations.

NCCI is currently conducting a review of the brewery, winery and distillery industries, including the classification of facility tours, product tasting, retail store and restaurant or tavern operations.

Appendix I

1915: Classifications 2121, *Breweries*, 2130, *Distilling – N.O.C.*, and 2142, *Wine Manufacturing*, are established.

1919: Classification 2121, *Breweries*, is amended to include bottling operations at locations that previously operated as breweries.

1950: Classification 2142, *Wine Manufacturing*, is changed to Classification 2142, *Wineries*.

1969: Classification 2130, *Distilling – N.O.C.*, is eliminated and all distilling operations are assigned to Classification 2142, *Wineries*.

1972: Classification 2142, *Wineries*, is amended to separately classify bottle manufacturing for distilling operations.

1982: California Assembly Bill No. 3610 allows beer to be sold at on-site brewery locations.

1988: Classifications 2142(1), *Wineries*, and 2142(2), *Distilling*, are established when the WCIRB adopts alternate phraseologies for wineries, distilleries and vinegar manufacturing to codify the separate operations that are assigned to Classification 2142.

2015: California Assembly Bill No. 933 allows tasting rooms for distilled spirits and Assembly Bill No. 1295 allows direct to consumer sales of distilled spirits in tasting rooms.

2016: Classifications 2121, 2142(1), and 2142(2) are amended to their current phraseologies as part of the multi-year classification enhancement project.

Appendix II

The following table shows the combinations of assigned classifications for breweries, wineries and distilleries that were inspected between January 1, 2010 and January 1, 2018.

Breweries	# of BNs
Brewery only	114
Brewery with Retail Stores (8060)	16
Brewery with Restaurants/Hot Foods (9079) ¹¹	91
Brewery with Alcohol Retail Stores and Restaurants	5
Wineries	# of BNs
Winery only	470
Winery and Retail Stores (8060)	344
Wineries and Restaurants/Hot Foods (9079)	55
Wineries with Retail Stores and Restaurants	45
Distilleries	# of BNs
Distillery only	7
Distillery and Retail Stores (8060)	4
Distillery and Restaurants/Hot Foods (9079)	1
Distillery with Alcohol Retail Stores and Restaurants	1

¹¹ According to the California Department of Alcohol Beverage Control, as of December 2017, there are 74 Beer Manufacturers (License Type 1); 872 Small Beer Manufacturers (License Type 23); and 141 Brewpubs (License Type 75) licensed in California.

Recommendation

Amend Classification 2121, *Breweries*, which is part of the *Food Packaging and Processing* Industry Group, to clarify that it includes the provision of product tasting samples to customers in connection with facility tours; direct that the operation of retail stores should be separately classified, the operation of restaurants or taverns and the preparation and serving of hot food should be separately classified as 9079(1), *Restaurants or Taverns*, and the operation of taprooms should be separately classified as 9079(1), and direct that beer making operations at restaurants where the beer brewed on-site is primarily sold to restaurant customers for on-site consumption should be classified as 9079(1); and provide direction as to how related operations should be classified.

PROPOSED

FOOD PACKAGING AND PROCESSING

BREWERIES – including bottling or canning

2121

This classification applies to the production and bottling or canning of beer, including but not limited to ale, lager, porter, stout and malt liquor. This classification includes product storage facilities and distribution stations and the manufacture of containers, including but not limited to cans and bottles in support of the employer's production operations. This classification also includes the production and bottling or canning of sake and the sale of by-products, including but not limited to wet or dry feed grains and brewer's yeast.

This classification includes employees who provide tours of the brewery, including tours where product tasting samples are provided to customers not in connection with taproom, tasting room, retail store, or restaurant or tavern operations.

~~The production of beer by restaurants or taverns shall be classified as 2121 in accordance with the provisions of the Multiple Enterprises rule.~~

The production of wine shall be classified as 2142(1), *Wineries*.

The production of distilled spirits shall be classified as 2142(2), *Distilling*.

Taprooms, tasting rooms, restaurants, taverns or the preparation and serving of hot food, shall be separately classified as 9079(1), *Restaurants or Taverns*.

Beer brewing operations at restaurants where the beer brewed on-site is primarily sold to restaurant customers for on-site consumption shall be classified as 9079(1), *Restaurants or Taverns*.

Retail stores shall be separately classified.

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Recommendation

Amend Classification 2142(1), *Wineries*, which is part of the *Food Packaging and Processing* Industry Group, to clarify that it includes the provision of product tasting samples to customers in connection with facility tours; and direct that the operation of retail stores should be separately classified, the operation of restaurants and the preparation and serving of hot food should be separately classified as 9079(1), *Restaurants or Taverns*, and the operation of tasting room facilities should be separately classified as 8060, *Stores – wine, beer or spirits – retail*.

PROPOSED

FOOD PACKAGING AND PROCESSING

WINERIES – all operations

2142(1)

This classification applies to the production of wine ~~and/or~~ champagne.

This classification includes employees who provide tours of the winery operations, including tours where product tasting samples are provided to customers not in connection with tasting room, retail store, or restaurant or tavern operations.

~~Retail stores, wine tasting rooms and restaurant or tavern operations shall be separately classified in accordance with the provisions of the Multiple Enterprises rule.~~

The production of distilled spirits shall be classified as 2142(2), *Distilling*.

The manufacture of vinegar shall be classified as 2142(3), *Vinegar Mfg.*

~~Employers engaged in the b~~Blending and bottling of purchased wines shall be classified as 8041, *Stores – wine or spirits – wholesale*.

Tasting rooms shall be separately classified as 8060, *Stores – wine, beer or spirits – retail*.

Restaurants, taverns or the preparation and serving of hot food shall be separately classified as 9079(1), *Restaurants or Taverns*.

Bottle manufacturing shall be separately classified.

Retail stores shall be separately classified.

Growing or harvesting, including field packing of crops, shall be assigned to the applicable *Farms* Industry Group classification.

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Recommendation

Amend Classification 2142(2), *Distilling*, which is part of the *Food Packaging and Processing* Industry Group, to clarify that it includes the provision of product tasting samples to customers in connection with facility tours; and direct that the operation of retail stores should be separately classified, the operation of tasting rooms, restaurants or taverns and the preparation and serving of hot food should be separately classified as 9079(1), *Restaurants or Taverns*.

PROPOSED

FOOD PACKAGING AND PROCESSING

DISTILLING – N.O.C.

2142(2)

This classification applies to the production of distilled spirits, including but not limited to vodka, rum, whiskey, brandy, tequila and liqueurs.

This classification includes employees who provide tours of the distillery operations, including tours where product tasting samples are provided to customers not in connection with tasting room, retail store, or restaurant or tavern operations.

The production of wine shall be classified as 2142(1), *Wineries*.

The production of beer or sake shall be classified as 2121, *Breweries*.

Blending and bottling purchased distilled spirits shall be classified as 8041, *Stores – wine or spirits – wholesale*.

Tasting rooms, restaurants, taverns or the preparation and serving of hot food shall be separately classified as 9079(1), *Restaurants or Taverns*.

Bottle manufacturing shall be separately classified.

Retail stores shall be separately classified.

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Recommendation

Amend Classification 9079(1), *Restaurants or Taverns*, to clarify that it also applies to brewery taproom operations and on-site beer making operations performed by restaurants where the beer brewed is primarily sold to the general public for consumption on the premises; and to provide direction as to how related operations should be classified.

PROPOSED

RESTAURANTS OR TAVERNS – all employees – including musicians and entertainers

9079(1)

This classification applies to the preparation and serving of hot ~~and~~ cold food items for consumption on or away from the premises or the preparation, pouring and serving of alcoholic beverages for consumption on the premises. ~~This classification also applies to the operation of mobile food trucks vending operations involving the use of food trucks, trailers, carts or temporary booths wherein hot food is prepared for sale to customers. Mobile food vending operations that do not include the preparation of hot food shall be classified as 8017(1), *Stores – retail,*~~

~~8078(1), Sandwich Shops, 8078(2), Beverage Preparation Shops, or 8078(3), Ice Cream or Frozen Yogurt Shops, depending on the products sold.~~

This classification also applies to mobile food vending operations involving the use of food trucks, trailers, carts or temporary booths wherein hot food is prepared for sale to customers.

This classification also applies to taprooms at breweries, including product tasting in connection therewith.

This classification also applies to restaurants that engage in on-site beer brewing operations where the beer brewed on-site is primarily sold to the general public for consumption on the premises. If 50% or more of the beer brewed on-site is sold for off-site consumption, the brewing operations shall be separately classified as 2121, *Breweries*.

Hot foods items are foods that are cooked to order and served hot to customers or foods that are cooked in advance and served from a warming tray or similar device.

This classification includes doughnut shops that prepare and serve doughnuts and beverages for consumption on the premises.

Mobile food vending operations that do not include the preparation of hot food shall be classified as 8017(1), *Stores – retail*, 8078(1), *Sandwich Shops*, 8078(2), *Beverage Preparation Shops*, or 8078(3), *Ice Cream or Frozen Yogurt Shops*, depending on the products sold.

Employers that operate under concessionary agreements to sell prepared or prepackaged hot or cold food items, including but not limited to hot dogs, hamburgers, pretzels, french fries, pop-corn, nachos, ice cream, candy, funnel cakes, soft drinks and alcoholic beverages at ball parks, race tracks, theaters, concert venues or amusement and recreational facilities shall be classified as 9079(2), *Concessionaires*.

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Recommendation

Amend Classification 8060, *Stores – wine, beer or spirits*, which is part of the *Stores* Industry Group, to clarify that it applies to product tasting in connection with retail store sales and direct that it also applies to winery tasting rooms.

PROPOSED

STORES

Refer to Section IV, *Special Industry Classification Procedures*, Rule 6, *Stores*.

STORES – wine, beer or spirits – retail

8060

This classification applies to retail stores operating under “off-sale” licenses issued by the California Department of Alcoholic Beverage Control and principally (in excess of 50% of gross receipts) engaged in the sale of alcoholic beverages to the general public for consumption away from the store premises, including product tastings in connection therewith.

For purposes of determining gross receipts, only the portion of lottery ticket sales identified by the California State Lottery as commission shall be included in the calculation. See Part 3, Section IV, Rule 6, *Stores*.

~~In accordance with the Multiple Enterprises rule, †This classification shall be assigned also applies to the sale of alcoholic beverages to the general public for consumption away from the premises in connection with wineries, breweries and distilleries winery tasting rooms.~~

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Recommendation

Amend the cross-reference for Classification 2142(1), *Wineries – all operations*, for consistency with other proposed changes.

PROPOSED

~~WINERIES – all operations~~

See Food Packaging and Processing.

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