



**Washington State
Liquor and Cannabis Board**

Date: May 24, 2023

To: David Postman, Board Chair
Ollie Garrett, Board Member
Jim Vollendroff, Board Member

From: Dr. Kathy Hoffman, Research Manager

Copy: Rick Garza, Agency Director
Toni Hood, Agency Deputy Director
Becky Smith, Licensing Director
Chandra Brady, Director of Enforcement and Education
Justin Nordhorn, Policy and External Affairs Director

Subject: **CR 102 regarding implementation of SSB 5448 concerning liquor licensee privileges for the delivery of alcohol.**

The Research Manager requests approval to file a rule proposal (CR 102) for the rulemaking related to implementation of 2023 legislation SSB 5448 described in the CR 102 Memorandum attached to this order and presented at the Board meeting on May 24, 2023. If approved for filing, the tentative timeline for this rule proposal is as follows:

May 24, 2023	Board is asked to approve filing proposed rules (CR 102). CR 102 filed with the Office of the Code Reviser. WSLCB webpage updated and notice circulated by GovDelivery distribution list. Formal comment period begins.
June 7, 2023	Notice published in the Washington State Register under WSR 23-11.
June 27, 2023	Public hearing held and formal comment period ends.
No earlier than July 5, 2023	Board is asked to adopt rules if no substantive changes are made (CR 103). Concise Explanatory Statement provided to individuals who offered written or oral comment at the public hearing or during the formal comment period, consistent with RCW 34.05.325. CR 103 and adopted rules are filed with the Office of the Code Reviser. WSLCB webpage updated and notice circulated by GovDelivery distribution list.
July 5, 2023	Rules are effective immediately. See RCW 34.05.380(3).

_____ Approve _____ Disapprove _____
David Postman, Chair _____
Date

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

_____ Approve _____ Disapprove _____
Jim Vollendroff, Board Member _____
Date

Attachments: CR 102 Memorandum



CR 102 Memorandum

Regarding Implementation of 2021 Legislation – E2SHB 1480 (COVID-19 Alcohol Allowances).

Date: September 29, 2021
Presented by: Audrey Vasek, Policy and Rules Coordinator

Background

In March of 2020, as the coronavirus (COVID-19) pandemic began to spread rapidly in Washington, the state announced restrictions that impacted the operations of many Washington State Liquor and Cannabis Board (WSLCB) licensees, particularly on-premises licensees. Some licensees were required to close entirely and others had significant limitations on sales and customer service. The WSLCB worked to find temporary ways for businesses to expand their operations using methods that would not put the health of employees or customers at risk. Engrossed Second Substitute House Bill (E2SHB) 1480 (chapter 48, Laws of 2021) took effect on April 14, 2021, providing legislative authorization extending certain temporary privileges that the WSLCB granted to liquor licensees to mitigate the impact of the COVID-19 pandemic.

The WSLCB began to consider rule revisions to implement E2SHB 1480 by filing a pre-proposal statement of inquiry (CR 101) under WSR 21-11-035 on May 12, 2021. The purpose of this rule proposal (CR 102) is to implement E2SHB 1480 by: (1) creating rules for the temporary “to-go” alcohol endorsements; (2) creating and revising rules for the temporary outdoor alcohol service area requirements; and (3) revising food service requirement rules to provide licensees with greater flexibility. The E2SHB 1480 rulemaking has several components:

Temporary Rules Creating Endorsements for “To-Go” Alcohol Sales

E2SHB 1480 creates temporary alcohol to-go endorsements that allow certain licensees to engage in curbside, takeout, or delivery sales of cocktails and wine by the glass, growlers, and other alcohol products. These new endorsements are set to expire July 1, 2023. There are no fees for licensees to obtain these endorsements. See E2SHB 1480, section 2(2)-(7) and (11).¹ The rule proposal creates three new temporary rule sections (intended to expire July 1, 2023) that describe the requirements for licensees to obtain these endorsements.

¹ Section 2 of E2SHB 1480 creating the temporary endorsements for “to-go” alcohol sales is uncoded due to its temporary nature (expiration July 1, 2023). However, section 3 (related to rulemaking authority with respect to food service menu requirements) is codified as RCW 66.08.071.

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Temporary Rules for Outdoor Alcohol Service Areas

E2SHB 1480 requires the WSLCB to adopt or revise current rules to allow for temporary outdoor service of alcohol by certain on-premises licensees, and provides the WSLCB with authority to adopt requirements providing for clear accountability at locations where multiple licensees use a shared space for serving customers. These outdoor alcohol service area rules are set to expire July 1, 2023. See E2SHB 1480, section 2(8) and (11). The rule proposal creates a new temporary rule section (intended to temporarily replace the current outdoor alcohol service area rules until July 1, 2023) describing the requirements for outdoor alcohol service areas, including shared spaces.

Permanent Rules Updating Food Service Menu Requirements

E2SHB 1480 requires the WSLCB to consider revising current rules in order to provide greater flexibility regarding the food service menu requirements that licensees must provide in conjunction with alcohol sales. These food service menu requirement changes are permanent. See RCW 66.08.071 (E2SHB 1480, section 3). The rule proposal amends a series of rule sections in chapter 314-02 WAC related to food service menu requirements, including the definitions of “complete meal” and “minimum food service.”

Stakeholder Engagement

The CR 102 rule proposal was developed through a collaborative rule development process involving both internal and external stakeholders. During the initial CR 101 public comment period from May 12 through July 2, 2021, three public comments were received.² These comments were considered as the conceptual draft rules were developed through a series of collaborative internal project team meetings with WSLCB staff from the Licensing Division, Enforcement and Education Division, and the Public Health and Prevention Liaison.

After the conceptual draft rules were developed, the WSLCB Policy and Rules Unit held two virtual Listen and Learn sessions through Microsoft Teams to gather public feedback and suggestions for revisions. The first Listen and Learn session was held on August 5, 2021, from 1:00 to 3:30 PM, and the second session was held on September 2, 2021, from 1:00 to 3:15 PM. At a peak, there were around 60 people in attendance at the first event and 55 people in attendance at the second event. Messages inviting any interested members of the public to participate in the Listen and Learn sessions were sent to GovDelivery subscriber lists two weeks prior to each event, and reminder emails were sent the day before each event.³

² See Attachments D, Table containing public feedback received during the CR 101 public comment period from May 12 through July 2, 2021, as well as comments received after CR 101 public comment period closed that are not related to the Listen & Learn Sessions.

³ See Attachments A & B, Tables containing public feedback received during the Listen and Learn Sessions & GovDelivery Messaging.

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The feedback received during Listen and Learn Sessions is provided in Attachments A and B to this memo. The WSLCB incorporated feedback received at the Listen and Learn sessions into the proposed rule language by making a number of changes including, but not limited to, the following:

- *For the temporary manufacturer sealed alcohol products “to-go” endorsement:*
 - The requirement that delivery must be made by employees of the licensed business who are at least 21 years of age is removed. The rule proposal allows delivery by third-party service providers under the existing consumer orders, internet sales, and delivery rules with approval by the WSLCB Licensing Division of an added activity application requesting internet sales privileges.
 - An exception is provided to the requirement that the exterior of to-go bags/packages containing manufacturer-sealed alcohol products be marked with the words “CONTAINS ALCOHOL, FOR PERSONS 21+.” Under the rule proposal, brewery, winery, and distillery licensees are not required to mark or label the exterior of the to-go bag/packaging if the to-go bag/packaging containing the manufacturer-sealed alcohol product is provided to customers through takeout service.
 - Both of the above changes are intended to address the concerns expressed during the first Listen and Learn session about inconsistencies between existing licensee privileges and the new privileges allowed by HB 1480 for certain licensees.
- *For the temporary growlers “to-go” endorsement:*
 - The rule proposal adds language stating that brewery and microbrewery products that meet federal alcohol and tobacco tax and trade bureau labelling requirements are not considered prefilled growlers and are not subject to the overnight storage prohibition on prefilled growlers. This change is intended to address the concern expressed during the first Listen and Learn session about potential confusion between prefilled growlers (as the term is used in E2SHB 1480) and manufacturer sealed products that meet TTB labelling requirements but look similar to growlers.
- *For the temporary cocktails/wine by the glass “to-go” endorsement:*
 - The rule proposal incorporates a reference to the existing consumer orders, internet sales, and delivery rules in response to the suggestion provided during the first Listen and Learn session to add language stating that all transactions need to take place at the licensed premises and that no money may be exchanged between the delivery person and customer upon delivery. The existing consumer orders, internet sales, and delivery rules already contain language stating that “Only a licensee or a licensee's direct employees may accept and process orders and payments.” and “All orders and payments shall be fully processed before liquor transfers ownership or, in the case of delivery, leaves a licensed premises.” (See e.g. WAC 314-03-020 through 314-03-040).
- *For all three temporary “to-go” endorsements:*

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- The rule proposal states that delivery sales records must meet the requirements in the consumer orders, internet sales, and delivery rules as well as general record retention requirements in WAC 314-11-035. This change is intended to clarify requirements in response to questions about delivery record requirements received at the first Listen and Learn Session.
- *For the temporary outdoor alcohol service area rules:*
 - The rule proposal clarifies that producers (e.g. breweries, wineries, and distilleries) can qualify for outdoor alcohol service areas without needing indoor dining capacity (i.e. “The licensee must have a building that provides indoor dining or production in order to qualify for an outdoor alcohol service area”). This change is intended to address the concerns expressed during the second Listen and Learn session that the conceptual draft rules would have prevented many producers from having outdoor alcohol service areas.
- *For the food service menu requirement rules:*
 - The rule proposal revises the definitions of “complete meal” and “minimum food service” to clarify that the restriction on menu items that consist solely of precooked frozen food applies to *meals* rather than *food* that is precooked and frozen. The revision is intended to clarify that ingredients or components of meals might be precooked and frozen, and then later used by the food service establishment to prepare a menu item that qualifies as a complete meal/ minimum food service item, in response to feedback and questions received in connection with the second Listen & Learn session.

Estimated Costs of Compliance

For the purpose of the minor cost analysis required by the Regulatory Fairness Act in chapter 19.85 RCW, the CR 102 includes estimated business costs of compliance with the proposed rules. In order to estimate these costs of compliance, WSLCB Policy and Rules Coordinators interviewed twelve volunteer licensees for 45 minutes each from September 15 through September 21, 2021. In order to recruit volunteer interviewees, a GovDelivery message was sent to all liquor licensee subscribers on September 3, 2021, asking for interview volunteers impacted by the alcohol to-go endorsements to provide feedback to help estimate the costs of compliance associated with the draft rules to implement HB 1480.⁴ The estimated costs of compliance and the relevant minor cost thresholds are described in detail in the CR 102 form.

Description of Rule Changes & Rule Necessity

The proposed rules are needed to align existing rules with and implement the law as established by E2SHB 1480, as described in the table below:

Rule section	Description of proposed rule changes	Rule necessity
Category: <i>Food Service Menu Requirements</i>		
WAC 314-02-010	The definitions of “complete meal,” “minimum food service,” and “snack food”	To implement

⁴ See Attachment C, GovDelivery Message re WSLCB Seeking Licensee Interview Volunteers Impacted by HB 1480.

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<p>“Definitions.” (AMENDED)</p>	<p>are revised to provide greater flexibility for licensees. (“Complete meal” was previously defined in WAC 314-02-035.) The definition of “limited food service” is removed and consolidated with “minimum food service.” New, culturally diverse food examples are added to all three of these definitions, and the definition of complete meal is expanded to include a “small plates” option in addition to the “entree with at least one side dish available” option.</p>	<p>section 3 of E2SHB 1480 (codified as RCW 66.08.071), which directs the WSLCB to “consider revising current rules in order to provide greater flexibility regarding food service menu requirements.”</p>
<p>WAC 314-02-035 “Food service requirements for a spirits, beer, and wine restaurant license.” (AMENDED)</p>	<p>The required number of complete meals is reduced from eight to four. The section is streamlined by removing content that is repeated in the definition section and replacing it with references to the appropriate definitions in WAC 314-02-010. The section caption is revised from a question to a statement.</p>	<p>To improve clarity of the rules by streamlining and making technical corrections to language and numbering, without changing its effect.</p>
<p>WAC 314-02-0411 “Food service requirements for a hotel license.” (AMENDED)</p>	<p>The required number of complete meals is reduced from eight to four. The section is streamlined by removing content that is repeated in the definition section and replacing it with references to the appropriate definitions in WAC 314-02-010. The section caption is revised from a question to a statement.</p>	<p>To improve clarity of the rules by streamlining and making technical corrections to language and numbering, without changing its effect.</p>
<p>WAC 314-02-065 “Snack bar license.” (AMENDED)</p>	<p>The cross-reference in subsection (2) to the definition of snack food in WAC 314-02-010 is updated. The section caption is revised from a question to a statement.</p>	<p>To improve clarity of the rules by streamlining and making technical corrections to language and numbering, without changing its effect.</p>
<p>WAC 314-02-087 “Spirits, beer, and wine theater license.” (AMENDED)</p>	<p>The section is streamlined by removing food service requirements that are repeated in WAC 314-02-035, the spirits, beer, and wine restaurant license, and replacing that language with a cross-reference. The effect of this change is that the required number of complete meals is reduced from eight to four. The section caption is revised from a question to a statement.</p>	<p>To improve clarity of the rules by streamlining and making technical corrections to language and numbering, without changing its effect.</p>
<p>WAC 314-02-112 “Caterer’s license.” (AMENDED)</p>	<p>The required number of complete meals is reduced from eight to four. The section is streamlined by removing content that is repeated in the definition section and replacing it with references to the appropriate definitions in WAC 314-02-010. The section caption is revised from a question to a statement. The subsection numbering is also revised throughout the section.</p>	<p>To improve clarity of the rules by streamlining and making technical corrections to language and numbering, without changing its effect.</p>
<p>WAC 314-02-114 “Senior center license.” (AMENDED)</p>	<p>The section is streamlined by removing content that is repeated in the definition of “minimum food service” and replacing it with a reference to the definition of “minimum food service” in WAC 314-02-010. The section caption is revised from a question to a statement.</p>	<p>To improve clarity of the rules by streamlining and making technical corrections to language and numbering, without changing its effect.</p>
<p><i>Category: Outdoor Alcohol Service Areas</i></p>		
<p>WAC 314-03-200 “Outside or extended alcohol service.” (AMENDED)</p>	<p>A cross-reference to the proposed temporary rules for outdoor alcohol service in WAC 314-03-205 is added to the first paragraph.</p>	<p>To implement section 2(8) of E2SHB 1480, which directs the WSLCB to “adopt or revise current rules to allow for outdoor service of alcohol by on-premises licensees.”</p>
<p>WAC 314-03-205 “Temporary rules for outdoor alcohol service by on-premises licensees.” (NEW)</p>	<p>Creates a new section. The section applies to all on-premises licensees that want to have ongoing outdoor alcohol service areas. As before, licensees must apply to the WSLCB Licensing Division for approval/alteration request. There are different requirements for outdoor alcohol service areas in private versus public spaces.</p> <p>As compared to the existing rules, the temporary rules provide more flexibility and options for licensees that want to have outdoor alcohol service areas:</p> <p>Outdoor service areas in public spaces (e.g. sidewalk cafes) are no longer limited to restaurants—all licensees are eligible if they have local jurisdiction approval.</p> <p>The outdoor service area does not have to be contiguous to the licensed premises but must be on the same property or parcel.</p> <p>Interior access to the licensed premises from the outdoor service area is no longer required, but there must be a direct line of sight to the outdoor area from within the licensed premises or an employee must be present in the outdoor area at all times when customers are present to monitor alcohol consumption.</p> <p>Requirements for shared outdoor alcohol service areas are established as follows:</p>	<p>To improve clarity of the rules by streamlining and making technical corrections to language and numbering, without changing its effect.</p>

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	<ul style="list-style-type: none"> • Licensees' property parcels/buildings must be located in direct physical proximity to one another; • Licensees must maintain separate storage of products and separate financial records for the shared outdoor alcohol service area; • Licensees must use distinctly marked glassware or serving containers in the shared outdoor area to identify the source of any alcohol product being consumed. The distinctive marking may be either permanent or temporary; and • Licensees must complete an operating plan for the shared outdoor alcohol service area. 	
<i>Category: Temporary Endorsements for "To-Go" Alcohol Sales</i>		
<p>WAC 314-03-500 "Temporary endorsement for sale of manufacturer-sealed alcohol products through curbside, takeout, or delivery service." (NEW)</p>	<p>Creates a new rule section to implement the new temporary endorsement for sale of alcohol products through curbside, takeout, or delivery service created by E2SHB 1480. The endorsement is available to the licensees specified in E2SHB 1480: Spirits, Beer, and Wine (SBW) Restaurants, Beer and/or Wine (BW) Restaurants, Taverns, Wineries, Breweries, Microbreweries, Distilleries, Snack Bars, Nonprofit Arts Licensees, and Caterers. The endorsement includes the following requirements:</p> <ul style="list-style-type: none"> • Alcohol products must be manufacturer-sealed or factory-sealed. • 21+ Labelling requirement: If the alcohol product is enclosed in a bag, box, or other packaging, the exterior of the packaging must be marked with the words "CONTAINS ALCOHOL, FOR PERSONS 21+". Producers (breweries, wineries, and distilleries) selling alcohol products through takeout are exempt from this requirement. • Delivery requirements: Delivery must be made by persons who are 21+. Third-party service providers are allowed if licensees comply with the existing consumer orders, internet sales, and delivery rules. Delivery person must verify that person receiving the alcohol is 21+ and obtain their signature. Alcohol products may not be left unattended. Delivery may not be made to intoxicated persons. • Signage requirements: Signs regarding public consumption and transportation of alcohol products sold through curbside, takeout, or delivery service will be provided electronically by the WSLCB and must be posted at the main entrance and areas of the premises where customers pick up alcohol products for takeout or curbside service. 	<p>To implement E2SHB 1480, section 2(2), (6), and (9).</p>
<p>WAC 314-03-505 "Temporary endorsement for sale of premixed cocktails, cocktail kits, wine by the glass, premixed wine and spirits cocktails, or premixed wine drinks through curbside, takeout, or delivery service." (NEW)</p>	<p>Creates a new rule section to implement the new temporary endorsement for sale of premixed cocktails, cocktail kits, wine by the glass, premixed wine and spirits cocktails, or premixed wine drinks through curbside, takeout, or delivery service created by E2SHB 1480. The endorsement is available to the licensees specified in E2SHB 1480: SBW restaurants (for all of the above drinks), BW restaurants (for wine or premixed wine drinks by the glass). The endorsement includes the following requirements:</p> <ul style="list-style-type: none"> • Food requirements: For SBW restaurants, a complete meal must be sold with the "to-go" cocktail, wine, etc. Up to 3 ounces of spirits may be sold per complete meal. For BW restaurants, a minimum food service item must be sold with the "to-go" wine or premixed wine drink. • Container requirements: The "to-go" cocktails, wine, etc, must be packaged in containers that are sealed in a manner designed to prevent consumption without removal of a tamper-evident lid, cap, or seal. A non-comprehensive list of examples is provided. • 21+ Labelling requirements: The individual "to-go" containers must be clearly marked or labelled with the words "CONTAINS ALCOHOL, FOR PERSONS 21+". If the individual "to-go" containers are enclosed in a bag, box, or other packaging, the exterior of the packaging must be marked with the words "CONTAINS ALCOHOL, FOR PERSONS 21+" • To deter public consumption or consumption in a vehicle, licensees may not put ice directly into the alcohol "to-go" containers. Ice may be provided separately with the order. • Alcohol "to-go" containers must be placed in the trunk of a vehicle or beyond the immediate reach of the driver and any passengers in compliance with open container requirements in RCW. • Delivery requirements: Delivery must be made by employees of the licensed business who are 21+. Delivery may not be made by third-party service providers. Delivery person must verify that person receiving the alcohol is 21+ and obtain their signature. Alcohol products may not be left unattended. Delivery may not be made to intoxicated persons. 	<p>To implement E2SHB 1480, section 2(3), (4), (6), and (9).</p>

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	<ul style="list-style-type: none"> Signage requirements: Signs regarding public consumption and transportation of alcohol products sold through curbside, takeout, or delivery service will be provided electronically by the WSLCB and must be posted at the main entrance and areas of the premises where customers pick up alcohol products for takeout or curbside service. <p>The following terms used in E2SHB 1480 are defined: "premixed cocktail," "premixed wine and spirits cocktail," and "premixed wine drink."</p>	
<p>WAC 314-03-510 "Temporary endorsement for sale of growlers through curbside, takeout, or delivery service." (NEW)</p>	<p>Creates a new rule section to implement the new temporary endorsement for sale of growlers through curbside, takeout, or delivery service created by E2SHB 1480. The endorsement is available to the licensees specified in E2SHB 1480: licensees that were authorized by statute or rule before January 1, 2020, to sell growlers, including Taverns, BW restaurants, SBW restaurants, Grocery Stores, Beer and Wine Specialty Shops, Breweries, Microbreweries, Wineries, Combination SBW Licensees, and Hotel Licensees. The endorsement includes the following requirements:</p> <ul style="list-style-type: none"> As specified in E2SHB 1480, sales of growlers must meet federal TTB requirements. Growlers must be filled at the tap by the licensee at the time of sale, except that beer and wine specialty shops and breweries can prefill growlers as allowed by E2SHB 1480. Delivery requirements: Delivery must be made by employees of the licensed business who are 21+. Delivery may not be made by third-party service providers. Delivery person must verify that person receiving the alcohol is 21+ and obtain signature. Alcohol products may not be left unattended. Delivery may not be made to intoxicated persons. Signage requirements: Signs regarding public consumption and transportation of alcohol products sold through curbside, takeout, or delivery service will be provided electronically by the WSLCB and must be posted at the main entrance and areas of the premises where customers pick up alcohol products for takeout or curbside service. 	<p>To implement E2SHB 1480, section 2(5)-(7), and (9).</p>

Attachments:

Attachment A. *Table containing public feedback received during Listen and Learn Session 1 on August 5, 2021 & GovDelivery Messaging.*

Attachment B. *Table containing public feedback received during Listen and Learn Session 2 on September 2, 2021 & GovDelivery Messaging.*

Attachment C. *GovDelivery Messaging re WSLCB Seeking Licensee Interview Volunteers Impacted by HB 1480.*

Attachment D. *Table containing public feedback received during the CR 101 public comment period from May 12 through July 2, 2021, as well as comments received after CR 101 public comment period closed that are not related to the Listen & Learn Sessions.*

PROPOSED RULE MAKING



CR-102 (July 2022) (Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

Agency: Washington State Liquor and Cannabis Board

- Original Notice**
- Supplemental Notice to WSR** _____
- Continuance of WSR** _____
- Preproposal Statement of Inquiry was filed as WSR** _____ ; or
- Expedited Rule Making--Proposed notice was filed as WSR** _____ ; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**
- Proposal is exempt under RCW** _____.

Title of rule and other identifying information: (describe subject) The Washington State Liquor and Cannabis Board (Board) proposes to amend the following rule sections to implement statutory mandates of Senate Bill (SSB) 5448, (chapter 279, laws of 2023), effective July 1, 2023, concerning outside or extended alcohol service, the extension of a temporary alcohol delivery endorsement, and an alcohol takeout endorsement:

Chapter 314-03 WAC, "Allowed Activities"

Amended: WAC 314-03-200 "Outside or extended alcohol service."

Amended: WAC 314-03-205 "Rules for outdoor alcohol service by on-premises licensees."

Amended: WAC 314-03-500 "Temporary and permanent endorsements for sale of manufacturer-sealed alcohol products through takeout, or delivery service."

Amended: WAC 314-03-505 "Temporary and permanent endorsements for sale of premixed cocktails, cocktail kits, wine by the glass, premixed wine and spirits cocktails, or premixed wine drinks through curbside, takeout, or delivery service."

Amended: WAC 314-03-510 "Temporary endorsement for sale of growlers through curbside, takeout, or delivery service."

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
June 27, 2023	10:00 a.m.	All public Board activity will be held in a "hybrid" environment. This means that the public will have options for in-person or virtual attendance. The Boardroom at the headquarters building in Olympia (1025 Union Avenue, Olympia, WA 98504) will be open for in-person attendance. The public may also login using a computer or device, or call-in using a phone, to listen to the meeting through the Microsoft Teams application. The public may provide verbal comments during the specified public comment and rules hearing segments. TVW also regularly airs these	For more information about Board meetings, please visit https://lcb.wa.gov/Boardmeetings/Board_meetings

		meetings. Please note that although the Boardroom will be staffed during a meeting, Board Members and agency participants may continue to appear virtually	
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Date of intended adoption: No earlier than July 5, 2023 (Note: This is **NOT** the effective date)

<p>Submit written comments to:</p> <p>Name: Dr. Kathy Hoffman, Research Manager</p> <p>Address: P.O. Box 43080, Olympia WA 98504-3080</p> <p>Email: rules@lcb.wa.gov</p> <p>Fax: 360-704-5027</p> <p>Other:</p> <p>By (date) <u>June 27, 2023</u></p>	<p>Assistance for persons with disabilities:</p> <p>Contact <u>Anita Bingham, ADA Coordinator, Human Resources Director</u></p> <p>Phone: 360-664-1739</p> <p>Fax: 360-664-9689</p> <p>TTY: 7-1-1 or 1-800-833-6388</p> <p>Email: anita.bingham@lcb.wa.gov</p> <p>Other:</p> <p>By (date) <u>June 22, 2023</u></p>
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Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of this rule proposal is to implement and incorporate by reference without material change the technical provisions of SSB 5448, which become effective July 1, 2023, as follows:

- Makes outside or extended alcohol service permanent;
- Makes an endorsement for the sale of manufacturer sealed alcohol products, premixed cocktails, wine by the glass, premixed wine and spirits cocktails, or premixed wine drinks available through *takeout* service.
- Makes an endorsement for the sale of manufacturer sealed alcohol products, premixed cocktails, wine by the glass, premixed wine and spirits cocktails, or premixed wine drinks available through *delivery* service until July 1, 2025.
- Makes an endorsement for the sale of growlers available through *takeout* service.
- Makes an endorsement for the sale of growlers available through *delivery* service until July 1, 2025.
- Removes all reference to curbside service.
- Removes all reference to cocktail kits and mini-bottles.

Reasons supporting proposal: The proposed rule amendments are needed to align existing rules with the statutory mandates of SSB 5448, (chapter 279, Laws of 2023), which become effective July 1, 2023. The proposed rule amendments are anticipated to support regulatory stability and business continuity.

Statutory authority for adoption: Substitute Senate Bill (SSB) 5448, (chapter 279, laws of 2023), RCW 66.08.071; RCW 66.08.030.

Statute being implemented: Substitute Senate Bill (SSB) 5448, (chapter 279, laws of 2023)

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Type of proponent: Private Public Governmental

Name of proponent: (person or organization) Washington State Liquor and Cannabis Board

Name of agency personnel responsible for:			
	Name	Office Location	Phone
Drafting: Manager	Dr. Kathy Hoffman, Research	1025 Union Avenue, Olympia WA 98501	360-664-1622
Implementation: Licensing	Rebecca Smith, Director of	1025 Union Avenue, Olympia WA 98501	360-664-1753
Enforcement: Education and Enforcement	Chandra Brady, Director of	1025 Union Avenue, Olympia WA 98501	360-664-1726

Is a school district fiscal impact statement required under [RCW 28A.305.135](#)? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under [RCW 34.05.328](#)?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

No: Please explain: The proposed rules do not qualify as a type of rule requiring a cost-benefit analysis under RCW 34.05.328(5). The WSLCB is not listed as an agency under RCW 34.05.328(5)(a)(i), so the cost-benefit analysis requirements in RCW 34.05.328 are not applicable to the proposed rules unless voluntarily applied or made applicable by the joint administrative rules review committed under RCW 34.05.328(5)(a)(ii).

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570](#)(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025](#)(3). Check all that apply:

- | | |
|--|---|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
(i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025](#)(4) (does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of how the above exemption(s) applies to the proposed rule: The proposed rules are exempt from the Regulatory Fairness Act's (RFA) Small Business Economic Impact Statement (SBEIS) requirement under RCW 34.05.310(4)(c) and (e). The proposed rules incorporate by reference the statutory mandates of SSB 5448 (chapter 279, Laws of 2023) without material change.

(2) Scope of exemptions: Check one.

The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.

The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):

The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. _____
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Date: May 24, 2023

Name: David Postman

Title: Chair

Signature:

Place signature here

AMENDATORY SECTION (Amending WSR 22-01-052, filed 12/8/21, effective 1/8/22)

WAC 314-03-200 Outside or extended alcohol service. A licensee must request approval from the board's licensing division for ongoing outside or extended alcohol service. Except as provided in ~~((the temporary))~~ rules for outdoor alcohol service in WAC 314-03-205 ~~((that are effective until July 1, 2023, unless extended by law))~~, the following conditions must be met:

(1) The area must be enclosed with a permanent or movable barrier a minimum of 42 inches in height.

(2) There must be an interior access to the licensed premises. If the interior access is from a minor restricted area of the premises, minors are prohibited in the outside or extended alcohol service area.

(3) There must be an attendant, wait staff, or server dedicated to the outside service area when patrons are present.

(4) Must have leasehold rights to the area and have and be connected to the licensed premises.

(5) Openings into and out of the outside area cannot exceed 10 feet. If there is more than one opening along one side, the total combined opening may not exceed 10 feet.

(6) **Exception.** For sidewalk cafe outside service, the board allows local regulations that, in conjunction with a local sidewalk cafe permit, requires a 42 inch barrier or permanent demarcation of the designated alcohol service areas for continued enforcement of the boundaries.

(a) The permanent demarcation must be at all boundaries of the outside service area;

(b) The permanent demarcation must be at least six inches in diameter;

(c) The permanent demarcation must be placed no more than 10 feet apart;

(d) There must be an attendant, wait staff, or server dedicated to the outside service area when patrons are present;

(e) This exception only applies to restaurant liquor licenses with sidewalk cafe service areas contiguous to the liquor licensed premises. "Contiguous" means touching along a boundary or at a point;

(f) This exception does not apply to beer gardens, standing room only venues, and permitted special events. Board approval is still required with respect to sidewalk cafe barrier requirements.

(7) **Limited exception.** The board may grant limited exceptions to the required 42 inch high barrier for outside alcohol service areas.

(a) The licensee must have exclusive leasehold rights to the outside service area.

(b) There must be permanent demarcations at all boundaries of the outside service area for continued enforcement of the boundaries.

[Statutory Authority: 2021 c 48 § 2, RCW 66.08.071, 66.08.030 and 2021 c 48. WSR 22-01-052, § 314-03-200, filed 12/8/21, effective 1/8/22.

Statutory Authority: RCW 66.08.030 and 66.44.310. WSR 20-03-180, § 314-03-200, filed 1/22/20, effective 2/22/20. Statutory Authority: RCW 66.08.030. WSR 17-12-030, § 314-03-200, filed 5/31/17, effective 7/1/17.]

AMENDATORY SECTION (Amending WSR 22-01-052, filed 12/8/21, effective 1/8/22)

WAC 314-03-205 ((~~Temporary rules for~~)) Outdoor alcohol service ((~~by~~)) for on-premises licensees. (1) ((~~As authorized in section~~

~~2(8), chapter 48, Laws of 2021, the temporary rules for outdoor alcohol service described in this section are effective until July 1, 2023, unless extended by law. These rules create a temporary exception to the requirements in WAC 314-03-200. These rules apply to all on-premises licensees.~~

(2)) **Outdoor alcohol services in privately owned spaces.** For ongoing outdoor alcohol service located in privately owned spaces, a licensee must request approval from the board's licensing division and meet the following requirements:

(a) The licensee must have legal authority to use the outdoor alcohol service area including, but not limited to, ownership or leasehold rights;

(b) The licensee must have a building that provides indoor dining or production in order to qualify for an outdoor alcohol service area;

(c) The outdoor alcohol service area must be (i) contiguous to the licensed business, or (ii) located on the same property or parcel of land as the licensed business;

(d) The outdoor alcohol service area must have an attendant, wait staff, or server dedicated to the area when patrons are present;

(e) Interior access to the licensed premises from the outdoor alcohol service area is not required. However, unless there is (i)

interior access to the licensed premises from the outdoor alcohol service area, or (ii) an unobstructed direct line of sight from inside the licensed premises to the outdoor alcohol service area, an employee with a mandatory alcohol server training (MAST) permit under chapter 314-17 WAC must be present in the outdoor alcohol service area at all times that patrons are present, in order to monitor alcohol consumption. This requirement is in addition to the requirement in (d) of this subsection that the outdoor alcohol service area must have an attendant, wait staff, or server dedicated to the area when patrons are present;

(f) The same food service offered inside the licensed premises must also be offered in the outdoor alcohol service area;

(g) The outdoor alcohol service area must be enclosed with a permanent or movable barrier a minimum of 42 inches in height. The board may grant limited exceptions to the required 42 inch high barrier for outdoor alcohol service areas if the licensee has permanent boundaries for the outdoor alcohol service area;

(h) Openings into and out of the outdoor alcohol service area cannot exceed 10 feet. If there is more than one opening along one side, the total combined opening may not exceed 10 feet; and

(i) Licensees must comply with local building codes, local health jurisdiction requirements, department of labor and industries requirements, and any other applicable laws and rules.

~~((+3+))~~ **(2) Outdoor alcohol services in public spaces.** For ongoing outdoor alcohol service located in public spaces, a licensee must request approval from the board's licensing division and meet the following requirements:

(a) The licensed business must have a permit from their local jurisdiction allowing the business to use the public space as a service area, such as a sidewalk cafe permit or other similar outdoor area permit authorized by local regulation;

(b) The licensee must have a building that provides indoor dining or production in order to qualify for an outdoor alcohol service area;

(c)(i) Except as provided in (c)(ii) of this subsection, the outdoor alcohol service area must be enclosed with a permanent or movable barrier a minimum of 42 inches in height. Openings into and out of the outdoor alcohol service area cannot exceed 10 feet. If there is more than one opening along one side, the total combined opening may not exceed 10 feet;

(ii) Licensees with outdoor alcohol service areas contiguous to the licensed premises may use a permanent demarcation of the

designated alcohol service area for continued enforcement of the boundaries, instead of a permanent or movable barrier a minimum of 42 inches in height. If a permanent demarcation is used, the permanent demarcation must be at all boundaries of the outdoor alcohol service area, must be at least six inches in diameter, and must be placed no more than 10 feet apart;

(d) The outdoor alcohol service area must have an attendant, wait staff, or server dedicated to the area when patrons are present;

(e) The same food service offered inside the licensed premises must also be offered in the outdoor alcohol service area; and

(f) Licensees must comply with local building codes, local health jurisdiction requirements, department of labor and industries requirements, and any other applicable laws and rules.

~~((4))~~ (3) For multiple licensees to share an outdoor alcohol service area, the licensees must request approval from the board's licensing division and meet the following requirements:

(a) The licensees' property parcels or buildings must be located in direct physical proximity to one another. For the purposes of this subsection, "direct physical proximity" means that the property parcels or buildings are physically connected or touching each other along a boundary or at a point;

(b)(i) If the shared outdoor alcohol service area is located on public space, the licensees sharing the space must meet all of the requirements in subsection (~~(+3+)~~) (2) of this section and shared use of the outdoor service area must be authorized by the licensees' local jurisdiction permits; or

(ii) If the shared outdoor alcohol service area is located in a privately owned space, the licensees sharing the space must meet all of the requirements in subsection (~~(+2+)~~) (1) of this section and must have legal authority to share use of the outdoor service area including, but not limited to, ownership or leasehold rights;

(c) The licensees must maintain separate storage of products and separate financial records for the shared outdoor alcohol service area. If licensees share any point of sale system, the licensees must keep complete documentation and records for the shared point of sale system showing clear separation as to what sales items and categories belong to each respective licensee;

(d) The licensees must use distinctly marked glassware or serving containers in the shared outdoor alcohol service area to identify the source of any alcohol product being consumed. The distinctive markings may be either permanent or temporary. Any temporary markings must

remain on the glassware or serving containers through the duration of use by the customer;

(e) The licensees must complete an operating plan for the shared outdoor alcohol service area. The operating plan should demonstrate in general how responsibility for the outdoor alcohol service area is shared among the licensees. Licensees are required to submit the operating plan to the board's licensing division at the time of application or alteration and must keep documentation of an up-to-date plan available for inspection on premises; and

(f) Consistent with WAC 314-11-065, a licensee may not permit the removal of alcohol in an open container from the shared outdoor alcohol service area, except to reenter the licensed premises where the alcohol was purchased. Signage prohibiting the removal of alcohol in an open container must be visible to patrons in the shared outdoor alcohol service area.

~~((5))~~ (4) If multiple licensees use a shared outdoor alcohol service area as described in subsection ~~((4))~~ (3) of this section, all participating licensees are jointly responsible for any violation or enforcement issues unless it can be demonstrated that the violation or enforcement issue was due to one or more licensee's specific

conduct or action, in which case the violation or enforcement action applies only to those identified licensees.

~~((6))~~ (5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Alcohol service" means service of liquor as defined in RCW 66.04.010.

(b) "Contiguous" means touching along a boundary or at a point.

(c) "Sidewalk cafe" means a designated seating area on the sidewalk, curb space, or other public space where a business provides table service and seating for their patrons during business hours.

~~((7) This section expires July 1, 2023, pursuant to section 2(11), chapter 48, Laws of 2021, unless extended by law.)~~

[Statutory Authority: 2021 c 48 § 2, RCW 66.08.071, 66.08.030 and 2021 c 48. WSR 22-01-052, § 314-03-205, filed 12/8/21, effective 1/8/22.]

AMENDATORY SECTION (Amending WSR 22-01-052, filed 12/8/21, effective 1/8/22)

WAC 314-03-500 (~~Temporary~~) Endorsement for sale of manufacturer sealed alcohol products through (~~curbside~~) takeout (~~(7)~~) or delivery service. (1) (~~As authorized in section 2,~~

~~chapter 48, Laws of 2021, the temporary endorsement described in this section is available until July 1, 2023, unless extended by law.))~~ An endorsement for the sale of manufacturer sealed alcohol products is available through takeout and delivery service as set forth in section 1(5)(d), chapter 279, Laws of 2023. There is no fee for a licensee to apply for and obtain this endorsement.

(2)(a) ~~((Consistent with section 2(2), chapter 48, Laws of 2021,))~~ An endorsement to sell manufacturer sealed alcohol products at retail through ~~((curbside,))~~ takeout~~((,))~~ or delivery service is available to the following licensees: Beer and wine restaurants; spirits, beer, and wine restaurants; taverns; domestic wineries; domestic breweries and microbreweries; distilleries; snack bars; nonprofit arts licensees; and caterers.

(b) This endorsement is separate from the endorsements in WAC 314-03-505 and 314-03-510 that authorize the sale through ~~((curbside,))~~ takeout~~((,))~~ or delivery service of nonmanufacturer or nonfactory sealed premixed cocktails, ~~((cocktail kits,))~~ wine by the glass, premixed wine and spirits cocktails, premixed wine drinks, or growlers.

(3) In order to obtain and maintain the endorsement described in this section, licensees must meet the following requirements:

(a) Alcohol products must be sold in closed, factory or manufacturer sealed packages or containers, such as cans, bottles, and kegs. Licensees may only sell the types of manufacturer sealed alcohol products under this endorsement that they are authorized to sell under the terms of their license.

(b)(i) Except as provided in (b)(ii) of this subsection, if an alcohol product authorized for sale under this endorsement is enclosed inside a bag, box, or other packaging before the alcohol product is provided to the customer through ~~((curbside))~~ takeout~~(())~~ or delivery service, the exterior of the bag, box, or other packaging must be clearly marked or labeled with the words "CONTAINS ALCOHOL, FOR PERSONS 21+" in a size that is legible and readily visible.

(ii) Brewery, winery, and distillery licensees are not required to mark or label the exterior of the bag, box, or other packaging as described in (b)(i) of this subsection if the alcohol product is provided to the customer through takeout service.

(c) If the alcohol products authorized for sale under this endorsement are sold through delivery service:

(i) Licensees must comply with the requirements in the consumer orders, internet sales, and delivery rules in this title. For these requirements, see WAC 314-03-020 through 314-03-040. ~~((Delivery by~~

~~third-party service providers is allowed with approval by the board's licensing division of an added activity application requesting internet sales privileges.))~~

(ii) At the time of delivery, the employee making the delivery must verify that the person receiving the delivery is at least ~~((twenty-one))~~ 21 years of age using an acceptable form of identification in WAC 314-11-025. See RCW 66.44.270.

~~(iii) ((Consistent with section 2(9), chapter 48, Laws of 2021))~~
As set forth in section 1(8), chapter 279, Laws of 2023, upon delivery of the alcohol product, the signature of the person age ~~((twenty-one))~~ 21 or over receiving the delivery must be obtained. Delivery sales records must meet the requirements in the consumer orders, internet sales, and delivery rules. For general record retention requirements, see WAC 314-11-095.

(iv) If no person age ~~((twenty-one))~~ 21 or over is present to accept the alcohol product at the time of delivery, the alcohol product must be returned. An alcohol product may not be left unattended at a delivery location.

(v) Delivery of an alcohol product may not be made to any person who shows signs of intoxication. See RCW 66.44.200.

(d)(i) In addition to the signs required by WAC 314-11-060, signs provided electronically by the board regarding public consumption and transportation of any alcohol products sold through ((~~curbside~~)) takeout((~~7~~)) or delivery service must be posted in plain view at:

(A) The main entrance to the area of the premises where alcohol products are sold; and

(B) The areas of the premises where alcohol products are picked up for takeout((~~7~~curbside~~7~~)) or delivery service.

(ii) The signs will be designed to remind customers purchasing alcohol products through ((~~curbside~~)) takeout((~~7~~)) or delivery service that they must comply with applicable laws and rules including, but not limited to, restrictions on consuming alcohol in public in RCW 66.44.100 and restrictions on drinking or having an open container in a vehicle in RCW 46.61.519.

(4) In addition to the requirements listed in this section, licensees must comply with all applicable requirements in Title 66 RCW, Title 314 WAC, and any other applicable laws and rules including, but not limited to: Keg sale requirements in WAC 314-02-115 and restrictions on sales to minors and intoxicated persons in chapter 66.44 RCW and WAC 314-16-150.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Alcohol product" means liquor as defined in RCW 66.04.010.

(b) "Factory sealed" or "manufacturer sealed" means that a package or container is in ~~((one hundred))~~ 100 percent resalable condition, with all manufacturer's seals intact.

(6) ~~((This section expires July 1, 2023, pursuant to section 2(11), chapter 48, Laws of 2021, unless extended by law.))~~ The delivery service endorsement described in this section expires July 1, 2025, as set forth in section 1(3), chapter 279, Laws of 2023.

[Statutory Authority: 2021 c 48 § 2, RCW 66.08.071, 66.08.030 and 2021 c 48. WSR 22-01-052, § 314-03-500, filed 12/8/21, effective 1/8/22.]

AMENDATORY SECTION (Amending WSR 22-01-052, filed 12/8/21, effective 1/8/22)

WAC 314-03-505 ~~((Temporary))~~ Endorsement for sale of premixed cocktails, ~~((cocktail kits,))~~ wine by the glass, premixed wine and spirits cocktails, or premixed wine drinks through ~~((curbside,))~~ takeout~~((,))~~ or delivery service. (1) ~~((As authorized in section 2, chapter 48, Laws of 2021, the temporary endorsement described in this~~

~~section is available until July 1, 2023, unless extended by law.))~~ An endorsement is available for the sale of premixed cocktails, wine by the glass, premixed wine and spirits cocktails, or premixed wine drinks through takeout and delivery service as set forth in section 1(3), chapter 279, Laws of 2023. There is no fee for a licensee to apply for and obtain this endorsement.

(2) ~~((Consistent with section 2(3) and (4), chapter 48, Laws of 2021))~~ As set forth in section 1(2) and (3), chapter 279, Laws of 2023:

(a) An endorsement is available to spirits, beer, and wine restaurants to sell premixed cocktails, ~~((cocktail kits,))~~ wine by the glass, or premixed wine and spirits cocktails through ~~((curbside,))~~ takeout~~((,))~~ or delivery service. This endorsement does not authorize the sale of full bottles of spirits for off-premises consumption~~((, although mini-bottles may be sold as part of cocktail kits. Consistent with section 2(3), chapter 48, Laws of 2021, mini-bottle sales as part of cocktail kits are exempt from the spirits license issuance fee under RCW 66.24.630 (4)(a) and the tax on each retail sale of spirits under RCW 82.08.150))~~.

(b) An endorsement is also available to beer and wine restaurant licensees to sell wine or premixed wine drinks by the glass through ~~((curbside))~~ takeout~~((7))~~ or delivery service.

(3) In order to obtain and maintain the endorsement described in this section, licensees must meet the following requirements:

(a)(i) For spirits, beer, and wine restaurants, food that qualifies as a complete meal under WAC 314-02-010 must be sold with the premixed cocktails, ~~((cocktail-kits))~~ wine by the glass, or premixed wine and spirits cocktails authorized for sale through ~~((curbside))~~ takeout~~((7))~~ or delivery service under this endorsement. Spirits, beer, and wine restaurants can sell up to ~~((3))~~ three ounces of spirits per complete meal.

(ii) For beer and wine restaurants, a food item that qualifies as minimum food service under WAC 314-02-010 must be sold with the wine or premixed wine drinks by the glass authorized for sale through ~~((curbside))~~ takeout~~((7))~~ or delivery service under this endorsement.

(b) The alcohol products authorized for sale through ~~((curbside))~~ takeout~~((7))~~ or delivery service under this endorsement must be prepared the same day they are sold.

(c) The alcohol products authorized for sale through ~~((curbside))~~ takeout~~((7))~~ or delivery service under this endorsement

must be packaged in a container that has been sealed in a manner designed to prevent consumption without removal of the tamper-evident lid, cap, or seal. For the purposes of this subsection, "tamper-evident" means a lid, cap, or seal that visibly demonstrates when a container has been opened. Tape is not a tamper-evident seal. The following list of examples is not comprehensive and is not intended to capture all of the possible types of allowed or disallowed containers:

(i) Examples of containers that are allowed:

(A) Containers with a screw top cap or lid that breaks apart when the container is opened.

(B) Containers with a plastic heat shrink wrap band, strip, or sleeve extending around the cap or lid to form a seal that must be broken when the container is opened.

(C) Vacuum or heat-sealed pouches without holes or openings for straws.

(ii) Examples of containers that are not allowed:

(A) Containers with lids with sipping holes or openings for straws.

(B) Containers such as styrofoam, paper, or plastic cups that lack a tamper-evident lid, cap, or seal.

(d) The containers that the alcohol products authorized for sale under this endorsement are packaged in must be clearly marked or labeled with the words "CONTAINS ALCOHOL, FOR PERSONS 21+" in a size and manner that is legible and readily visible. If a container of alcohol authorized for sale under this endorsement is enclosed inside a bag, box, or other packaging before it is provided to the customer through ((~~curbside~~)) takeout((~~7~~)) or delivery service, the exterior of the bag, box, or other packaging must be clearly marked or labeled with the words "CONTAINS ALCOHOL, FOR PERSONS 21+" in a size and manner that is legible and readily visible.

(e) To deter public consumption or consumption in a vehicle of premixed cocktails, ((~~cocktail kits~~)) wine by the glass, premixed wine and spirits cocktails, and premixed wine drinks sold through ((~~curbside~~)) takeout((~~7~~)) or delivery service, licensees may not put ice directly into the containers that the alcohol products authorized for sale under this endorsement are packaged in, except for frozen or blended drinks. Ice may be provided separately along with the ((~~curbside~~)) takeout((~~7~~)) or delivery order.

(f) The premixed cocktails, ((~~cocktail kits~~)) wine by the glass, premixed wine and spirits cocktails, and premixed wine drinks authorized for sale through ((~~curbside~~)) takeout((~~7~~)) or delivery

service under this endorsement must be placed in the trunk of the vehicle or beyond the immediate reach of the driver or any passengers in compliance with open container requirements in RCW 46.61.519 before being transported off the licensee's premises.

(g) If the premixed cocktails, (~~cocktail kits,~~) wine by the glass, premixed wine and spirits cocktails, and premixed wine drinks authorized for sale under this endorsement are sold through delivery service:

(i) Licensees must comply with the requirements in the consumer orders, internet sales, and delivery rules in this title, except to the extent that those rules (~~allow delivery by third party service providers and~~) prohibit the sale of nonfactory sealed containers. For these requirements, see WAC 314-03-020 through 314-03-040.

(ii) Delivery must be made by an employee of the licensed business who is at least (~~twenty-one~~) 21 years of age and holds a class 12 mandatory alcohol server training (MAST) permit under chapter 314-17 WAC. Delivery may not be made by third-party service providers.

(iii) At the time of delivery, the employee making the delivery must verify that the person receiving the delivery is at least (~~twenty-one~~) 21 years of age using an acceptable form of identification in WAC 314-11-025. See RCW 66.44.270.

(iv) (~~Consistent with section 2(9), chapter 48, Laws of 2021~~)

As set forth in section 1(8), chapter 279, Laws of 2023, upon delivery of the alcohol product, the signature of the person age (~~twenty-one~~) 21 or over receiving the delivery must be obtained. Delivery sales records must meet the requirements in the consumer orders, internet sales, and delivery rules. For general record retention requirements, see WAC 314-11-095.

(v) If no person age (~~twenty-one~~) 21 or over is present to accept the alcohol product at the time of delivery, the alcohol product must be returned. An alcohol product may not be left unattended at a delivery location.

(vi) Delivery of an alcohol product may not be made to any person who shows signs of intoxication. See RCW 66.44.200.

(h)(i) In addition to the signs required by WAC 314-11-060, signs provided electronically by the board regarding public consumption and transportation of any alcohol products sold through (~~curbside,~~) takeout(~~(,)~~) or delivery service must be posted in plain view at:

(A) The main entrance to the area of the premises where alcohol products are sold; and

(B) The areas of the premises where alcohol products are picked up for takeout(~~(, curbside,)~~) or delivery service.

(ii) The signs will be designed to remind customers purchasing alcohol products through ~~((curbside))~~ takeout~~((τ))~~ or delivery service that they must comply with applicable laws and rules including, but not limited to, restrictions on consuming alcohol in public in RCW 66.44.100 and restrictions on drinking or having an open container in a vehicle in RCW 46.61.519.

(4) In addition to the requirements listed in this section, licensees must comply with all applicable requirements in Title 66 RCW, Title 314 WAC, and any other applicable laws and rules including, but not limited to, restrictions on sales to minors and intoxicated persons in chapter 66.44 RCW and WAC 314-16-150.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Alcohol product" or "alcoholic beverage" means liquor as defined in RCW 66.04.010.

~~(b) ("Mini-bottles" has the same meaning as defined in section 2(10), chapter 48, Laws of 2021: Original factory sealed containers holding not more than 50 milliliters of a spirituous beverage.~~

~~(e))~~ "Premixed cocktail" means a drink made by combining spirits with other alcoholic or nonalcoholic beverages and ingredients

including, but not limited to, fruit juice, carbonated beverages, flavorings, or cream.

~~((d))~~ (c) "Premixed wine and spirits cocktail" means a drink made by combining wine and spirits with other alcoholic or nonalcoholic beverages and ingredients including, but not limited to, fruit juice, carbonated beverages, flavorings, or cream.

~~((e))~~ (d) "Premixed wine drink" means a drink made by combining wine with nonalcoholic beverages and ingredients including, but not limited to, fruit juice, carbonated beverages, flavorings, or cream. A premixed wine drink may not include alcoholic beverages other than wine.

~~((f))~~ (e) "Spirits" has the same meaning as defined in RCW 66.04.010.

~~((g))~~ (f) "Wine" has the same meaning as defined in RCW 66.04.010.

(6) ~~((This section expires July 1, 2023, pursuant to section 2(11), chapter 48, Laws of 2021, unless extended by law.))~~ The delivery service endorsement described in this section expires July 1, 2025, as set forth in section 1(3), chapter 279, Laws of 2023.

[Statutory Authority: 2021 c 48 § 2, RCW 66.08.071, 66.08.030 and 2021 c 48. WSR 22-01-052, § 314-03-505, filed 12/8/21, effective 1/8/22.]

AMENDATORY SECTION (Amending WSR 22-01-052, filed 12/8/21, effective 1/8/22)

WAC 314-03-510 (~~(Temporary)~~) Endorsement for sale of growlers through (~~(curbside,)~~) takeout(~~(,)~~) or delivery service. (1) (~~As authorized in section 2, chapter 48, Laws of 2021, the temporary endorsement described in this section is available until July 1, 2023, unless extended by law.~~) An endorsement is available for the sale of growlers through takeout and delivery service as set forth in section 1(4), chapter 279, Laws of 2023. There is no fee for a licensee to apply for and obtain this endorsement.

(2) (~~Consistent with section 2(5), chapter 48, Laws of 2021~~) As set forth in section 1(4), chapter 279, Laws of 2023, an endorsement to sell growlers for off-premises consumption through (~~(curbside,)~~) takeout(~~(,)~~) or delivery service is available to licensees that were authorized by statute or rule before January 1, 2020, to sell growlers.

(a) Licensees eligible for this endorsement include: Taverns; beer and wine restaurants; spirits, beer, and wine restaurants; grocery stores; beer and wine specialty shops; breweries;

microbreweries; wineries; combination spirits, beer, and wine licensees; and hotel licensees.

(b) For a beer and wine specialty shop to be eligible for the endorsement described in this section, the beer and wine specialty shop must meet the requirement in RCW 66.24.371(3), as it existed on December 31, 2019, that the licensee's beer and/or wine sales must be more than (~~fifty~~) 50 percent of the licensee's total sales.

(3) In order to obtain and maintain this endorsement, licensees must meet the following requirements:

(a) Sale of growlers must meet federal alcohol and tobacco tax and trade bureau requirements.

(b)(i) Growlers must be filled at the tap by the licensee at the time of sale, except that beer and wine specialty shops licensed under RCW 66.24.371 and domestic breweries and microbreweries with this endorsement may sell prefilled growlers (~~(consistent with section 2(7), chapter 48, Laws of 2021)~~) as set forth in section 1(4), chapter 279, Laws of 2023. Prefilled growlers must be sold the same day they are prepared for sale and not stored overnight for sale on future days.

(ii) Brewery and microbrewery products that meet federal alcohol and tobacco tax and trade bureau labeling requirements are not

considered prefilled growlers and are not subject to the overnight storage prohibition.

(c) Growlers must be filled with alcohol products, such as beer, wine, or cider, that the licensee was authorized by statute or rule before January 1, 2020, to sell in growlers.

(d) If the growlers authorized for sale under this endorsement are sold through delivery service:

(i) Licensees must comply with the requirements in the consumer orders, internet sales, and delivery rules in this title, except to the extent that those rules allow delivery by third-party service providers and prohibit the delivery of growlers. For these requirements, see WAC 314-03-020 through 314-03-040.

(ii) Delivery must be made by an employee of the licensed business who is at least ~~((twenty-one))~~ 21 years of age. Delivery may not be made by third-party service providers.

(iii) At the time of delivery, the employee making the delivery must verify that the person receiving the delivery is at least ~~((twenty-one))~~ 21 years of age using an acceptable form of identification in WAC 314-11-025. See RCW 66.44.270.

(iv) ~~((Consistent with section 2(9), chapter 48, Laws of 2021))~~
As set forth in section 1(8), chapter 279, Laws of 2023, upon delivery

of the alcohol product, the signature of the person age (~~(twenty-one)~~) 21 or over receiving the delivery must be obtained. Delivery sales records must meet the requirements in the consumer orders, internet sales, and delivery rules. For general record retention requirements, see WAC 314-11-095.

(v) If no person age (~~(twenty-one)~~) 21 or over is present to accept the alcohol product at the time of delivery, the alcohol product must be returned. An alcohol product may not be left unattended at a delivery location.

(vi) Delivery of an alcohol product may not be made to any person who shows signs of intoxication. See RCW 66.44.200.

(e)(i) In addition to the signs required by WAC 314-11-060, signs provided electronically by the board regarding public consumption and transportation of any alcohol products sold through (~~(curbside)~~) takeout(~~(7)~~) or delivery service must be posted in plain view at:

(A) The main entrance to the area of the premises where alcohol products are sold; and

(B) The areas of the premises where alcohol products are picked up for takeout(~~(7-curbside)~~) or delivery service.

(ii) The signs will be designed to remind customers purchasing alcohol products through (~~(curbside)~~) takeout(~~(7)~~) or delivery

service that they must comply with applicable laws and rules including, but not limited to, restrictions on consuming alcohol in public in RCW 66.44.100 and restrictions on drinking or having an open container in a vehicle in RCW 46.61.519.

(4) In addition to the requirements listed in this section, licensees must comply with all applicable requirements in Title 66 RCW, Title 314 WAC, and any other applicable laws and rules including, but not limited to, restrictions on sales to minors and intoxicated persons in chapter 66.44 RCW and WAC 314-16-150.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Alcohol product" means liquor as defined in RCW 66.04.010.

(b) "Beer" has the same meaning as defined in RCW 66.04.010.

(c) "Cider" has the same meaning as defined in RCW 66.24.210.

(d) "Growlers" has the same meaning as defined in section 2(10), chapter 48, Laws of 2021: Sanitary containers brought to the premises by the purchaser or furnished by the licensee and filled by the retailer at the time of sale.

(e) "Wine" has the same meaning as defined in RCW 66.04.010.

(6) (~~(This section expires July 1, 2023, pursuant to section 2(11), chapter 48, Laws of 2021, unless extended by law.)~~) The

delivery service endorsement described in this section expires July 1, 2025, as set forth in section 1(4), chapter 279, Laws of 2023.

[Statutory Authority: 2021 c 48 § 2, RCW 66.08.071, 66.08.030 and 2021 c 48. WSR 22-01-052, § 314-03-510, filed 12/8/21, effective 1/8/22.]