



Notice of Permanent Rules

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

This concise explanatory statement concerns the Washington State Liquor and Cannabis Board’s (WSLCB) adoption of new rules and amendments to existing rules to implement Engrossed Second Substitute House Bill (E2SHB) 1480 (chapter 48, Laws of 2021), which extended certain temporary privileges granted to liquor licensees to mitigate the impact of the coronavirus (COVID-19) pandemic.

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to prepare a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. The concise explanatory statement must be provided to any person upon request, or from whom the WSLCB received comment.

The WSLCB appreciates and encourages your involvement in the rulemaking process. If you have questions, please contact Audrey Vasek or Robert DeSpain, Policy and Rules Coordinators, at (360) 664-1758 or by e-mail at rules@lcb.wa.gov.

Background and reasons for adopting these rules.

In March of 2020, as the COVID-19 pandemic began to spread rapidly in Washington, the state announced restrictions that impacted the operations of many 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. E2SHB 1480 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 preproposal statement of inquiry (CR 101) as WSR 21-11-035 on May 12, 2021. During the initial CR 101 public comment period from May 12 through July 2, 2021, three public comments were received. 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,

Communications Unit, Policy and Rules Unit, 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. The feedback received during Listen and Learn Sessions is provided in Attachments A and B to the CR 102 Memorandum.

Before filing the rule proposal (CR 102), the WSLCB incorporated feedback received at the Listen and Learn sessions into the proposed rule language by making a number of changes described in the CR 102 memorandum. The CR 102 was filed as WSR 21-20-066 on September 29, 2021. Information about the proposed rules and how to provide public comment was shared through a GovDelivery message and posted on the WSLCB webpage.

The public hearing on the proposed rules was held on November 10, 2021. Two people testified at the public hearing. One written comment was received. The public testimony and comment received and the WSLCB response are contained in the Concise Explanatory Statement attached to this memorandum.

The final rules adopted are needed to implement E2SHB 1480 and have 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 final rules create three new temporary rule sections (set to expire July 1, 2023) that describe the requirements for licensees to obtain these endorsements.

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 changes are set to

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.

expire July 1, 2023. See E2SHB 1480, section 2(8) and (11). The final rules create 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 final rules amend a number of sections in chapter 314-02 WAC related to food service menu requirements, including the definitions of “complete meal” and “minimum food service.”

The final rule changes and reasons for these changes are described in more detail in the table included in the CR 103 Memo.

Rulemaking history for this adopted rule:

CR 101 – filed May 12, 2021 as WSR 21-11-035.

CR 102 – filed September 29, 2021 as WSR 21-20-066.

Public hearing held November 10, 2021. Two people testified at the public hearing. One written comment was received.

Public comments received on the rule proposal

The following comments were received as indicated below. A response to the comment is provided, along with an indication regarding whether the comment is reflected in the adopted rule.

1. Email received November 10, 2021—Direct quotation included below:

From Annie McGrath, Washington Brewers Guild:

“Members of the Liquor & Cannabis Board:

Please accept these comments on behalf of the Washington Brewers Guild regarding rulemaking on E2SHB 1480 (COVID-19 alcohol allowances). We truly appreciate the collaborative approach to your work on these rules and the opportunities you have provided to offer input.

We are largely supportive of the draft before you for consideration. During the listen and learn sessions, the WA Brewers Guild provided input on to-go labeling and signage, pre-filled growlers, third-party delivery, and outdoor service areas.

We appreciate staff's thoughtful response and resolution of several key issues for WA breweries.

We are especially appreciative of the following:

- Increased flexibility in outdoor service areas
- Enforcement clarity regarding packaged product vs growlers at a brewery premise
- Clarity and consistency regarding the third-party delivery of beer from brewery licensees
- Clarity that brewery allowances prior to the passage of HB 1480 are not subject to new labeling and other requirements more restrictive than current allowances for brewery licensees

Again, we appreciate the work on these rules, which will provide continued and needed flexibility for breweries and other hospitality businesses impacted by the pandemic.

We stand ready to work with LCB staff so that, when adopted, these rules and communications regarding the rules are clear, easy to understand and enforce, and do not add to or conflict with current compliance requirements for breweries.

Please do not hesitate to contact us with any questions.

Thank you,
Annie McGrath

Executive Director
Washington Brewers Guild"

Board response: The Board appreciates these comments and the demonstration of interest in collaborative participation in the rulemaking process.

Was the comment reflected in the adopted rule? This comment is not reflected in the final rule.

2. **Oral testimony provided during the public hearing held November 10, 2021, as transcribed directly from the meeting recording:**

From Katie Doyle, Washington Hospitality Association:

"Good morning, Chair Postman and members of the board. I had a feeling I'd be first today and I'm excited about it. Katie Doyle, representing the Washington Hospitality Association and thousands of licensees across the state. We are

extremely grateful for the thoughtful and collaborative approach to the rule making on House Bill 1480.

It was an amazingly well run process and we had lots of opportunity to provide input and we're really grateful for that. Our members are generally supportive of the proposed rules and only have one significant request; but, naturally, I have to start with highlighting all of the things that we are thankful for, which include the lessened meal requirements flexibility and outdoor service areas, (inaudible) minors have no access to our alcohol products. We appreciate the clear guidelines for allowable containers for alcohol to go and the ability for third-party delivery services to deliver beer and wine, specifically.

The one change we are requesting is to see an increase in the number of ounces of spirits allowed per complete meal.

As you may know, several other states have also passed legislation in regard to alcohol to go. For example, in Oregon, they've passed this legislation to become permanent so they can have cocktails beer and wine to go into eternity. For them, you're allowed to do two cocktails per complete meal, each at three ounces, so totaling six ounces versus the three ounces we're allowed here in Washington. California has extended these allowances through 2026. They also allow two cocktails per complete meal at four and a half ounces each, so totaling nine ounces per complete meal and other states don't have limitations on the ounces at all.

So we are requesting an increase in the ounces per meal today. We'd love to see a reflection of at least six ounces per complete meal and that's the only change we want out of this beautiful rules package, so we thank you for your time today and look forward to continuing to work with the Liquor and Cannabis Board."

Board response: The Board appreciates these comments and the demonstration of interest in collaborative participation in the rulemaking process. The agency considered this suggested revision, but this suggestion is not reflected in the adopted rule. Three ounces of spirits is around 2 standard drinks. As the amount of spirits allowed to-go increases, the potential public health and safety risks increase. The cocktails to-go endorsement is new, and the agency is still assessing the impacts of this endorsement on public health and safety. The limit of 3 ounces of spirits is per complete meal. For example, if 2 complete meals are ordered, then up to 6 total ounces of spirits would be allowed, and if 3 complete meals are ordered, then up to 9 total ounces of spirits would be allowed.

Was the comment reflected in the adopted rule? This comment is not reflected in the final rule.

3. **Oral testimony provided during the public hearing held November 10, 2021, as transcribed directly from the meeting recording:**

From Josh McDonald, Washington Wine Institute:

“Good morning, Chair Postman, Board Members Garrett and Hauge, my name is Josh McDonald. I am the executive director of the Washington Wine Institute. We are the trade association for the Washington State wine industry. We represent hundreds of wineries across the state.

The Washington Wine Institute is grateful for the thoughtful and collaborative approach to the rulemaking in House Bill 1480. As you mentioned, Chairman, we were part of the Listen and Learn among with many others and grateful for that opportunity to talk through, actually there were two Listen and Learns and I thought that the rules team did a great job taking in input from both the to-go side and the outdoor seating side as both are very important to licensees and to for us for wineries.

We are generally supportive of the draft rules. We do have a few questions remaining on them that may need a little more work but overall we want you to know how much we're grateful for the hard work and willingness to listen to us; and some of our concerns have already been addressed in these rules. So specifically, we're grateful for the recognition that to-go privileges for wineries have existed for years.

And so, we are, we are exempted from the specifically takeout exceptions because our privileges and that the requirements there within because we already have those. We've had them for many years and they've served wineries well for many years, selling wine to go out of our wineries and tasting rooms.

We are, the outdoor seating was as big if not bigger for us, the modernization of that, than the to-go sales. For that, we're extremely grateful for your team. They did a wonderful job of putting rules in place that modernizes outdoor seating, recognizes the current types of outdoor seating we have now, that we had to put in place because of the pandemic. For most of 2020, we were only allowed to serve outside which made sense but we had to make that work. We have a lot of creative approaches to how we serve our customers outside. Our customers still ask to be outside when the weather is allowing, allows for it to be; and so we want to continue those because you stay creative with them but also safe and responsible at the same time.

And finally, on that part, I really want to say how grateful we are for the recognition and the extension of the cafe, what's known as sidewalk cafe seating, or demarcation approach, to outdoor seating for licensees, especially wineries. Prior to this rule making, it was really only for a few licensees, restaurant licensees. Now it's being expanded so that we can all, as we go into more urban spaces as wineries, we can utilize the demarcations and make our spaces work better for us and not have to worry so much about the 42-inch physical barriers that are often very challenging to set up those spaces.

Two questions we have remaining for the rules that I'd like to work with your team on. One is just better understanding the requirements and who they are specifically impacting on the delivery service and consumer orders, internet sales, and delivery. Those rules, those rules - we were working on those rules with the Liquor and Cannabis Board for wineries back in 2016 to 18. We did not finish that work and I know we're going to continue up working on in the future, but for now, we'd like to make sure we understand that what we do now with our common carriers as we are distributors of our own wine continues to be recognized as its own thing and we continue that without interruption. I don't believe 1480 meant to impact how wineries utilize common carriers to ship wine, direct to consumer across the state which is really the lifeblood of our industry. And then finally - yes, yes sir. Am I done?"

[Chair Postman: "Sorry, 30 seconds, Josh."]

"30 seconds, great.

One final question then I'll let you go. We were grateful for the recognition when we would talk about how to, if there needed to be, what needed to happen for a space to be able to utilize outdoor seating and the current rules talk about needing to have indoor dining and other related things. We were, you know, there are opportunities where we can utilize an outdoor space and not specifically need to have indoor service at all.

And so we did notice that the new rules have production. So if you have production like a winery does, you can utilize your outdoor space. That I'm not sure helps us with our satellite tasting rooms. So specifically for wineries - restaurants may have their own perspective and others - but for wineries, we have retail spaces outside of our winery space that we have satellite locations on.

We're not sure that that would help those spaces if we want to utilize our 100% of our outdoor space for seating for service and do it in a smart responsible way. So that may need a little more tweaking depending on how your team, how the Liquor Board looks at domestic wineries and our satellite taste room uses for this specific rulemaking.

With that, I will say, just again, thank you for your time. Thank you for this hard work. Thank you to your team. They've done a wonderful job and I look forward to continue to work with them."

Board response: The Board appreciates these comments and the demonstration of interest in collaborative participation in the rulemaking process. The questions posed during this oral testimony have been addressed under separate cover.

Was the comment reflected in the adopted rule? This comment is not reflected in the final rule.

Changes from the Proposed Rules (CR 102) to the Final Rules as Adopted

There were no changes from the proposed rules to the final rules as adopted.