



## CR 103 Memorandum

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

Date: December 8, 2021  
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### 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 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 rule proposal and how to provide comment was shared publicly 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.

## **Description of Rule Changes & Rule Necessity**

The final rules 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).<sup>1</sup> 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 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

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<sup>1</sup> Section 2 of E2SHB 1480 creating the temporary endorsements for “to-go” alcohol sales is uncodified 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.

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 table below describes the final rule changes and reasons for these changes in more detail.

Rule section	Description of final rule changes	Rule necessity
<i>Category: Food Service Menu Requirements</i>		
WAC 314-02-010 “Definitions.” (AMENDED)	The definitions of “complete meal,” “minimum food service,” and “snack food” 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.	To implement 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.”
WAC 314-02-035 “Food service requirements for a spirits, beer, and wine restaurant license.” (AMENDED)	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.	To improve clarity of the rules by streamlining and making technical corrections to language and numbering, without changing its effect.
WAC 314-02-0411 “Food service requirements for a hotel license.” (AMENDED)	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.	
WAC 314-02-065 “Snack bar license.” (AMENDED)	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.	
WAC 314-02-087 “Spirits, beer, and wine theater license.” (AMENDED)	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.	
WAC 314-02-112 “Caterer’s license.” (AMENDED)	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.	
WAC 314-02-114 “Senior center license.” (AMENDED)	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.	
<i>Category: Outdoor Alcohol Service Areas</i>		
WAC 314-03-200 “Outside or extended alcohol service.” (AMENDED)	A cross-reference to the temporary rules for outdoor alcohol service in WAC 314-03-205 is added to the first paragraph.	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.”
WAC 314-03-205 “Temporary rules for outdoor alcohol service by on-premises licensees.” (NEW)	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.	To improve clarity of the rules by

	<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> <ul style="list-style-type: none"> <li>• Licensees' property parcels/buildings must be located in direct physical proximity to one another;</li> <li>• Licensees must maintain separate storage of products and separate financial records for the shared outdoor alcohol service area;</li> <li>• 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</li> <li>• Licensees must complete an operating plan for the shared outdoor alcohol service area.</li> </ul>	<p>streamlining and making technical corrections to language and numbering, without changing its effect.</p>
<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"> <li>• Alcohol products must be manufacturer-sealed or factory-sealed.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul>	<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"> <li>• 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.</li> <li>• Container requirements: The "to-go" cocktails, wine, etc, must be packaged in containers that are sealed in a manner designed to prevent</li> </ul>	<p>To implement E2SHB 1480, section 2(3), (4), (6), and (9).</p>

	<p>consumption without removal of a tamper-evident lid, cap, or seal. A non-comprehensive list of examples is provided.</p> <ul style="list-style-type: none"> <li>• 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+”</li> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul> <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"> <li>• As specified in E2SHB 1480, sales of growlers must meet federal TTB requirements.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul>	<p>To implement E2SHB 1480, section 2(5)-(7), and (9).</p>

## Changes from the Proposed Rules (CR 102) to the Final Rules:

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

## Rule Implementation

### Informing and Educating Persons Impacted by the Rule

To help inform and educate persons impacted by the rule, the WSLCB will:

- Email notice with the adoption materials and application instructions to persons who commented on the rules and to all GovDelivery subscribers;
- Notify on-premises retailers with existing off-premises endorsements of new temporary endorsements.
- Post rule adoption materials, including final rule language, response to comments, final analysis (Concise Explanatory Statement), and any other relevant documents on the rulemaking webpage for public access.
- Provide application instructions on public website.
- Provide information and training on request.

### **Promoting and Assisting Voluntary Compliance**

The WSLCB will promote and assist voluntary compliance through technical assistance.

- WSLCB staff are available to respond to phone and email inquiries about the rules.
- The WSLCB Licensing Division and Enforcement and Education Division have participated in the rule revision process and are familiar with the final product. Internal and external education efforts to share knowledge and assure consistent application of rule will be supported.
- Rule and guidance documents will be available on the WSLCB website.
- The WSLCB will use available and customary resources to disseminate materials and information to all persons impacted by the rules.

These actions are designed to inform and educate all persons impacted by the rules to support and promote voluntary compliance.

### **Training and Informing WSLCB Staff**

Several WSLCB staff responsible for implementing these rules work directly with impacted parties and are already familiar with the nuances of the rule changes. Additional internal guidance documents may be prepared as necessary. The WSLCB will also consider:

- Provision of internal and external training and education, as needed, potentially including webinars, training, and videos if appropriate;
- Coordinating and centrally locating decisions to assure consistency between agency, staff, and industry.

### **Rule Effectiveness Evaluation**

The WSLCB will evaluate the effectiveness of these rules in the following ways, including but not limited to:

- Monitoring questions received after the effective date of these rules, and adjusting training and guidance accordingly;
- Monitoring enforcement actions, including type, resolution, and final outcome;
- Monitoring requests for rule language revisions or changes;
- Monitoring requests for rule interpretation.