

WSR 24-21-168
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed October 23, 2024, 10:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-17-049.

Title of Rule and Other Identifying Information: Rule making to implement HB 2204 (chapter 91, Laws of 2024), codified at RCW 66.20.010(19), which creates an emergency liquor permit allowing liquor manufacturing licensees to temporarily operate in a retail capacity on the premises of another liquor licensee with retail privileges while the manufacturer's premises are inaccessible and unable to operate due to an emergency or road closure. This rule making anticipates the creation of new WAC 314-38-120 Emergency liquor permits.

Hearing Location(s): On December 4, 2024, at 10:00 a.m. All public liquor and cannabis board (LCB) activity will be held in a "hybrid" environment. This means that the public will have options for in-person or virtual attendance. The board room 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 meetings. Please note that although the board room will be staffed during a meeting, board members and LCB participants may continue to appear virtually. For more information about LCB meetings, please visit <https://lcb.wa.gov/Boardmeetings/Boardmeetings>.

Date of Intended Adoption: No earlier than December 18, 2024.

Submit Written Comments to: Daniel Jacobs, Rules and Policy Coordinator, P.O. Box 48030, Olympia, WA 98504-3080, email rules@lcb.wa.gov, fax 360-704-5027, beginning October 23, 2024, 12:00 p.m., by December 4, 2024, 12:00 p.m.

Assistance for Persons with Disabilities: Contact Anita Bingham, ADA coordinator, human resources, phone 360-664-1739, fax 360-664-9689, TTY 711 or 1-800-833-6388, email anita.bingham@lcb.wa.gov, by November 27, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed rule is to implement HB 2204, chapter 91, Laws of 2024, codified at RCW 66.20.010(19):

Section 1: This language mostly repeats RCW 66.20.010(19), except for expressly stating that the permit is to allow manufacturing licensees to sell alcohol "of their own production." This is within the meaning of the permit and original legislation because it clarifies that this permit is intended to allow manufacturers, who otherwise may sell liquor of their own production on their own premises in a retail capacity, to continue these retail activities while being temporarily displaced, to sell their own liquor on the retail premises of another licensee.

Section 2: This language states that LCB will not charge money for the issuance of this permit. There is no statutory requirement for LCB to charge a fee, nor a specific fee identified in statute, and LCB has decided not to charge a fee to manufacturing licensees during a period that they are experiencing financial hardship.

Section 3: This language states that distilleries, craft distilleries, fruit and wine distilleries, domestic breweries, microbreweries, and domestic wineries are allowed to obtain the emergency liquor permit.

Section 4: This language identifies all liquor licensees as eligible to host emergency liquor permit holders with a few exceptions: Caterers, which do not have their own premises to host; private clubs, which are not open to the public per RCW 66.24.450 and 66.24.452; and sports entertainment facilities, which are a unique type of liquor licensee that would be impracticable to host an emergency permit holder, as it would be more hassle than it would be worth to have a large football stadium host a winery on a temporary basis. All of these are prohibited from hosting emergency liquor permit holders.

Section 5: This language clarifies that a host must have the same ability to sell alcohol as the permit holder. For example, a beer/wine restaurant not authorized to serve spirits may not host a distillery, as that would result in spirits being served on premises that would not be permitted to serve spirits without an emergency liquor permit holder temporarily operating there. This is a theme continued throughout the proposed rules; an emergency liquor permit shall not be used to allow licensees to operate in ways they are not otherwise permitted to operate.

This is also reflected in subsection (5)(b), which states that distilleries must continue to satisfy the food offering requirements identified in WAC 314-28-067 and RCW 66.24.1471, and the host must also satisfy those food offerings requirements to be eligible to host a distillery.

Section 6: This states that a permit holder shall identify the host when applying for an emergency liquor permit. This is consistent with existing practice and means that a licensee interested in applying for a permit should identify a tentative host who agrees prior to applying for a permit.

Section 7: Per RCW 66.20.010(19), the permit shall be for 30 days, and can be extended for another 30 days so long as the emergency continues.

Section 8: The first two requirements in subsections (8) and (8)(a) are dictated by statute in RCW 66.20.010(19). The MAST reciprocity requirements in subsections (8)(b) and (c) continue with the theme of ensuring that these permits are not used to engage in otherwise impermissible activity. The MAST permits required for a host's employees must be sufficient to allow them to serve the permit holder's liquor, as allowed by statute, and vice versa. This is not supposed to be used as an opportunity to allow service of liquor by individuals not permitted to provide such service.

Section 9: Continuing with the theme of not allowing this to become an opportunity for an end-run around other alcohol laws and regulations, this section specifically identifies agreements involving impermissible direct or indirect interests, more commonly known as "undue influence," as remaining prohibited despite the existence of an emergency liquor permit.

Section 10: Subsection (10)(a) is dictated by statute at RCW 66.20.010(19). Subsection (10)(b) continues with the theme repeatedly identified above and provides that an emergency liquor permit holder can only have one permit at a time, so a manufacturer with one established premises cannot use this as an opportunity to temporarily operate out of three different hosts. Subsection (10)(c) borrows language from WAC 314-11-060(3) where liquor licenses are required to be con-

spicuously posted for public inspection and viewing by liquor enforcement officers. The same logic applies here in allowing public viewing and inspection of emergency liquor permits.

Section 11: This section operates generally on the theme of keeping everything separated between hosts and permit holders. The licensees remain distinct legal entities while operating on the same premises. As such, they need to maintain separate financial records, subsection (11)(a); they need to continue to pay taxes and make payments as separate entities, subsection (11)(b); and they need to use distinctively marked glassware to serve liquor, subsection (11)(c). The language of subsection (11)(c) is borrowed from WAC 314-03-200(4), which identifies how licensees can share outdoor spaces.

Section 12: Continuing to borrow from WAC 314-03-200(4) on shared outdoor spaces, this language on joint liability explains that if a violation occurs, the default presumption will be that the host and permit holder share responsibility for the violation, and the responsibility of attributing fault or liability will be on the licensees themselves, not on LCB.

Section 13: The definitions provided are identified in more detail in the table below. The time frame of 48 hours was used because a licensee that is closed for less than that may not find it worthwhile to make all the arrangements and apply for a permit, move all the liquor and supplies etc., if the closure is only temporary. This also ensures that routine freeway closures or other periodic disruptions of the like do not rise to the level where an emergency liquor permit is warranted or necessary.

Reasons Supporting Proposal: The reasons supporting these proposed rules, in addition to that described above, are identified in the tables herein:

WAC 314-38-120 Emergency liquor permits		
Section	Proposed Rule	Reason
(1)	Per RCW 66.20.010, there is an emergency liquor permit for eligible licensees to authorize the sale, service, and consumption of liquor of their own production on the premises of another liquor licensee with retail sales privileges when an emergency has made the permit holder's premises inaccessible and unable to operate due to an emergency or road closure.	The language mimics that found in RCW 66.20.010(19), with one exception: the use of the wording "of their own production[.]" which is added to ensure that the purpose of the statute is maintained in rule, allowing manufacturers to continue the retail activities allowed by their license during an emergency closure.
(2)	There is no fee for the emergency liquor permit.	LCB has made the decision within its authority not to charge fees to licensees experiencing this hardship.
(3)	The following licensees are eligible to obtain an emergency liquor permit:	These are the liquor licensees with manufacturing privileges, per the following: (a) RCW 66.24.140, 66.24.145 (b) RCW 66.24.244, 66.24.240 (c) RCW 66.24.170
(3)(a)	Distilleries, craft distilleries, and fruit and wine distilleries;	
(3)(b)	Domestic breweries and microbreweries; and	
(3)(c)	Domestic wineries.	

WAC 314-38-120 Emergency liquor permits		
Section	Proposed Rule	Reason
(4)	The following licensees are eligible to operate as a host of a permit holder:	These are the liquor licensees eligible to host a permit holder: (1) All of the manufacturing licensees, and (2) all liquor licensees with retail privileges except for caterers, which do not have a dedicated premises, private clubs, which are not intended to be open to the public, and sports entertainment facilities, which operate in such a way that allowing them to host a permit holder would be infeasible.
(4)(a)	All the licensees identified in subsection (3) of this section;	
(4)(b)	All liquor licensees with retail sales privileges, except for the following:	
(4)(b)(i)	Caterers, licensed under RCW 66.24.690;	
(4)(b)(ii)	Private clubs licensed under RCW 66.24.450 or 66.24.452; and	
(4)(b)(iii)	Sports entertainment facilities licensed under RCW 66.24.570.	
(5)(a)	To be eligible to host a permit holder, the host must have the authority to sell the type of products manufactured by the permit holder.	The goal is to prevent a host from selling liquor it is not ordinarily permitted to sell on its premises, such as a beer/wine restaurant hosting a distillery and thus having spirits served on premises.
(5)(b)	If the permit holder is a distillery, craft distillery, or fruit and wine distillery, the host must comply with the food offerings requirements in WAC 314-28-067.	Per RCW 66.24.1471 and WAC 314-28-067, distilleries, craft distilleries and fruit and wine distilleries must satisfy certain food offering requirements. This ensures liquor licensees required to meet food offerings requirements cannot avoid these requirements through use of the emergency liquor permit.
(6)	The permit holder shall identify the host when applying to the board's licensing division for an emergency liquor permit.	This is consistent with existing practice when applying for an emergency liquor permit. Additionally, this ensures that a host is identified prior to a permit holder requesting a permit, and thus presumably informed that they are expected to host a permit holder.
(7)(a)	The permit shall last for 30 days.	This language is from RCW 66.20.010(19).
(7)(b)	If the emergency continues, the permit may be renewed for an additional 30 days.	
(8)	The permit holder may store no more than a 30-day supply of liquor at the host premises.	This language is from RCW 66.20.010(19).
(8)(a)	The permit holder's liquor must be kept separate from the host liquor.	
(8)(b)	Host employees and agents are permitted to serve liquor provided by the permit holder if they have the MAST permits required by RCW 66.20.310 and chapter 314-17 WAC.	This wording is meant to ensure that employees and agents of hosts and permit holders have the same level of MAST permit privileges to serve liquor, and as stated above in subsection (5)(a), the host has authority to sell liquor manufactured by the permit holder.
(8)(c)	The permit holder's employees and agents must meet the same MAST permit requirements as the host's employees and agents.	
(9)	A host and permit holder may not enter into any type of agreement that would involve impermissible direct or indirect interests as provided in chapter 66.28 RCW.	Reiterating that hosts and permit holders cannot use the emergency liquor permit to enter business agreements that are otherwise prohibited by law or rule.
(10)(a)	A host may have no more than three permit holders operating on its premises at a time.	This language is from RCW 66.20.010(19).
(10)(b)	A permit holder may only have one permit at a time.	This is to prevent a permit holder with one location from using the emergency liquor permit as an opportunity to operate at multiple locations.
(10)(c)	The permit holder must conspicuously post the emergency liquor permit at the host premises at all times the permit is in use and be available for inspection by liquor enforcement officers.	This language is from WAC 314-11-060(3) about required public display of liquor licenses, and the reasoning is similar: To allow patrons and liquor enforcement officers to know that permit holders are legally operating on the premises.

WAC 314-38-120 Emergency liquor permits		
Section	Proposed Rule	Reason
(11)(a)	Hosts and permit holders must maintain separate records consistent with Titles 66 RCW and 314 WAC as it applies to the host and permit holder.	This is consistent with WAC 314-03-200(4) on licensees sharing outdoor spaces and the need to maintain separate records.
(11)(b)	Hosts and permit holders must comply with all tax payment and reporting requirements in Titles 66 RCW and 314 WAC.	This is to ensure that licensees continue to comply with all tax payment requirements as if they were operating from the original premises.
(11)(c)	Hosts and permit holders must use distinctively marked glassware or serving containers to identify the source of any alcohol product being consumed on the host premises. 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.	Language from WAC 314-03-200 regarding outdoor service areas and licensees sharing space.
(12)	Hosts and all permit holders on the hosts' premises 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.	Language from WAC 314-03-200 regarding outdoor service areas and licensees sharing space.
(13)	Definitions: For purposes of this section, the following definitions apply:	
(13)(a)	"Emergency" means an emergency or disaster as defined in RCW 38.52.010.	This language is from RCW 66.20.010(19).
(13)(b)	"Host" means a liquor licensee with the same retail sales privileges that allows a permit holder to operate on their premises pursuant to the terms of the emergency liquor permit.	Definition needed to identify the licensee who is allowing the emergency permit liquor holder to temporarily operate on their premises.
(13)(c)	"Inaccessible" means unable to be safely entered, reached, or used for on-premises business purposes for more than 48 hours.	Term needs to be defined because it is used in RCW 66.20.010(19) and no definition is provided.
(13)(d)	"Permit holder" means a licensed manufacturer that has experienced an emergency that has made its premises inaccessible and unable to operate due to an emergency or road closure.	Definition needed to identify the licensee who is eligible to obtain the emergency liquor permit.
(13)(e)	"Road closure" means whenever the condition of any state highway, county road, city street, or right-of-way is such that its use by vehicles will be dangerous to traffic, or it is being constructed, altered, or repaired in such a manner as to require their use to be closed or restricted to all vehicles for more than 48 hours.	Language used is from RCW 47.48.010 regarding Washington state department of transportation's authority to close roads.
(13)(f)	"Unable to operate" means unable to perform the on-premises activities which the liquor license authorizes in Titles 66 RCW and 314 WAC.	Term needs to be defined because it is used in RCW 66.20.010(19) and no definition is provided.

Statutory Authority for Adoption: RCW 66.08.030, 66.20.010, 66.98.070.

Statute Being Implemented: RCW 66.20.010(19); HB 2204, chapter 91, Laws of 2024.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: LCB, governmental.

Name of Agency Personnel Responsible for Drafting: Daniel Jacobs, Rules and Policy Coordinator, 1025 Union Avenue, Olympia, WA 98504, 360-480-1238; Implementation: Becky Smith, Director of Licensing, 1025 Union Avenue, Olympia, WA 98504, 360-664-1753; and Enforcement: Chan-

dra Wax, Director of Enforcement and Education, 1025 Union Avenue, Olympia, WA 98504, 360-664-1726.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed amended rules do not qualify as a type of rule requiring a cost-benefit analysis under RCW 34.05.328(5). LCB is not a listed 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 committee under RCW 34.05.328 (5) (a) (ii).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: HB 2204, codified at RCW 66.20.010(19), creates a new emergency liquor permit for manufacturing licensees who can apply for this permit under certain statutory conditions identified in the statute. The proposed rule consists of a single new rule that identifies which licensees can apply for the permit, and the other conditions that they must satisfy while maintaining the permit to be consistent with other provisions of Titles 66 RCW and 314 WAC. No other sections of Title 314 WAC are proposed to be amended. The permit conditions are dictated by statute, and the rule language relates to process requirements for applying to an agency for the emergency liquor permit in that it identifies the conditions that must be met to apply for the permit and what conditions must be met while using the permit, satisfying both RCW 34.05.310 (4) (e) and (g).

Scope of exemption for rule proposal:

Is fully exempt.

October 23, 2024
David Postman
Chair

OTS-5783.4

NEW SECTION

WAC 314-38-120 Emergency liquor permits. (1) Per RCW 66.20.010, there is an emergency liquor permit for eligible licensees to authorize the sale, service, and consumption of liquor of their own production on the premises of another liquor licensee with retail sales privileges when an emergency has made the permit holder's premises inaccessible and unable to operate due to an emergency or road closure.

(2) There is no fee for the emergency liquor permit.

(3) The following licensees are eligible to obtain an emergency liquor permit:

- (a) Distilleries, craft distilleries, and fruit and wine distilleries;
- (b) Domestic breweries and microbreweries; and
- (c) Domestic wineries.
- (4) The following licensees are eligible to operate as a host of a permit holder:
- (a) All the licensees identified in subsection (3) of this section;
- (b) All liquor licensees with retail sales privileges, except for the following:
- (i) Caterers, licensed under RCW 66.24.690;
- (ii) Private clubs licensed under RCW 66.24.450 or 66.24.452; and
- (iii) Sports entertainment facilities licensed under RCW 66.24.570.
- (5) (a) To be eligible to host a permit holder, the host must have the authority to sell the type of products manufactured by the permit holder.
- (b) If the permit holder is a distillery, craft distillery, or fruit and wine distillery, the host must comply with the food offerings requirements in WAC 314-28-067.
- (6) The permit holder shall identify the host when applying to the board's licensing division for an emergency liquor permit.
- (7) (a) The permit shall last for 30 days.
- (b) If the emergency continues, the permit may be renewed for an additional 30 days.
- (8) The permit holder may store no more than a 30-day supply of liquor at the host premises.
- (a) The permit holder's liquor must be kept separate from the host liquor.
- (b) Host employees and agents are permitted to serve liquor provided by the permit holder if they have the MAST permits required by RCW 66.20.310 and chapter 314-17 WAC.
- (c) The permit holder's employees and agents must meet the same MAST permit requirements as the host's employees and agents.
- (9) A host and permit holder may not enter into any type of agreement that would involve impermissible direct or indirect interests as provided in chapter 66.28 RCW.
- (10) (a) A host may have no more than three permit holders operating on its premises at a time.
- (b) A permit holder may only have one permit at a time.
- (c) The permit holder must conspicuously post the emergency liquor permit at the host premises at all times the permit is in use and be available for inspection by liquor enforcement officers.
- (11) (a) Hosts and permit holders must maintain separate records consistent with Titles 66 RCW and 314 WAC as it applies to the host and permit holder.
- (b) Hosts and permit holders must comply with all tax payment and reporting requirements in Titles 66 RCW and 314 WAC.
- (c) Hosts and permit holders must use distinctively marked glassware or serving containers to identify the source of any alcohol product being consumed on the host premises. 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.
- (12) Hosts and all permit holders on the hosts' premises 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.

(13) **Definitions:** For purposes of this section, the following definitions apply:

(a) "Emergency" means an emergency or disaster as defined in RCW 38.52.010.

(b) "Host" means a liquor licensee with the same retail sales privileges that allows a permit holder to operate on their premises pursuant to the terms of the emergency liquor permit.

(c) "Inaccessible" means unable to be safely entered, reached, or used for on-premises business purposes for more than 48 hours.

(d) "Permit holder" means a licensed manufacturer that has experienced an emergency that has made its premises inaccessible and unable to operate due to an emergency or road closure.

(e) "Road closure" means whenever the condition of any state highway, county road, city street, or right-of-way is such that its use by vehicles will be dangerous to traffic, or it is being constructed, altered, or repaired in such a manner as to require their use to be closed or restricted to all vehicles for more than 48 hours.

(f) "Unable to operate" means unable to perform the on-premises activities which the liquor license authorizes in Titles 66 RCW and 314 WAC.