

WSR 23-11-163
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed May 24, 2023, 10:35 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: The Washington state liquor and cannabis board (board) proposes to amend the following rule sections to implement statutory mandates of 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: Amending WAC 314-03-200 Outside or extended alcohol service, 314-03-205 Rules for outdoor alcohol service by on-premises licensees, 314-03-500 Temporary and permanent endorsements for sale of manufacturer-sealed alcohol products through takeout, or delivery service, 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, and 314-03-510 Temporary endorsement for sale of growlers through curbside, takeout, or delivery service.

Hearing Location(s): On June 27, 2023, at 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, 1025 Union Avenue, Olympia, WA 98504, will be open for in-person attendance. The public may also log in 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 Boardroom will be staffed during a meeting, board members and agency participants may continue to appear virtually. For more information about board meetings, please visit https://lcb.wa.gov/Boardmeetings/Board_meetings.

Date of Intended Adoption: No earlier than July 5, 2023.

Submit Written Comments to: Dr. Kathy Hoffman, Research Manager, P.O. Box 43080, Olympia, WA 98504-3080, email rules@lcb.wa.gov, fax 360-704-5027, by June 27, 2023.

Assistance for Persons with Disabilities: Contact Anita Bingham, ADA coordinator, human resources director, phone 360-664-1739, fax 360-664-9689, TTY 711 or 1-800-833-6388, email anita.bingham@lcb.wa.gov, by June 22, 2023.

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: SSB 5448 (chapter 279, Laws of 2023); RCW 66.08.071, 66.08.030.

Statute Being Implemented: SSB 5448, (chapter 279, Laws of 2023).

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

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

Name of Proponent: Washington state liquor and cannabis board, governmental.

Name of Agency Personnel Responsible for Drafting: Dr. Kathy Hoffman, Research Manager, 1025 Union Avenue, Olympia, WA 98501, 360-664-1622; Implementation: Rebecca Smith, Director of Licensing, 1025 Union Avenue, Olympia, WA 98501, 360-664-1753; and Enforcement: Chandra Brady, Director of Education and Enforcement, 1025 Union Avenue, Olympia, WA 98501, 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 rules do not qualify as a type of rule requiring a cost-benefit analysis under RCW 34.05.328(5). The board 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).

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 rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: 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.

Scope of exemption for rule proposal:
Is fully exempt.

May 24, 2023
David Postman
Chair

OTS-4600.1

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 on-going 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~~((,))~~ 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~~((,))~~ 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~~((,))~~ 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 (~~(7)~~ 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 (~~(eurb-~~side~~7)~~) 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-kits7)~~) wine by the glass, or premixed wine and spirits cocktails authorized for sale through (~~(eurb-~~side~~7)~~) 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 (~~(eurb-~~side~~7)~~) takeout(~~(7)~~) or delivery service under this endorsement.

(b) The alcohol products authorized for sale through (~~(eurb-~~side~~7)~~) 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 (~~(eurb-~~side~~7)~~) 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 (~~(eurb-~~side~~7)~~) 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(~~(r)~~) 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(~~(r)~~) 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(~~(r)~~) 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(~~(r)~~) 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(~~(r-curbside)~~) or delivery service.

(ii) The signs will be designed to remind customers purchasing alcohol products through (~~(curbside)~~) takeout(~~(r)~~) 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~~((,))~~ 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~~((,))~~ 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.]