



## Notice of Permanent Rules

**Regarding implementation of SSB 5448 concerning liquor license privileges and the delivery of alcohol.**

**This concise explanatory statement concerns the Washington State Liquor and Cannabis Board's (WSLCB) adoption of technical amendments to chapter 314-03 WAC that incorporate legislation effective July 1, 2023.**

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to complete 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 rule making process. If you have questions, please contact Katherine Hoffman, PhD, Research Manager, at (360) 664-1622 or e-mail at [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov).

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### Background and reasons for adopting these rules:

#### *Prior Legislation and Rule Development*

In 2021, the Legislature codified certain liquor license privileges, similar to the allowances the Washington State Liquor and Cannabis Board (LCB) had temporarily provided to liquor licensees during the COVID-19 pandemic through Engrossed Second Substitute House Bill (E2SHB) 1480 (chapter 48, Laws of 2021). These privileges were set to expire July 1, 2023. The CR 102 Memorandum from implementation of E2SHB 1480 describing these changes is attached hereto as Attachment A and incorporated herein by this reference.

#### *Current Legislation and Rule Development*

In 2023, the Legislature revised the liquor license privileges codified in E2SHB 1480 through Substitute Senate Bill (SSB) 5448 (chapter 279, Laws of 2023). SSB 5448 made the following revisions:

- The July 1, 2023, expiration of the temporary liquor license privileges for takeout was removed, and the privileges made permanent.

- The authorization to sell alcohol products curbside and the authorization for spirits, beer, and wine restaurant licensees to sell cocktail kits with mini-bottles for takeout and delivery was removed.
- The authorization for specified licensees to sell alcohol for delivery under the temporary privileges was extended only until July 1, 2025. No alcohol products may be sold by delivery under the privileges after July 1, 2025.
- While delivery sales are authorized, alcohol delivery must be performed only by an employee of an alcohol delivery endorsement holder who is 21 years of age or older and possesses a class 12 alcohol server permit. The employee must have completed an approved alcohol server permit course with a curriculum component on best practices for alcohol delivery. The signature requirement is extended so that upon delivery of any alcohol product the signature of the person age 21 or over receiving the delivery must be obtained.
- Delivery and takeout services conducted by restaurant licensees must be accompanied by a purchased meal prepared and sold by the license holder. Any alcohol product sold for takeout or delivery pursuant to the privileges must be in a factory sealed container or a tamper-resistant container.

The adopted revisions incorporate legislation that became effective on July 1, 2023, and do not materially or substantively change existing rules. The adopted rule revisions are needed to align existing rules with and implement the law as established by SSB 5448.

Additionally, as provided in RCW 34.05.310(4)(c), the adopted rule amendments adopt or incorporate by reference, without material change, a Washington state statute. Also, consistent with RCW 34.05.310(4)(e), the adopted rule amendments provide content that is explicitly and specifically dictated by statute. For that reason, the adopted rule amendments were exempt from public notice and prenotice inquiry requirements, and the opportunity for stakeholder engagement occurred during the public comment period and at the public hearing.

**Rulemaking history for this adopted rule:**

**CR 102** – filed May 24, 2023 as WSR #23-11-163  
Public hearing held June 27, 2023

**The effective date of these rules is July 5, 2023.**

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**Public comment received on the rule proposal:**

1. **Letter attached to email received from Stacey Oakland, received June 27, 2023:**

RE: CR102 Revised rules for alcohol delivery and take out

Thank you for the opportunity to testify regarding this CR 102 for implementing the revised rules for alcohol delivery and alcohol take-out. My name is Stacey Okland and I am a board member with Washington Association for Substance use and Violence Prevention or WASAVP. I'm also the Executive Director for Okanogan County Community Coalition in Omak.

My concern today is on Page 17 Section 3(a) stating that spirits, beer, and wine restaurants can sell up to 3 ounces of spirits per complete meal. Although SB5448 doesn't explicitly define number of ounces, the spirit of SB5448 was one drink per meal. Looking at National Institute of Health (NIH) Publication No. 07-3769, a standard drink of spirits is 1.5 ounces. So technically, up to 3 ounces of spirits could be considered two standards drinks.

Factors such as age, weight, gender, and the amount of food consumed can affect how fast the body processes alcohol, but the liver can typically only process one ounce of spirits per hour, so I propose reducing the amount of spirits allowed to be delivered to consumers be reduced to 1 ounce with a complete meal.

Thank you again for the opportunity to testify. Let me know if you have any questions.

Sincerely,



Stacey Okland

WASAVP Secretary

Executive Director, Okanogan County Community Coalition

**WSLCB response:** The WSLCB appreciates this comment, and participation in the rulemaking process. The WSLCB looks forward to your participation in future policy and rule development projects. However, this comment addresses a concern that is not within the scope of this rulemaking.

Consistent with the CR 102 filed on May 24, 2023, as WSR #23-11-163 this rulemaking was specifically limited as follows, "The Washington State Liquor and Cannabis Board (Board) proposes to amend the following rule sections to implement statutory mandates of Substitute Senate Bill (SSB) 5448 (chapter 279, laws of 2023), effective July 1, 2023, concerning outside or extended alcohol service, the extension of a temporary alcohol delivery endorsement, and an alcohol takeout endorsement."

SSB 5448 does not statutorily mandate a modification to the amount of spirits allowed to be delivered to consumers. The rule proposal did not change the current amount of spirits allowed to be delivered to consumer.

Specifically, the rule language referenced in this comment has been in place since the rule in question was adopted on December 8, 2021 as WSR #22-01-052. To wit, the language of WAC 314-03-505(3)(a)(i) provides:

(3) In order to obtain and maintain the endorsement described in this section, licensees must meet the following requirements: (a)(i) For spirits, beer, and wine restaurants, food that qualifies as a complete meal under WAC 314-02-010 must be sold with the premixed cocktails, cocktail kits, wine by the glass, or premixed wine and spirits cocktails authorized for sale through curbside, takeout, or delivery service under this endorsement. Spirits, beer, and wine restaurants can sell up to 3 ounces of spirits per complete meal.

The adopted rule does not change this language. Instead, it changes the number 3 to the word three, consistent with drafting guidance from the Washington State Code Reviser's Office as follows:

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

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

**2. Document attached to email from Scott Waller, received June 27, 2023:**

**WASAVP Testimony Regarding CR 102 for SB 5448**

**Scott Waller**

Washington Association for Substance use and Violence Prevention (WASAVP)

[Tumh2o99@comcast.net](mailto:Tumh2o99@comcast.net)

(360) 701-8658

**Thank you for the opportunity to testify regarding this CR 102 for implementing the revised rules for alcohol delivery and alcohol take out. My name is \_\_\_\_\_ and I am a board member with Washington Association for Substance use and Violence Prevention or WASAVP. I live in the 35<sup>th</sup> Legislative District and all three of my legislators voted in favor of 5448.**

**WASAVP represents more than 120 community substance use and violence prevention coalitions in the state.**

**In the past session, WASAVP became neutral on SB 5448 when significant changes were made that reduced the chances that youth could access alcohol**

through the delivery system and that reduced the potential for public health consequences like DUI by eliminating curbside service.

We applaud the good work that went into crafting the bill that became session law. And we appreciate the good work from LCB staff for mostly following the bill's direction and intent in crafting this proposed CR 102.

We do take issue with the language in the proposed CR 102 that allows three ounces of alcohol to be delivered with each complete meal (Page 17, Section 3, Sub A). Using a standard one and a half ounces of spirits per drink as a measuring stick, the current rule language could allow up to two drinks per entrée.

The bill does not provide specific numeric guidance about how much alcohol can accompany a purchased meal. It only says that the delivered alcohol must be accompanied by a purchased meal.

But the prime sponsor of the legislation, Sen. MacEwen, was very clear in testimony at a public hearing about the intent of the bill when he said, "... You can only order one alcoholic beverage per entrée."

Under the proposed rule, three ounces of alcohol could be delivered per meal and three ounces of alcohol is enough to impair or intoxicate most adults, depending on the speed of consumption, metabolic factors, and built-up tolerance for alcohol. An individual that has consumed three ounces of alcohol could be legally impaired for driving with a BAC above .08.

This seems to be an unnecessary public health risk. We understand the impacts of alcohol on humans and we also understand the always tragic relationship between alcohol consumption, impairment, and traffic crashes that result in fatalities and injuries.

Once the alcohol is delivered to the home, there is no control over what happens. During the temporary alcohol allowance period – 2021-23 – there were numerous reports of people receiving alcohol deliveries and then driving to purchase more alcohol or to find a place to continue drinking.

We encourage the board to change the three ounces of alcohol per complete meal to one ounce of alcohol per complete meal. Having the one-to-one relationship is closer to the actual SB 5448 language and is clearly consistent with legislative intent as articulated by the bill's prime sponsor, Sen. MacEwen.

**Thank you again for the opportunity to testify, and I would be happy to answer any questions.**

**WSLCB response:** The WSLCB appreciates this comment, and participation in the rulemaking process. The WSLCB looks forward to your participation in future policy and rule development projects. However, this comment addresses a concern that is not within the scope of this rulemaking.

Consistent with the CR 102 filed on May 24, 2023, as WSR #23-11-163 this rulemaking was specifically limited as follows, “The Washington State Liquor and Cannabis Board (Board) proposes to amend the following rule sections to implement statutory mandates of Substitute Senate Bill (SSB) 5448 (chapter 279, laws of 2023), effective July 1, 2023, concerning outside or extended alcohol service, the extension of a temporary alcohol delivery endorsement, and an alcohol takeout endorsement.”

SSB 5448 does not statutorily mandate a modification to the amount of spirits allowed to be delivered to consumers, nor did it’s precursor, Engrossed Second Substitute House Bill (E2SHB) 1480 (chapter 67, laws of 2021). The rule proposal did not change the current amount of spirits allowed to be delivered to consumer as implemented under E2SHB 1480.

Specifically, the rule language referenced in this comment has been in place since the rule in question was adopted on December 8, 2021 as WSR #22-01-052. To wit, the language of WAC 314-03-505(3)(a)(i) provides:

(3) In order to obtain and maintain the endorsement described in this section, licensees must meet the following requirements: (a)(i) For spirits, beer, and wine restaurants, food that qualifies as a complete meal under WAC 314-02-010 must be sold with the premixed cocktails, cocktail kits, wine by the glass, or premixed wine and spirits cocktails authorized for sale through curbside, takeout, or delivery service under this endorsement. Spirits, beer, and wine restaurants can sell up to 3 ounces of spirits per complete meal.

The adopted rule does not change this language. Instead, it changes the number 3 to the word three, consistent with drafting guidance from the Washington State Code Reviser’s Office as follows:

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

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

### **3. Email from Jim MacRae, received June 27, 2023:**

**From:** Jim MacRae <[jimmacrae13@gmail.com](mailto:jimmacrae13@gmail.com)>  
**Sent:** Tuesday, June 27, 2023 10:44 AM

**To:** Dickson, Dustin P (LCB) <[dustin.dickson@lcb.wa.gov](mailto:dustin.dickson@lcb.wa.gov)>  
**Cc:** Postman, David (LCB) <[david.postman@lcb.wa.gov](mailto:david.postman@lcb.wa.gov)>; Vollandroff, Jim (LCB) <[jim.vollandroff@lcb.wa.gov](mailto:jim.vollandroff@lcb.wa.gov)>; Garrett, Ollie A (LCB) <[ollie.garrett@lcb.wa.gov](mailto:ollie.garrett@lcb.wa.gov)>  
**Subject:** Standard mini-bottle holds 50ml

The last I looked, a standard "mini-bottle" holds 50ml (1.69 ounces).

Also, when I worked bar (decades ago), a standard shot was 1.5 oz.

Hope that helps.

Jim

**WSLCB response:** The WSLCB appreciates this comment, and participation in the rulemaking process. The WSLCB looks forward to your participation in future policy and rule development projects. However, this comment addresses a concern that is not within the scope of this rulemaking.

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

## Oral Testimony Received During the Public Hearing

### 1. Scott Waller (virtual):

Thank you for the opportunity to testify regarding this CR 102 for implementing the revised rules for alcohol delivery and alcohol takeout. My name is Scott Waller and I am a board member with Washington Association for Substance Use and Violence Prevention, I live in the 35<sup>th</sup> Legislative District and all three of my legislators voted in favor of 5448.

WASAVP represents more than 120 community substance use and violence prevention coalitions in the state.

In the past session, WASAVP became neutral on SB 5448 when significant changes were made that reduced the chances that youth could access alcohol through the delivery system and that reduced the potential for public health consequences like DUI by eliminating curbside service.

We applaud the good work that went into crafting the bill that became session law. And we appreciate the good work from LCB staff for *mostly* following the bill's direction and intent in crafting this proposed CR 102.

We do take issue with the language in the proposed CR 102 that allows three ounces of alcohol to be delivered with each complete meal (Page 17, Section 3, Sub

A). Using a standard one and a half ounces of spirits per drink as a measuring stick, the current rule language could allow up to two drinks per entrée.

The bill does not provide specific numeric guidance about how much alcohol can accompany a purchased meal. It only says that the delivered alcohol must be accompanied by a purchased meal.

But the prime sponsor of the legislation, Sen. MacEwen, was very clear in testimony at a public hearing about the intent of the bill when he said, "... You can only order one alcoholic beverage per entrée."

Under the proposed rule, three ounces of alcohol could be delivered per meal and three ounces of alcohol is enough to impair or intoxicate most adults, depending on the speed of consumption, metabolic factors, and built-up tolerance for alcohol. An individual that has consumed three ounces of alcohol could be legally impaired for driving with a BAC above .08.

This seems to be an unnecessary public health risk. We understand the impacts of alcohol on humans and we also understand the always tragic relationship between alcohol consumption, impairment, and traffic crashes that result in fatalities and injuries.

Once the alcohol is delivered to the home, there is no control over what happens. During the temporary alcohol allowance period – 2021-23 – there were numerous reports of people receiving alcohol deliveries and then driving to purchase more alcohol or to find a place to continue drinking.

We encourage the board to change the three ounces of alcohol per complete meal to one ounce of alcohol per complete meal. Having the one-to-one relationship is closer to the actual SB 5448 language and is clearly consistent with legislative intent as articulated by the bill's prime sponsor, Sen. MacEwen.

Thank you again for the opportunity to testify, and I would be happy to answer any questions.

**WSLCB response:** The WSLCB appreciates this comment, and participation in the rulemaking process. The WSLCB looks forward to your participation in future policy and rule development projects. However, this comment addresses a concern that is not within the scope of this rulemaking.

Consistent with the CR 102 filed on May 24, 2023, as WSR #23-11-163 this rulemaking was specifically limited as follows, "The Washington State Liquor and Cannabis Board (Board) proposes to amend the following rule sections to implement statutory mandates of Substitute Senate Bill (SSB) 5448 (chapter 279, laws of 2023), effective July 1, 2023, concerning outside or extended alcohol service, the extension of a temporary alcohol delivery endorsement, and an alcohol takeout endorsement."

SSB 5448 does not statutorily mandate a modification to the amount of spirits allowed to be delivered to consumers, nor did its precursor, Engrossed Second Substitute House Bill (E2SHB) 1480 (chapter 67, laws of 2021). The rule proposal did not change the current amount of spirits allowed to be delivered to consumer as implemented under E2SHB 1480.

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(3) In order to obtain and maintain the endorsement described in this section, licensees must meet the following requirements: (a)(i) For spirits, beer, and wine restaurants, food that qualifies as a complete meal under WAC 314-02-010 must be sold with the premixed cocktails, cocktail kits, wine by the glass, or premixed wine and spirits cocktails authorized for sale through curbside, takeout, or delivery service under this endorsement. Spirits, beer, and wine restaurants can sell up to 3 ounces of spirits per complete meal.

The adopted rule does not change this language. Instead, it changes the number 3 to the word three, consistent with drafting guidance from the Washington State Code Reviser's Office as follows:

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

## 2. Stacey Oakland (virtual):

Thank you for the opportunity to testify regarding CR 102 for implementing the revised rules for alcohol delivery and alcohol takeout. My name is Stacey Oakland. I am a board member with Washington Association for Substance Use and Violence Prevention, or WASVP. I'm also the Executive Director for Okanogan County Community Coalition in Omak. As Scott's concern, I have the same concern, um, and it is on page 17, section a stating that spirits, beer, wine restaurants can sell three ounces of spirits per complete meal.

Although Senate Bill 5448 doesn't explicitly define a number of ounces the spirit of the bill is one drink per meal. So if you look at the National Institute of Health standards, um, U.S. standards of drink chart, um, 1.5 ounces of spirits, say like [unintelligible] or tequila is actually [unintelligible] percent alcohol. So up to three ounces technically could be two standard drinks. Um, National Institute of Health, um, also states that it takes, um, approximately one hour to metabolize one ounce of

spirits, so I propose reducing the amount of spirits allowed to be delivered from one from three ounces to one ounce. Um, thank you for your time, I will email my testimony after the hearing.

**WSLCB response:** The WSLCB appreciates this comment, and participation in the rulemaking process. The WSLCB looks forward to your participation in future policy and rule development projects. However, this comment addresses a concern that is not within the scope of this rulemaking.

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

### 3. Linda Thompson (Virtual)

There we go. I am Linda Thompson. I am also with WASVP. I am the current president, but I work for the Greater Spokane Substance Abuse Council and for the past 30 years have coordinated our Spokane County DUI Victim Panel. Um, I had lost my three-year-old son to a seventeen-time repeat drunk driver, and really felt like I needed to get into prevention and so this has been my life work since Trevor was killed in 1986. Um, I, I am also here to testify about changing that rule back to be one ounce of alcohol, um, per, for the drink per the meal, um, we know that was the intent based on the hearing at that that the Senator testified on, um, in my district, I live in the fourth district, and um, even though Senator Patton, Representative Schmidt, and Christian are all my current district folks for me, uh I this district we have fifteen legislators, uh uh, two of our representatives did not, they voted no on this bill but I know that the overwhelming majority are really focused on community norming for alcohol, public safety, and looking at impaired driving. Um, as you have heard, you know, oftentimes folks will get a delivery of alcohol at home and then decide that they do want to go, uh, back out and get more, um, here at the victim panel, um, we have our panels four to five times a month and we have many many people now who are repeat offenders over the last couple of years with the covid impacts. We know that people are filling a real need to socialize and try to get out there and we know that many are self-medicating. Also want speak in support of those in treatment and those in recovery. It is extremely important that we have community norms that alcohol is not the norm that for everything that you have to have it delivered to home and have a lot of it, um, we want to make sure that our youth do don't get access and so you've heard eloquent testimony from my colleagues Scott and Stacey, um just really would appreciate that you change that, um, make that one ounce, uh, the norm and help us, um, as we really try to to watch over the health and safety and all of our partnerships working together to make sure that we don't have the tragedies with alcohol, um, that we continue to see on the rise here in our state. Thank you.

**WSLCB response:** The WSLCB appreciates this comment, and participation in the rulemaking process. The WSLCB looks forward to your participation in future policy and rule development projects. However, this comment addresses a concern that is not within the scope of this rulemaking.

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

### **Changes from Proposed Rules (CR-102) to the Rules as Adopted:**

There were no changes between the proposed and adopted rules.