



Washington State
Liquor and Cannabis Board

Date: July 5, 2023

To: David Postman, Board Chair
Ollie Garrett, Board Member
Jim Vollendroff, Board Member

From: Kathy Hoffman, PhD, Research Manager

Copy: Toni Hood, Deputy Director
Justin Nordhorn, Director of Policy and External Affairs
Becky Smith, Director of Licensing and Regulation
Chandra Brady, Director of Education and Enforcement

Subject: Request for approval of final rules (CR 103) regarding implementation of SSB 5448 concerning liquor license privileges and the delivery of alcohol.

The Research Manager requests that the Board adopt the final rules and approve the CR 103 to implement SSB 5448 concerning liquor license privileges and the delivery of alcohol.

The Board has been briefed on the rule development background and public comment received for this rule making project. A CR 103 memorandum, CR 103 form, and rule text are attached.

If approved, the Research Manager will send the concise explanatory statement concerning this rulemaking to all persons who provided comments. The Research Manager will file the rules with the Office of the Code Reviser. The effective date of the rules is immediately upon filing, or July 5, 2023.

_____ Approve _____ Disapprove _____
David Postman, Chair Date

_____ Approve _____ Disapprove _____
Ollie Garrett, Board Member Date

_____ Approve _____ Disapprove _____
Jim Vollendroff, Board Member Date

Attachments: CR 103 Memorandum
Concise Explanatory Statement



CR 103 Memorandum

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

Date: July 5, 2023
Presented by: Kathy Hoffman, PhD, Research Manager

Background

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.

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 aged 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.

Rule Necessity

The adopted rule amendments incorporate legislation that became effective on July 1, 2023, and do not materially or substantively change existing rules. The adopted rule amendments 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.

Description of Rule Changes

Rule section	Description of adopted rule amendments	Rule necessity
<i>Category: Outdoor Alcohol Service Areas</i>		
WAC 314-03-200 <i>"Outside or extended alcohol service"</i> (AMENDED)	<p>This existing rule was amended to implement E2SHB 1480 by adding a cross-reference to temporary rule WAC 314-02-205, which added more flexibility and options for licensees wishing to have outdoor alcohol service areas.</p> <p>The current proposal removes temporary references throughout the section and removes the sunset date of July 1, 2023.</p> <p>No substantive changes are proposed, and all other requirements remain the same.</p>	<p>To implement SSB 5448, section 1(7) and 8, chapter 279, Laws of 2023.</p>
WAC 314-03-205 <i>"Temporary rules for outdoor alcohol service by on-premises licensees"</i> (AMENDED IN PART; MADE PERMANENT IN PART)	<p>This rule was created to implement E2SHB 1480. The section applies to all on-premises licensees that want to have ongoing outdoor alcohol service areas. There are different requirements for outdoor alcohol service areas in private spaces versus public spaces. SSB 5448 makes the allowances in this rule permanent.</p> <p>The current proposal removes temporary references throughout section and removes the sunset date of July 1, 2023.</p> <p>No substantive changes are proposed, and all other requirements remain the same.</p>	<p>To implement SSB 5448, section 1(7) and 8, chapter 279, Laws of 2023.</p>
<i>Category: Endorsements for "To Go" Alcohol Sales</i>		
WAC 314-03-500 <i>"Temporary and permanent endorsements for sale of manufacturer sealed alcohol products through takeout, or delivery service"</i> (AMENDED IN PART; MADE PERMANENT IN PART)	<p>This was a new rule section to implement the temporary endorsement for sale of alcohol products through curbside, takeout, or delivery service created by E2SHB 1480.</p> <p>As set forth in SSB 5448, the current proposal:</p> <ul style="list-style-type: none"> • Removes references to curbside service and cocktail kits. • Makes the takeout services endorsement available for listed license types. • Makes the <i>delivery services endorsement</i> available from July 1, 2023 to July 1, 2025 for listed license types. Maintains the requirement that delivery must still be made by employees of the licensed business who are at least 21 years of age and hold a MAST 12 permit. • Removes allowance for third party delivery service. • Updates statutory references to SSB 5448. <p>These endorsements remain available to the following licensees: Spirits, Beer, and Wine (SBW) Restaurants, Beer and/or Wine (BW) Restaurants, Taverns, Wineries, Breweries,</p>	<p>To implement SSB 5448, section 1(2), chapter 279, Laws of 2023.</p>

	Microbreweries, Distilleries, Snack Bars, Nonprofit Arts Licensees, and Caterers.	
	No substantive changes are proposed, and all other requirements remain the same.	
WAC 314-03-505 "Temporary endorsement for the 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" (AMENDED IN PART; MADE PERMANENT IN PART).	<p>This was 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.</p> <p>As set forth in SSB 5448, the current proposal:</p> <ul style="list-style-type: none"> • Removes reference to curbside service, mini-bottles, and cocktail kits. • Makes the <i>takeout services endorsement</i> available for the sale of premixed cocktails, cocktail kits, wine by the glass, premixed wine and spirits cocktails, or premixed wine drinks permanent for the listed license types. • Makes the <i>delivery services endorsement</i> available from July 1, 2023 to July 1, 2025 for premixed cocktails, cocktail kits, wine by the glass, premixed wine and spirits cocktails, or premixed wine drinks. • Updates statutory references to SSB 5448. <p>These endorsements remain available to SBW restaurants (for all of the above drinks), BW restaurants (for wine or premixed wine drinks by the glass).</p> <p>No substantive changes are proposed, and all other requirements remain the same.</p>	To implement SSB 5448, section 1(2) and (3), chapter 279, Laws of 2023.
WAC 314-03-510 "Temporary endorsement for the sale of growlers through curbside, takeout, or delivery service" (AMENDED IN PART; MADE PERMANENT IN PART)	<p>This was a new rule section to implement the new temporary endorsement for sale of growlers through curbside, takeout, or delivery service created by E2SHB 1480.</p> <p>Consistent with SSB 5448, the current proposal accomplishes the following:</p> <ul style="list-style-type: none"> • Removes reference to curbside service. • Makes the <i>takeout services endorsement</i> available for the sale growlers. • Makes the <i>delivery services endorsement</i> available from July 1, 2023 to July 1, 2025 for the sale of growlers. • Adds that delivery may not be made by common carriers. <p>These endorsements remain available to the 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.</p> <p>No substantive changes are proposed, and all other requirements remain the same.</p>	To implement SSB 5448, section 1(4) and (8), chapter 279, Laws of 2023.

Variance between proposed rule (CR102) and final rule:

There is no variance between the proposed and final rules.

Rule Implementation (RCW 34.05.328(3)(a))

Informing and Educating Persons Impacted by the Rule (RCW 34.05.328(3)(b))

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

- Email notice with the adoption materials to persons who commented on the rules, the rule making and licensee distribution lists, and the general WSLCB GovDelivery list;
- 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.

Promoting and Assisting Voluntary Compliance (RCW 34.05.328(3)(c))

WSLCB will promote and assist voluntary compliance through technical assistance.

- WSLCB staff are available to respond to phone and email inquiries about the rules.
- Agency leadership and staff have actively participated in rule development and revisions and are familiar with the final product. Internal and external education efforts to share knowledge and assure consistent application of rule have will be supported.
- Rule and guidance documents will be available on the WSLCB website.
- 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 adopted 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 (RCW 34.05.328(3)(d))

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 the number of enforcement actions, including type, resolution, and final outcome;
- Monitoring the number of requests for rule language revisions or changes;
- Monitoring the number of requests for rule interpretation;
- Monitoring licensee feedback including, but not limited to, the number of requests for assistance.



RULE-MAKING ORDER

PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

Agency: Washington State Liquor and Cannabis Board

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) _ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain: The adopted amendments implement relevant sections of Substitute Senate Bill (SSB) 5448 (chapter 279, Laws of 2023) that became effective July 1, 2023 regarding liquor licensee privileges for the delivery of alcohol.

Purpose: The Washington State Liquor and Cannabis Board (Board) has adopted rule amendments to implement the statutory mandates of Substitute Senate Bill (SSB) 5448 (chapter 279, Laws of 2023), effective July 1, 2023, concerning outdoor or extended alcohol service, the extension of a temporary alcohol delivery endorsement, and an alcohol takeout endorsement.

Citation of rules affected by this order:

New:
 Repealed: _____
 Amended: WAC 314-03-200; WAC 314-03-205; WAC 314-03-500; WAC 314-03-505; WAC 314-03-510.
 Suspended: _____

Statutory authority for adoption: Substitute Senate Bill (SSB) 5448, (chapter 279, laws of 2023), RCW 66.08.071; RCW 66.08.030.

Other authority: Substitute Senate Bill (SSB) 5448, (chapter 279, Laws of 2023).

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 23-11-163 on May 24, 2023_ (date).

Describe any changes other than editing from proposed to adopted version: There were no changes from the proposed to adopted version.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: Katherine Hoffman
 Address: 1025 Union Avenue SE, Olympia WA 98501
 Phone: 360-664-1622
 Fax: 360-664-3208
 TTY:
 Email: rules@lcb.wa.gov
 Web site: www.lcb.wa.gov
 Other:

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	4	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
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The number of sections adopted on the agency's own initiative:

New	___	Amended	4	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	___	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	4	Repealed	___

Date Adopted: July 5, 2023

Name: David Postman

Title: Chair

Signature:

Place signature here

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 ongoing 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((~~7~~)) 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((~~7~~curbside~~7~~)) or delivery service.

(ii) The signs will be designed to remind customers purchasing alcohol products through ((~~curbside~~)) takeout((~~7~~)) 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~~((, 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 ~~((curbside))~~ 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-kits))~~ wine by the glass, or premixed wine and spirits cocktails authorized for sale through ~~((curbside))~~ 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 ~~((curbside))~~ takeout~~((7))~~ or delivery service under this endorsement.

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

(ii) The signs will be designed to remind customers purchasing alcohol products through ~~((curbside))~~ takeout~~((τ))~~ 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(~~(7)~~) 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(~~(7, curbside)~~) or delivery service.

(ii) The signs will be designed to remind customers purchasing alcohol products through (~~(curbside)~~) takeout(~~(7)~~) 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.]



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.

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.

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
(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 35th 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>

Sent: Tuesday, June 27, 2023 10:44 AM

To: Dickson, Dustin P (LCB) <dustin.dickson@lcb.wa.gov>
Cc: Postman, David (LCB) <david.postman@lcb.wa.gov>; Vollandroff, Jim (LCB) <jim.vollandroff@lcb.wa.gov>; Garrett, Ollie A (LCB) <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 35th 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.

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.

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.

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.”

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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(~~(7)~~) 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. 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.

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."

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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(~~(($\bar{\text{r}}$))~~) 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.

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

There were no changes between the proposed and adopted rules.