



Topic: Petition for Adoption, Amendment, or Repeal of a State Administrative Rule – WAC 314-17-015 – What are the two types of alcohol server training permits?

Date: January 4, 2023

Presented by: Kathy Hoffman, Policy and Rules Manager

Background

On November 09, 2022, Josh McDonald of the Washington Wine Institute submitted a petition for adoption, amendment, or repeal of a state administrative rule. The petition requests that the agency amend WAC 314-17-015 to allow Class 13 permit holders to open bottles and pour wine and beer away from the customers table in the same way they can perform their duties at the customer’s table.

In the rule petition, Mr. McDonald stated:

- I am requesting the following change: Expand Class 13 MAST permit holders’ allowances to include pre-pouring samples, flights, and glasses of wine or beer for customers away from the customer’s table.
- This change is needed because: These types of MAST 13 holders' allowed work activities existed over the course of most of the pandemic in 2020-2022 and were extremely helpful to those licensees utilizing 18-20 year old employees in new ways that support their industry learning, the work
- The effect of this rule change will be: Currently MAST 13 permit holders can carry wine and beer to a customer’s table, then open the container, and pour the beverage for the customer. The intent of this rule making is to have the class 13 permit holder be able to conduct the same activities they
- The rule is not clearly or simply stated: These allowances for MAST 13 permit holders exist now, just state that they must be done at the customer’s table. This rule petition asks for clarification to also allow these same activities away from the customer's table.

Issue

Whether the Board should initiate the rulemaking process to consider amending WAC 314-17-015 to allow Class 13 permit holders to open bottles and pour alcohol for customers away from the customer’s table, in the same manner they are currently allowed to open and pour alcohol at the customer’s table.

Authority

Laws

RCW 66.04.010(3) defines “beer” as “any malt beverage, flavored malt beverage, or malt liquor as these terms are defined in this chapter.”

RCW 66.04.010(48)(a) defines “wine” as “any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than twenty-four percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel, and angelica, not exceeding twenty-four percent of alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this title, any beverage containing no more than fourteen percent of alcohol by volume when bottled or packaged by the manufacturer shall be referred to as “table wine,” and any beverage containing alcohol in an amount more than fourteen percent by volume when bottled or packaged by the manufacturer shall be referred to as “fortified wine.” However, “fortified wine” shall not include: (i) Wines that are both sealed or capped by cork closure and aged two years or more; and (ii) wines that contain more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and that have not been produced with the addition of wine spirits, brandy, or alcohol.”

RCW 66.20.300(2) defines “alcohol server” as “any person who as part of his or her employment participates in the sale or service of alcoholic beverages for on-premises consumption at a retail licensed premise as a regular requirement of his or her employment, and includes those persons eighteen years of age or older permitted by the laws of this state to serve alcoholic beverages with meals.”

RCW 66.20.310 describes alcohol server permits, known as class 12 and class 13 permits:

- (1)(a) There is an alcohol server permit, known as a class 12 permit, for a manager or bartender selling or mixing alcohol, spirits, wines, or beer for consumption at an on premises licensed facility.
- (b) There is an alcohol server permit, known as a class 13 permit, for a person who **only serves** alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility (emphasis added).
- (c) As provided by rule by the board, a class 13 permit holder may be allowed to act as a bartender without holding a class 12 permit.

RCW 66.44.350 provides that under certain circumstances, employees eighteen years and over are allowed to serve and carry liquor and perform other duties for certain licensed employers. Specifically, notwithstanding the provisions of RCW 66.44.310, employees of businesses holding beer and/or wine restaurant; beer and/or wine private club; snack bar, spirits, beer, and wine restaurants; spirits, beer, and wine private club; catering, and sports entertainment licenses who are between the ages of eighteen and twenty-one may take orders for, serve, and sell liquor on any part of the licensed premises, except cocktail lounges, bars, or other areas classified by LCB as off-limits. Such employees may enter such restricted areas to perform work assignments including picking up liquor for service in other parts of the licensed premises, performing clean up work, setting up and arranging tables, delivering supplies, delivering messages, serving

food, and seating patrons. Importantly, such employees are not permitted to perform the activities of a bartender.

Rule

WAC 314-17-015 describes two types of alcohol server training permits for persons who serve, mix, sell, or who supervise the sale of alcohol at a licensed premises.

Analysis

Statutory and Regulatory Backdrop

Although the Board has statutory authority under RCW 66.08.030 to make regulation pertaining to alcohol generally, RCW 66.20.330 describes the Board's authority to adopt rules pertaining to specifically to alcohol servers.

RCW 66.20.310 describes two types of alcohol server permits, described as class 12 and class 13. These permits are distinguished by the types of activities permitted under the license, and the age at which the license may be issued. A class 12 permit holder (manager or bartender) can **sell or mix** alcohol spirits, wines or beer for consumption at an on-premises licensed facility. A class 13 permit holder can only **serve** alcohol, spirits, wines or beer for consumption at an on-premises licensed facility. The statute also describes qualification requirements, exemptions, and circumstances under which a permit may be suspended or revoked.

Consistent with this statutory authority, WAC 314-17-015 establishes and further distinguishes class 12 and class 13 permits. The role and allowable service privileges for a class 13 permit holder was further clarified by the board in rule, specifying that the service of alcohol, spirits, wines, or beer delivery may occur when delivering alcohol to a customer's table, along with the ability to open and pour beer or wine into a customer's glass at the customer's table:

Class 12 permit	Class 13 permit
(1) A class 12 permit holder must be at least twenty-one years of age.	(5) A class 13 permit holder must be at least eighteen years of age.
(2) A class 12 permit is required for any person who:	(6) A class 13 permit is required for any person who:
(a) Manages a retail licensed premises licensed to sell alcoholic beverages for on-premises consumption;	(a) Takes orders for alcoholic beverages for on-premises consumption;
(b) Sells, mixes or draws from a dispensing device alcoholic beverages for on-premises consumption; or	(b) Delivers alcoholic beverages to customers for on-premises consumption; or
(c) Supervises a class 13 permit holder.	(c) Opens or pours beer or wine into a customer's glass at a customer's table.
(3) A class 12 permit includes all authorities granted under a class 13 permit.	(7) See RCW 66.20.310 for exceptions for grocery store employees.
(4) See RCW 66.20.310 for exceptions for grocery store employees.	

COVID-19 Temporary Allowances

In response to the COVID-19 pandemic, and subsequent business reopening, the agency offered a number of temporary allowances designed to support the businesses it licenses. These were offered during various stages of the pandemic, and several were extended to continue that support as the economy began to recover, social distancing was still required, and labor shortages began to emerge.

One of the temporary allowances provided an option for class 13 permit holders to pre-pour samples, flights, and glasses of wine or beer for customers away from the table instead of pouring these products at the table. The allowance was available to licensees until September 30, 2022:

Mandatory Alcohol Server Training (MAST) – Temporary Allowance for Class 13 Permit Holders

Effective Until: September 30, 2022

Applies To: Class 13 Permit Holders

A MAST Class 13 permit is typically issued to workers of a liquor licensed establishment that are between the ages of 18-21, and allows them to take orders of alcohol, deliver alcohol to customers at their tables for on-premises consumption, and to open or pour beer or wine into a customer's glass at their table. Class 13 permit holders may perform these duties as long as there is a person 21 years or older on duty supervising the sale of alcohol.

In order to minimize interactions between customers and workers, the WSLCB is temporarily allowing holders of a Class 13 MAST permit to **pre-pour samples, flights, and glasses of wine or beer** for customers away from the customer's table instead of having to open or pour wine or beer into a customer's glass at their table. A person 21 years or older must be on duty supervising the sale. (Emphasis added).

The Petitioner's Request

Mr. McDonald asks the Board to "expand Class 13 MAST permit holders' allowances to include pre-pouring samples, flights, and glasses of wine or beer for customers away from the customer's table." The request is because "these types of MAST 13 holders' allowed work activities existed over the course of most of the pandemic in 2020-2022 and were extremely helpful to those licensees utilizing 18-20 year old employees in new ways that support their industry...". Mr. McDonald further asserts that the rule change would have minimal effect because "these allowances for MAST 13 permit holders exist now, just state that they must be done at the customer's table. This rule petition asks for clarification to also allow these same activities away from the customer's table."

Turning first to the allowance, and as noted above, Mr. McDonald references a temporary allowance for class 13 permit holders to pre-pour samples, flights and glasses of *wine* or *beer* for customers at a location other than a customer's table. The purpose of the allowance was to support social distancing and business re-entry.

RCW 66.44.350 describes the employment of persons eighteen years and over in businesses holding certain liquor licenses. Under certain circumstances, employees eighteen years and over are allowed to *serve and carry liquor* and perform other duties for certain licensed employers. The statute further provides that such employees, who are between the ages of eighteen and twenty-one may take orders for, *serve*, and sell liquor on any part of the licensed premises, except cocktail lounges, bars, or other areas classified by LCB as off-limits. Specifically, *such employees are not permitted to perform the activities or function as a bartender*.

This statutory framework is further clarified in RCW 66.20.310 that distinguishes the privileges of the class 12 permit and class 13 permit holder. Specifically, RCW 66.20.310(1)(b) clearly limits the activities of a class 13 permit holder to only service of alcohol, spirits, wines or beer for consumption at an on-premises licensed facility. This is reflected in rule, providing that class 13 permit holder may deliver, or *serve* alcoholic beverages to consumers for on-premises consumption. Rule further clarifies that a class

13 permit holder may also open and pour *beer* or *wine* into a customer's glass at a customer's table (see WAC 314-17-015(5)(b) and (c)).

The temporary allowance aligned with statutory framework and rule, but also allowed the activity described in current rule to be performed at an alternate location – away from the table to support social distancing – under supervision, and limited to pre-poured samples, flights, and glasses of wine or beer. These activities are statutorily authorized by RCW 66.44.350 and RCW 66.20.310(1)(b).

Mr. McDonald's request does not suggest allowing class 13 permit holders between the ages of eighteen and twenty-one to engage in activity beyond *service* of alcohol, spirits, wine and beer, nor does the request seek to change the status of the class 13 permit to mirror privileges which are exclusive to the class 12 permit. Instead, the request is limited to allowing class 13 permit holders to pre-pour samples, flights, and glasses of wine or beer for customers at locations other than a customer's table.

RCW 66.20.310 does not specify or limit where service can take place or even expressly authorize the class 13 permit holder to open (as opposed to serve) beer or wine. This activity has already been addressed in rule as noted above. Based on this analysis, the limited scope of the request does not exceed statutory authority for further clarification in rule.

Divisional, Interagency, Intergovernmental, DEIB, Social Equity and Other Impacts

Divisional

Licensing

As outlined in the analysis, RCW 66.20.310 only allows minors to only “serve” alcohol, and WAC 314-17-015 expands this definition to allow a minor to open or pour beer or wine into a customer's glass at their table. Licensing is concerned that if the agency considered allowing minors to pour wine or beer from the bottle into a glass *away from the table*, it would need to consider whether this could also be interpreted as allowing minors to fill glasses or flights from taps (which are often behind bars/minor restricted areas). WAC 314-11-040 specifically states that these duties are “functions of bartending” and RCW 66.44.350 prohibits minors “to perform the activities or function as a bartender.”

Similarly, RCW 66.44.350 states that minors are only allowed to enter minor restricted areas “to perform work assignments including picking up liquor for service in other parts of the licensed premises, performing cleanup work, setting up and arranging tables, delivering supplies, delivering messages, serving food, and seating patrons.” There may be concerns related to allowing minors in restricted areas more often, rather the more limited option of allowing minors to pick up an order and deliver it to the table. Allowing increased access could result in minors behind the bar performing the activities or functions of a bartender, which as prohibited as noted above.

Further, while the rule petition only references WAC 314-17-015, and it should be noted this petition conflicts with WAC 314-11-040.

Finally, if the Board were to consider such a rule change, it would require MAST providers (there are currently 21 providers) to update their training programs for MAST 13 permit holders. Although it is anticipated that this may not be considered a significant change, it would certainly change curriculum and require additional education.

Enforcement & Education

The Enforcement & Education division find that the Licensing division thoroughly considered the request, and did not offer additional comment.

Finance

The Finance division did not identify any impacts.

Information Technology/Infrastructure

The IT division did not identify any impacts.

Public Health/Prevention

The prohibition for any person under 21 years of age to “possess, consume, or otherwise acquire any liquor” is in keeping with what we know about alcohol, young people, and their health. Exceptions have already been made for servers under the age of 21 on licensed premises to deliver alcohol to customers. However, allowing those same individuals to be behind the bar and pour drinks creates additional concerns about access, expectations, and oversight.

While it may seem at first glance that the difference between delivering a drink to a table and pouring there versus pouring and then delivering, the potential lack of supervision/oversight behind the bar creates additional concerns. I don’t believe that allowing this activity is aligned with our overall purpose of public health and safety and preventing underage use.

Interagency

Department of Health

This request does not appear to have any direct impact on programs or services offered by the Department of Health.

Labor & Industries

This request does not appear to have any direct impact on programs or services offered by the Department of Labor and Industries.

Intergovernmental

Tribes

This request does not appear to have any direct impact on Tribes. However, note concerns related to Public Health and Prevention above, and DEIB and Social Equity below.

DEIB, Social Equity

Inequities in alcohol-related harm can arise from many factors at many levels. Health inequities are defined as systemic differences in health that can be avoided by appropriate policy intervention and are therefore deemed to be unfair or unjust. To be able to devise effective action, it is necessary first to understand that the causes of these inequities in health. Health inequities are not solely related to access to health care services; there are many other determinants related to living and working conditions, as well as the overall macro-policies prevailing in a country or region.

Inequities in alcohol-related harm in the United States exist based on factors including economic status, education, gender, ethnicity and place of residence. In general, lower socioeconomic groups experience higher levels of alcohol-related harm than wealthier groups with the same level of alcohol consumption. Experiencing the multiple aspects of socioeconomic disadvantage amplifies inequities in alcohol-related harms. However, this request does not appear to amplify those inequities or increase underage exposure, availability and marketing.

Conclusion

Current statute does not specify or limit where class 13 permit holders may serve beer or wine. The described and requested changes do not exceed existing statutory authority or seek to extend the limited privileges of the class 13 permit. Rather, the suggested revisions seek to further clarify where service of beer and wine may occur within the existing privileges of the class 13 permit, and the Board is authorized to adopt rules to further clarify statutes.

However, agency staff have expressed significant concern related to the broader impacts and implications of moving this expired temporary allowance to permanent rule. These concerns may be explored with stakeholders through the rulemaking process. If the Board accepts the petition, and allows Policy & Rule Coordinators to inquire further into the issue, such exploration may occur with stakeholders across the authorizing environment.

It is important to note that such discussions may or may not result in permanent rule change.




For this reason, agency staff recommends initiating rulemaking as requested in this petition.

Recommendation

For the reasons described above, Director’s Office staff recommend that consistent with RCW 34.05.330(1)(a), the Board accept Mr. McDonald’s rule petition request, received on November 09, 2022.

Board Action

After considering the recommendation of Director’s Office staff, the Board accepts/denies the petition for rulemaking received from Josh McDonald on November 09, 2022.

<input checked="" type="checkbox"/> Accept <input type="checkbox"/> Deny	 David Postman, Chair	<u>1.4.2023</u> Date
<input checked="" type="checkbox"/> Accept <input type="checkbox"/> Deny	 Ollie Garrett, Board Member	<u>1.4.2023</u> Date
<input checked="" type="checkbox"/> Accept <input type="checkbox"/> Deny	 Jim Vollendroff, Board Member	<u>1.4.2023</u> Date

Attachments

1. Email from Mr. McDonald containing rule petition.
2. Laws and Rules cited under the “Authority” section above.