



Notice of Permanent Rules

Regarding Implementing Substitute Senate Bill 5448 / MAST 13 Rulemaking

This concise explanatory statement concerns the Washington State Liquor and Cannabis Board's (LCB) adoption of rules that align existing regulations on alcohol delivery with the provisions of Substitute Senate Bill 5448 ([chapter 279, Laws of 2023](#)), primarily codified in [RCW 66.24.710](#), and responds to a petition for rulemaking accepted by LCB in January 2022 to amend rules on MAST 13 permit holders pouring beer or wine away from the table.

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 LCB received comment.

The LCB appreciates and encourages your involvement in the rule making process. If you have questions, please e-mail at rules@lcb.wa.gov.

Background and reasons for adopting these rules:

On July 19, 2023, the Washington State Liquor and Cannabis Board (LCB) filed a CR 101 preproposal statement of inquiry ([WSR# 23-15-116](#)) to consider creating new rule sections, amending existing rule sections, and repealing rule sections to implement Substitute Senate Bill (SSB) 5448 ([chapter 279, Laws of 2023](#)) and amending [WAC 314-17-015](#) and other sections of Title 314 WAC as necessary to allow MAST 13 permit holders to open and pour beer or wine in areas where minors are not prohibited.

On December 6, 2023, the proposed rules (CR 102) were filed ([WSR# 23-24-100](#)).

SSB 5448, passed during the 2023 Legislative Session, extended the expiration of delivery privileges for some liquor licensees to July 2025, made what was a temporary takeout endorsement permanent, rescinded some delivery and curbside privileges, and codified certain requirements for deliveries that had previously been only in regulation, such as requiring an accompanying meal for many delivery orders of alcohol and requiring delivery drivers to hold MAST 12 permits. This bill addressed many of the privileges put in place during the height of the COVID-19 pandemic through [Engrossed Second Substitute House Bill 1480](#). Most of these provisions are now codified at [RCW 66.24.710](#).

During most of the COVID-19 pandemic, the LCB [allowed](#) MAST 13 permit holders, employees between 18 and just under 21 years of age who can pour beer and wine at the customer's table, as well as take orders for spirits, to pour beer and wine away from

the customer's table. After this allowance expired in September 2022, the LCB received a petition for rulemaking that sought to amend WAC 314-17-015 and make this a permanent part of rule – allowing MAST 13 permit holders to pour beer and wine away from the customer's table. In January 2023, the LCB [accepted](#) this petition for rulemaking. This rulemaking project began in March 2023, and was later combined with the SSB 5448 rulemaking.

To develop potential rule language, a set of conceptual draft rules was shared publicly through GovDelivery in early October 2023 in anticipation of two stakeholder engagement sessions held October 16 and 18, 2023. The stakeholder engagement sessions produced a modest turnout with the only written follow up comments received from the petitioner.

Following internal rules team discussions after the stakeholder engagement sessions, some of the draft rule language was revised to reflect a more measured approach towards leaving delivery and takeout privileges for certain liquor licensees that preexisted the COVID-19 pandemic as is, as the language of SSB 5448 did not specifically supersede other statutes that provided for certain delivery and takeout privileges. Additional issues that are the subject of frequent questions, such as “ready to drink” cocktails, were identified and explanatory language has been added to rule to address these issues.

Lastly, a new rule was created, WAC 314-03-600, to display a table of whether accompanying meals are required and third-party delivery prohibited for various liquor licensees depending on the endorsement used.

Rulemaking history for this adopted rule:

CR 101 – filed July 19, 2023 as WSR #23-15-116
CR 102 – filed December 6, 2023, as WSR #23-24-100
Public hearing held January 17, 2024

The effective date of these rules is March 2, 2024.

Public comment received on the rule proposal:

1. Written Letter from Josh McDonald, Executive Director of the Washington Wine Institute, submitted January 16, 2024.

To: Washington State Liquor and Cannabis Board Chair and Board Members
From: Josh McDonald, Executive Director, Washington Wine Institute (WWI)
Re: SB 5448 Implementation and WAC 314 MAST 13 rules changes: CR 102 Rules Comments

Dear Washington State Liquor and Cannabis Board,

Thank you for the opportunity to comment on this CR 102. We divided up our comments into the two major sections of work taking place that most directly impact Washington Wine Institute members.

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SB 5448 Implementation Rules: Outdoor Seating Modernization

We appreciate the WSLCB's work so far on this rulemaking effort. We also want to recognize and thank LCB Board and staff for taking time to meet with us and discuss this rulemaking and their willingness to work with us on potential ways to make technical fixes to WAC 314-03-205 that will improve the rulemaking and allow us to have flexible outdoor service rules helping small businesses like wineries find success in 2024 and for years to come.

For this CR 102, we respectfully recommend the following changes to WAC 314-03-205:

- ✓ Not all on premise licensees require food service, so we ask the LCB to improve this rule language to bring consistency to this WAC in this regard. We are grateful for LCB staff's willingness to work with us to help clarify the intent of this WAC for future use by licensees and the agency. One approach discussed in our meetings, and that we would support, is making a technical fix to this WAC that would do something to the effect of recognizing the "if" food is required by the license holder. For example, language such as "if food service is required by the licensee, then food service must take place in the outdoor service area."
- ✓ We ask the LCB to streamline rules for privately owned and publicly owned spaces creating one set of rules to follow for the licensee and LCB licensing and enforcement. Let's take this opportunity with this WAC open for rulemaking improvements to make the process easier to understand for all parties involved. Additionally, this is an ideal time to modernize the rules through a technical fix for the purposes of use of demarcations instead of permanent barriers if the fence-free approach to defining the service area is more suitable to the licensee and space. Since this WAC is designed for on-premises alcohol service, the proposed changes will not impact special occasion licensed events and other one-time situations not taking place on licensed premises. A winery tasting room utilizing demarcations for on-premises outdoor alcohol service on their wholly owned or leased private property is in practice minimally different than similar outdoor alcohol service on a publicly owned space. Making this important improvement to the outdoor service area by an on-premises licensee will support small business throughout Washington State, improve how the licensee understands outdoor service options, and help WSLCB licensing and enforcement implement and enforce them as needed.

MAST 13 Rules Changes:

Thank you for the opportunity to submit written testimony in support of modifying WAC 314-17-015 to allow for MAST 13 holders to continue being allowed to provide additional levels of beer and wine service in a licensed establishment as was allowed by a temporary COVID allowance rule between 2020-2022 and expired on September 30th, 2022.

Under WAC 314-17-015, current 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 can now, just away from the table and as they have done successfully without incident or violation when this temporary allowance was in place during the pandemic-era operations from 2020-2022.

We are supportive of the current rulemaking language changes for MAST 13 holders being proposed in this CR 102 and believe they achieve our desired goal while also maintaining a responsible working environment for MAST 13 holders. We thank staff and the Board for recognizing our request, agreeing to move forward with rulemaking on this subject, and finding a great win-win approach.

LCB response: The LCB appreciates this comment, and because the oral testimony described below reflects these comments almost verbatim, the LCB's response is described to both the oral testimony and written comments below.

Was the comment reflected in the adopted rule? See below after transcription of oral testimony.

Oral testimony was received during the public hearing.

The following oral testimony of Josh McDonald, Executive Director of the Washington Wine Institute, was received during the public hearing held on January 17, 2024.

Good morning Chair Postman, chair members Garrett and Vollandroff, uh, thank you so much for the opportunity to speak to you today, my name is Josh McDonald, I'm the executive director of the Washington wine institute, um, and I will first want to thank Daniel, Daniel and his staff's great work so far on this CR, CR 101 and CR 102 and being able to be very open and engaging with us, and working with us and talking to us throughout the process. I'm going to divide my comments into two sections, one around outdoor service rules and one around MAST 13, this is where our focus was as stakeholders during the 2023 legislative process, helped work 5448 through the process to into law, these parts at least the outdoor service parts are very important to us, so we want to focus down on that, there are some things we think can continue to be worked on during that, I also want to thank LCB policy staff, licensing staff, the Board for meeting with us, taking the time to walk through our comments, our suggestions, our ways we think we can improve this, we hope that work can continue.

First on the outdoor service rules, we agree that consolidating into one WAC is a great, great move so we have one thing to look at, so thank you for doing that for all on-premises licensees. To that point, I think there could be an easy technical fix here, to make sure for future interpretations of this WAC its not confusing for both licensees, enforcement and licensing itself, and that's around making sure that when we talk about food, food service, that we're recognizing what the licensees are required to do. So, not all licensees are required to serve food, so making sure that the WACs reflect that so all on-premises licensees in the future there's no confusion on interpretation of that. I want to thank staff and others for coming through with some I think are really good solutions on that. One is looking at it from a technical fix of if your license requires you to serve food, then food service is required indoors and outdoors. That means if food is not required for your license, it's very simple and straight-forward. I think we can all understand the change there. And if you're a winery or a brewery that doesn't require it, that's your option. You're still welcome to use this, use outdoor service areas in this way. If you're licensed as a restaurant, you already know you have food requirements. It fits really well, so we thank that's a great solution to this, so thanks to staff and everyone for working with us on that. So hoping we can implement that when this goes into 103.

Second, is we do strongly believe that this, there's a great opportunity to streamline how we look at public space versus private space when it comes to outdoor service areas. Right now there are two different sets of standards of what's allowed to be done in a privately owned or leased area about outdoor service versus publicly owned indoor outdoor service. Based on limited time I'm happy offline to talk about why the history of that, but what I'll say, why that happened and where we are today, umm but but I think this is a great opportunity to bring those together, make it very simple, give the same set of opportunities for whether its your own private space, umm, or it's a space you're on a public setting, whether you want to use barriers, whether you want to use movable barriers, or whether you want to use demarcations, demarcate [sic] your space where you are going to serve. I think any of those options for licensees is flexible, it helps small businesses, it helps us be able to continue to be successful in our spaces, but I think it also streamlines how licensing and enforcement can look at [and] see, Okay, we know that this is your space, this is your service space however you want to identify that, it's up to the licensee to do that, we'll work with you on that to make sure it makes sense, but we think that option there is a modernizing way to look at it, but also, honestly, we have more of a technical fix to this, bringing together and something that we hope can be incorporated into as move towards the CR 103. Umm, and again, we're happy to work with, we would love to work with everyone on that, getting to that conclusion.

Finally, on MAST 13, I just want to say a very big thank you, and we brought this forward and we've been working with the Board and staff on these changes, very positive changes, to allow for our MAST 13 holders to be able to do a few more things like they did in the pandemic, zero violations, zero concerns that we hear from all around, so we think we've handled those responsibilities very well, and we look forward to moving to the 103 with the language intact and we think it's a great win-win solution. With that, thank you so much for your time.

LCB response: The LCB appreciates this comment, and participation in the rulemaking process. The LCB looks forward to your participation in future policy and rule development projects.

Was the comment reflected in the adopted rule? This comment was partially reflected in the final rule in that the suggested change to language regarding the food service requirement was made.

However, the proposal regarding removing the distinction between the use of barriers in public vs. private spaces falls beyond the scope of this rulemaking, which is limited to implementation of Substitute Senate Bill 5448 and the MAST 13 petition. The distinction between public and private spaces regarding the use of barriers has existed since the rules were created in 2021, and revisiting this distinction would be a policy discussion that, if desired and determined to be appropriate, should be the topic of separate rulemaking.

The **following changes** were made between the Proposed Rules as filed in the CR 102 and the Rules as Adopted:

Variations between Proposed and Final Rule Language			
Rule Section	Proposed Rule Language	Final Rule Language	Basis for Change
WAC 314-03-200 Outside or extended alcohol service. (AMENDED)	(2)(f) The same food service offered inside the licensed premises must also be offered in the outdoor alcohol service area;	(2)(f) Any food service requirements by the license type apply to both indoor and outside alcohol service areas;	Removes any possible concern for interpretation that these rules create an outdoor food service requirement where the premises is not required to serve food indoors.
	(3)(f) The same food service offered inside the licensed premises must also be offered in the outdoor alcohol service area;	(3)(f) Any food service requirements by the license type apply to both indoor and outside alcohol service areas;	
	(2)(g) The outdoor alcohol service area must be enclosed with a permanent or movable barrier a minimum of 42 inches in height. However, 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, but may not grant limited exceptions to beer gardens, standing room only venues, catered events, or permitted special events;	(2)(g) The outdoor alcohol service area must be enclosed with a permanent or movable barrier a minimum of 42 inches in height. However, 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, but may not grant limited exceptions to beer gardens, standing room only venues, or permitted special events;	Removes “catered events” from list that Board cannot grant limited exceptions to. This was initially added to the original rules as part of the proposed rules and is now being removed based on stakeholder feedback received.
	(3)(c)(iii) The exception identified in (c)(ii) of this subsection does not apply to beer gardens, standing room only venues, catered events, and permitted special events, all of which must always have a permanent or moveable barrier a minimum of 42 inches in height;	(3)(c)(iii) The exception identified in (c)(ii) of this subsection does not apply to beer gardens, standing room only venues, and permitted special events, all of which must always have a permanent or moveable barrier a minimum of 42 inches in height;	Removes “catered events” from the list that must always have permanent or moveable barriers. This was initially added to the original rules as part of the proposed rules and is now being removed based on stakeholder feedback.
WAC 314-03-600 Takeout/delivery endorsement comparison table. (NEW)	Adjusted margins and table layout without changing content.		Desire to make tables clearer and better identify the categories of x and y axis.