



CR 103 Memorandum

Re: Implementation of Substitute Senate Bill 5448 / MAST 13 Rulemaking.

Date: January 31, 2024
Presented by: Daniel Jacobs, Rules Coordinator

Background

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of delivery privileges for some liquor licensees to July 2025, made what was a temporary takeout endorsement permanent, rescinded some delivery and curbside privileges, and codified certain requirements for deliveries that had previously been only in regulation, such as requiring an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.

The day before the scheduled public hearing, the Washington Wine Institute submitted a written public comment, reproduced in the Concise Explanatory Statement attached herein. During the public hearing held on January 17, 2024, Josh McDonald, Executive Director of the Washington Wine Institute, testified almost verbatim to the written comments submitted the day before. His testimony is also transcribed in the Concise Explanatory Statement. Based on this, the following changes identified in the variations table below were made to the proposed rules.

Rule Necessity & Description of Rule Changes

These rule changes are identified by necessity in the table below:

SSB 5448		
Rule Section	Description of proposed rule change	Rule Necessity
WAC 314-03-035 Consumer orders, internet sales, and delivery for on-premises beer and/or wine liquor licensees. (AMENDED)	Added language stating that on-premises beer or wine licensees must obtain the takeout or delivery endorsement identified in RCW 66.24.710(5)(a).	Aligning existing rule language with RCW 66.24.710.
	Removed language referring to third-party delivery.	
	Changed written numbers to numeric form.	Improving clarity without changing effect.
WAC 314-03-200 Outside or extended alcohol service. (AMENDED)	Stated that all language referring to outdoor alcohol service applies also to extended indoor alcohol service.	Improving clarity, reducing confusion and the need for licensees and agency staff to reference two separate rules on outdoor alcohol service and implementing RCW 66.24.710(7).
	Rearranged order and flow of subsections to allow consolidation with WAC 314-03-205 to create one single rule for outdoor alcohol service.	
	Copied language verbatim regarding alcohol service in outdoor privately owned spaces from WAC 314-03-205(1), with the following exceptions: <ul style="list-style-type: none"> 1. Added language stating that if interior access is from an area classified by LCB as off limits to any person under age of 21, people under age 21 prohibited from outdoor or extended alcohol service area. 2. Moved language from subsections (6)(f) and (7) regarding the authority of the board to grant limited exceptions from the permanent or moveable barrier requirement. 3. Reworded language on outdoor food service requirement. 	
	Copied language verbatim regarding alcohol service in outdoor public spaces from WAC 314-03-205(2), with the following exceptions: <ul style="list-style-type: none"> 1. Added the word "fence-free" before "permanent demarcation." 2. Added language clarifying that certain 	

	<p>outdoor public spaces must always have permanent or moveable barriers.</p> <p>3. Reworded language on outdoor food service requirement.</p>	
	Copied language verbatim regarding liquor licensees sharing an outdoor service area, being jointly responsible for compliance with the outdoor service rules, and definitions from WAC 314-03-205(3)-(5).	
WAC 314-03-205 Outdoor alcohol service for on-premises licensees. (REPEALED)	REPEALED	Improving clarity, reducing confusion and the need for licensees and agency staff to reference two separate rules on outdoor alcohol service and implementing RCW 66.24.710(7).
WAC 314-03-500 Endorsement for sale of manufacturer sealed alcohol products through takeout or delivery service. (AMENDED)	Replaced citations to chapter 279, Laws of 2023 with citations to RCW 66.24.710.	Improving clarity without changing effect.
	Amending language describing people age 21 and older.	
	Clarifying that alcohol orders that cannot be delivered must be returned to the licensee.	
	Defining "spirits."	
	Removed language referencing domestic wineries, domestic breweries, microbreweries and distilleries.	Aligning rule language with RCW 66.24.710 and preexisting statutes that authorized certain licensees to deliver alcohol.
	Added language stating that licensees authorized to sell spirits are authorized to sell "ready to drink cocktails" through takeout or delivery services.	Providing clarity regarding a frequent subject of questions to agency staff.
	Defining "ready to drink cocktails."	
	Removing language regarding kegs.	Improving clarity because kegs are the subject of a different rule.
	Adding language stating that employees delivering alcohol must have a MAST 12 permit.	
Adding language that alcohol must be delivered by direct employees of the licensee.	Aligning rule language with RCW 66.24.710.	
Adding language that alcohol sold for takeout and delivery must be accompanied by a purchased meal.		
WAC 314-03-505 Endorsement for sale of premixed cocktails, wine by the glass, premixed wine and spirits cocktails, or premixed wine	<p>Replaced citations to chapter 279, Laws of 2023 with citations to RCW 66.24.710.</p> <p>Copied language from WAC 314-03-500 clarifying that this endorsement is separate from the endorsement authorizing the sale of manufacturer sealed alcohol products at retail, or growlers.</p> <p>Adding citations to RCW 66.24.710.</p> <p>Renumbering subsections to separate different requirements.</p>	Improving clarity without changing effect, citing to RCW 66.24.710 where appropriate.

drinks through takeout or delivery service. (AMENDED)	Clarifying that alcohol orders that cannot be delivered must be returned to the licensee.	
WAC 314-03-510 Endorsement for sale of growlers through takeout or delivery service. (AMENDED)	Replaced citations to chapter 279, Laws of 2023 with citations to RCW 66.24.710.	Improved clarity without changing effect, citing to RCW 66.24.710 where appropriate.
	Copied language from WAC 314-03-500 clarifying that this endorsement is separate from the endorsement authorizing the sale of manufacturer sealed alcohol products at retail, and nonmanufacturer or nonfactory sealed premixed cocktails, wine by the glass, premixed wine and spirits cocktails, and premixed wine drinks.	
	Clarifying that alcohol orders that cannot be delivered must be returned to the licensee.	
	Adding language stating that growlers do not need to be accompanied by a purchased meal.	
	Replacing definition of "growler" with a reference to RCW 66.24.710.	
WAC 314-03-600 Takeout/delivery endorsement comparison table. (NEW)	Demonstrates two tables that provide in a Yes/No format whether a meal is required to be sold with the alcohol, or third-party delivery is permitted, depending on the type of liquor licensee and the endorsement under which the alcohol is being sold. Identifies six liquor license types and six endorsements. Uses "n/a" if the liquor licensee cannot hold the endorsement at issue.	Some liquor license types are identified in RCW 66.24.710 as being eligible for the three different endorsements available, but already had endorsements or statutory authority to sell alcohol for takeout, and charts are necessary to provide licensees and agency staff a simple visual tool to enable them to understand what is permitted, prohibited and required depending on the liquor license type and endorsement at issue.

MAST 13 Permit Privilege Rule Revisions			
Rule Section	Current Rule Language	Proposed New Language	Rule Necessity
WAC 314-11-040 What duties can an employee under twenty-one years of age perform on a licensed premises? (AMENDED)	"What duties can an employee under twenty-one years of age perform on a licensed premises?"	"Permissible duties of an employee under 21 years of age on a licensed premises."	Improving clarity without changing effect.
	"Mixing drinks"	"Pouring spirits and mixing cocktails"	
	"Drawing beer or wine from a tap"	"Drawing beer or wine from a tap or spigot"	
	Replacing a comma with "or"		
	Changed written numbers to numeric form		
	Corrected spelling of "speciality" to "specialty"		

	"Pouring beer or wine anywhere except at the patron's table"	"Opening or pouring beer or wine in area classified by the board as off limits to any person under the age of 21."	Amending rule to make what was a temporary allowance during the COVID-19 pandemic a permanent rule change.
WAC 314-17-015 What are the two types of alcohol server training permits? (AMENDED)	"What are the two types of alcohol server training permits?"	"Types of alcohol server training permits."	Improving clarity without changing effect.
	Changing written numbers to numeric form		
	"Opens or pours beer or wine into customer's glass at a customer's table."	"Opens or pours beer or wine into a customer's glass without opening or pouring in an area classified by the board as off limits to any person under the age of 21."	Amending rule to make what was a temporary allowance during the COVID-19 pandemic a permanent rule change.

Variance between proposed rule (CR 102) and final rule:

The following variations between the proposed rule and final rule are noted:

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	(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	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.

	exceptions to beer gardens, standing room only venues, catered events, or permitted special events;	exceptions to beer gardens, standing room only venues, or permitted special events;	
	(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.

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 LCB will:

- Email notice with the adoption materials to persons who commented on the rules, the rule making and licensee distribution lists, and the general LCB 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))

LCB will promote and assist voluntary compliance through technical assistance.

- LCB 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 will be supported.
- Rule and guidance documents will be available on the LCB website.

- LCB 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 LCB Staff

Several LCB 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 LCB 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))

After the rule becomes effective, the LCB will evaluate the effectiveness of this rule in the following ways, including but not limited to:

- Monitoring questions received after the effective date of this rule, and adjusting training and guidance accordingly;
- Monitoring the number of enforcement actions, including type, resolution, and the 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.