



Washington State
Liquor and Cannabis Board

Date: August 26, 2014

To: Jane Rushford, Board Chair
 Ruthann Kurose, Board Member
 Russ Hauge, Board Member

From: Karen McCall, Agency Rules Coordinator

Copy: Rick Garza, Agency Director
 Randy Simmons, Deputy Director
 Justin Nordhorn, Chief of Enforcement
 Becky Smith, Licensing Director

Subject: Approval of final rulemaking (CR 103) for revisions to rules for Sports Entertainment Facility Licenses – WAC 314-02-056, WAC 314-02-057 and WAC 314-02-058.

At the Board meeting on August 26, 2015, the rules coordinator requests that the Liquor and Cannabis Board approve the final rulemaking (CR 103) for revisions to rules for **Sports Entertainment Facility Licenses - WAC 314-02-057 and WAC 314-02-058.**

The Board was briefed on the rule making background and public comment for this rule making. An issue paper and text of the rules is attached.

If approved, the Rules Coordinator will send an explanation of the rule making to all persons who submitted comments.

After sending this explanation, the Rules Coordinator will file the rules with the Office of the Code Reviser. The effective date of the rules will be 31 days after filing.

<input type="checkbox"/> Approve	<input type="checkbox"/> Disapprove	_____	_____
		Jane Rushford, Chairman	Date
<input type="checkbox"/> Approve	<input type="checkbox"/> Disapprove	_____	_____
		Ruthann Kurose, Board Member	Date
<input type="checkbox"/> Approve	<input type="checkbox"/> Disapprove	_____	_____
		Russ Hauge, Board Member	Date

Attachment: Issue Paper
 Proposed Rules

Washington State Liquor and Cannabis Board

Issue Paper

Revisions to the Sport's Entertainment Facility

License Rules

Date: August 26, 2015

Presented by: Karen McCall, Agency Rules Coordinator

Description of the Issue

The purpose of this issue paper is to recommend that the Washington State Liquor and Cannabis Board (WSLCB) proceed with final rule making and adopt the revisions to rules for **Sports Entertainment Facility Licenses - WAC 314-02-057 and WAC 314-02-058.**

Why is rule making necessary?

A petition for rulemaking was submitted by stakeholders to broaden the alcohol service area within a sport's entertainment facility venue.

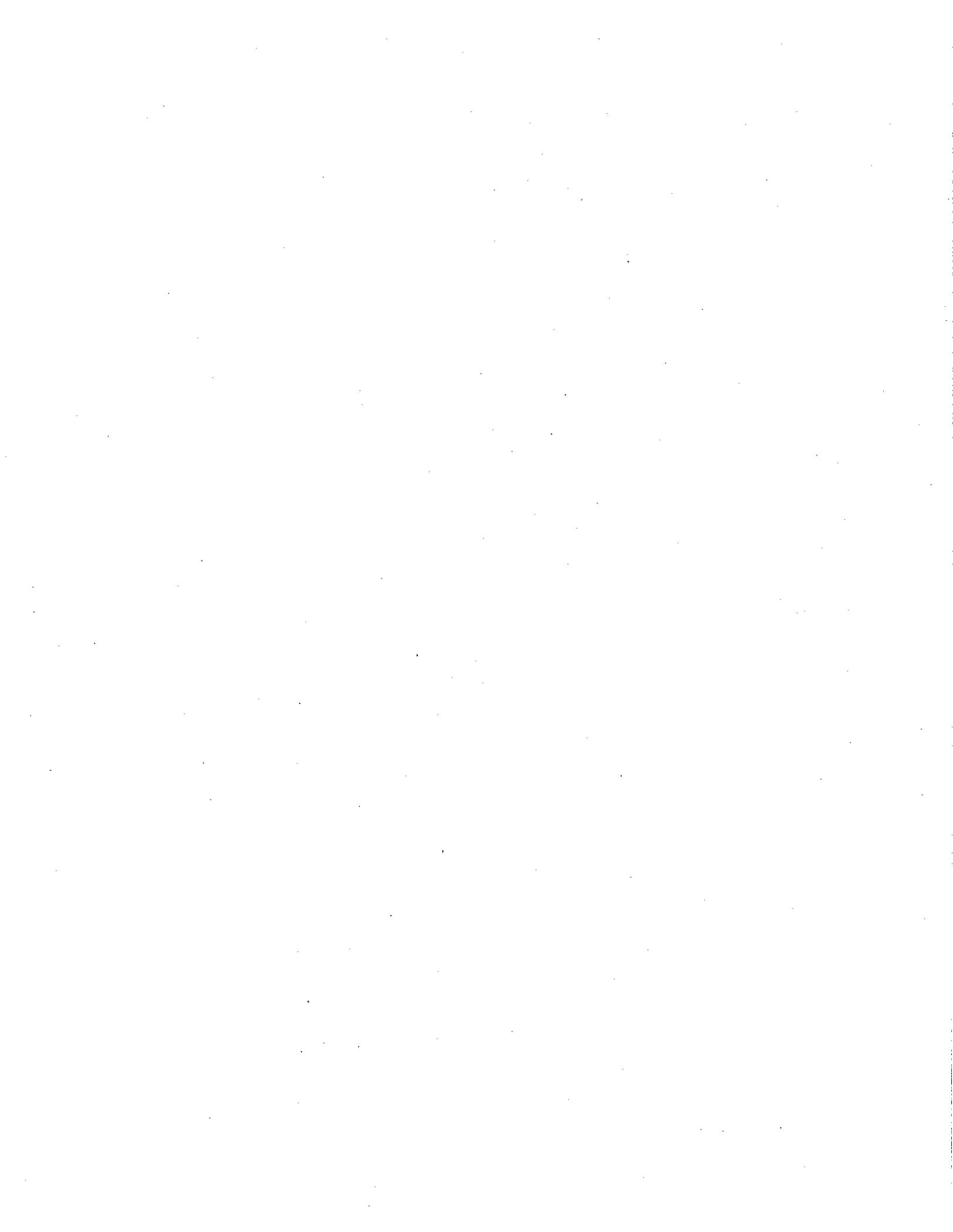
Public comment.

Two written comments were received on the proposed rules. One comment was received at the public hearing held August 12, 2015.

What changes are being proposed?

WAC 314-02-057 Definitions. Clarified event categories.

WAC 314-02-058 Sports/entertainment facility licenses –Operating plans. Clarified what is required in an operating plan and updated the operating plan matrix and clarified the types of events in each category. Repealed language requiring a licensee's hawking authorization be reviewed after the first year and then every two years.



AMENDATORY SECTION (Amending WSR 11-01-133, filed 12/21/10, effective 1/21/11)

WAC 314-02-057 Definitions. (1) **Premises** - Buildings, parking lots, and any open areas that are adjacent to and owned, leased, or managed by the licensee and under the licensee's control.

(2) **Event categories** - Types of events that the licensee expects to hold on the premises:

(a) **Professional sporting event** - A contest involving paid athletes and sanctioned by a professional sports organization that regulates the specific sport.

~~((i) A preapproved level of alcohol service will be applied to the professional sporting events of baseball, football, basketball, soccer, tennis, volleyball, horse racing, hockey, and track and field events (relay races, dashes, pole vaulting, etc.).~~

~~((ii) For all other professional sporting events, the board will determine the level of alcohol service on a case-by-case basis, as approved in the operating plan.))~~

(b) **Amateur sporting event** - A contest or demonstration involving athletes who receive no monetary compensation that is sanctioned by a national or regional amateur athletic regulatory organization.

(c) **Entertainment event** - A concert ~~((7))~~ involving a live musician, a live comedy act, or similar event intended for the entertainment of the audience. Broadcast television or background videos or music does not qualify as live entertainment.

(d) **Special event** - A convention, trade show, or other ~~((public/private event to large too be held in a separate banquet or meeting room within the facility))~~ like public event with prior approval.

(e) **Private event** - An event not open to the public such as a wedding, private party, or business meeting, where the facility or a portion of the facility where the event is held is not accessible to the general public during the time of the private event.

(3) **Hawking** - The practice of selling alcohol in seating areas by roving servers who carry the beverages with them, as outlined in WAC 314-02-058(4). Because of row seating arrangements, servers normally do not have direct access to customers. Therefore, service usually requires that drinks, money, and identification be passed down rows, involving other spectators.

(4) **Club seats** - A specifically designated and controlled seating area that is distinct from general seating with food and beverage service provided by servers directly to the customer.

AMENDATORY SECTION (Amending WSR 11-01-133, filed 12/21/10, effective 1/21/11)

WAC 314-02-058 Sports/entertainment facility licenses—Operating plans. (1) **What ~~((rules))~~ requirements govern the submission of operating plans?**

(a) To receive a license, a sports/entertainment facility must submit an operating plan for board approval.

(b) Once approved, the plan remains in effect until the licensee requests a change or the board determines that a change is necessary

due to demonstrated problems or conditions not previously considered or adequately addressed in the original plan.

(c) The plan must be submitted in a format designated by the board.

(d) The plan must contain all of the following elements:

(i) How the sports/entertainment facility will prevent the sale and service of alcohol to persons under twenty-one years of age and those who appear to be intoxicated.

(ii) The ratio of alcohol service staff and security staff to the size of the audiences at events where alcohol is being served. The minimum ratio allowed is one staff person to fifty attendees at the event.

(iii) Training provided to staff who serve, regulate, or supervise the service of alcohol. Mandatory alcohol server training is required for all staff.

(iv) The facility's policy on the number of alcoholic beverages that will be served to an individual patron during one transaction. Two alcoholic beverages is the maximum number allowed to be sold and served to an individual patron during one transaction.

(v) An explanation of the alcoholic beverage containers that will be used to ensure they are significantly different from containers utilized from nonalcoholic beverages.

~~((v))~~ (vi) A list of event categories (see WAC 314-02-057(2)) to be held in the facility at which alcohol service is planned, along with a request for the level of alcohol service at each event.

~~((vi))~~ (vii) The date must be included in the operating plan.

~~((vii))~~ (viii) The pages must be numbered in the operating plan.

~~((viii))~~ (ix) The operating plan must be signed by a principal of the licensed entity.

(e) Prior to the first of each month, the licensee must provide a schedule of events for the upcoming month to the facility's local liquor enforcement office. This schedule must show the date and time of each event during which alcohol service is planned. The licensee must notify the local enforcement office at least seventy-two hours in advance of any events where alcohol service is planned that were not included in the monthly schedule. Notice of private events is not required when the event is being held in conjunction with a professional or amateur sporting event, an entertainment event, or a special event as outlined in WAC 314-02-057(2).

(2) May the liquor control board impose any other mandatory standards as a part of an operating plan? Yes. To prevent persons who are under twenty-one years of age or who appear intoxicated from gaining access to alcohol, the board may impose the following standards as part of an operating plan:

(a) The board may require that an operating plan include additional mandatory requirements if it is judged by the board that the plan does not effectively prevent violations of liquor laws and regulations, particularly those that prevent persons under twenty-one years of age or who are apparently intoxicated from obtaining alcohol.

(b) To permit alcohol servers to establish the age of patrons and to prevent over-service, sports/entertainment facilities must meet minimum lighting requirements established by WAC 314-11-055 in any area where alcohol is served or consumed. For the purpose of establishing a permanent technical standard, an operating plan may include a lighting standard measured in foot candles, so long as the candle power of the lighting is, at all times, sufficient to permit alcohol

servers to establish the validity of documents printed in eight point type.

(3) **Where will spirits, beer, and wine be allowed in a sports/entertainment facility?** The purpose of the following matrix is to outline where and when alcohol service will normally be permitted. Due to the unique nature of each facility, the board will determine the permitted alcohol service based on the facility's approved operating plan.

(a) If alcohol service is requested outside of the parameters listed below, a special request with justification for the alcohol service area must be submitted with the operating plan for consideration by the board.

Type of event as defined in WAC 314-02-057	Beer, wine, and spirits may be sold and served in approved restaurants, lounges, private suites, and club rooms	Beer, wine, and spirits may be sold and served in temporary lounges, beer gardens, or other approved service areas	<u>Spirits, beer, and wine</u> may be served and consumed in club seats during events	Beer and wine may be consumed throughout seating areas during events	Hawking - beer may be served throughout seating areas, subject to the provisions of WAC 314-02-058(4)
Professional sporting events of baseball, football, basketball, soccer, tennis, volleyball, horse racing, hockey, and track and field events	x	x	x	x	x
All other professional sporting events including <u>WWE, UFC, rodeo, motorcross, national auto racing, and monster truck events</u> (level of alcohol service will be determined on a case-by-case basis per the approved operating plan)	x	x	x	x	
Amateur sporting events (<u>nonpaid athletes</u>)	x	x			
Entertainment events	x	x			
Special events (<u>trade shows, conventions</u>)	x	x			

(b) For private events, beer, wine, and spirits may be served in the area where the event is held. This area may be a separate meeting or banquet room or the entire facility.

(c) In order to minimize youth access to alcohol, the board may prohibit or restrict the service of alcohol at events where the attendance is expected to be over thirty percent persons under twenty-

one years of age. This restriction will not apply to the professional sporting events outlined in WAC 314-02-057 (2)(a).

(4) **Will hawking be allowed at sports/entertainment facilities?** Subject to the provisions of this rule, hawking may be permitted in general seating areas for the sale and consumption of beer, at the professional sporting events of baseball, football, basketball, soccer, tennis, volleyball, horse racing, hockey, and track and field events only, as defined by WAC 314-02-057 (2)(a).

(a) An operating plan must include procedures for hawkers to verify the age of purchasers and to prevent service to apparently intoxicated persons.

(b) During hawking, any patron may decline to handle alcoholic beverages, either on behalf of themselves and for any person under their supervision. When a patron objects to handling alcohol, hawkers must accommodate the objection. The facility operating plan will address how hawking will be managed, including how hawkers will respond to patron objections to handling alcohol.

~~((c) Each facility's hawking authorization will be reviewed by the board one year after the facility commences hawking under these rules and then every two years. This review, which will take no more than ninety days, will recommend the continuation, modification, or repeal of the hawking authorization. The decision to continue hawking will be based on:~~

~~(i) The facility's demonstrated record of preventing service of liquor to persons under twenty-one years of age and to persons who appear intoxicated; and~~

~~(ii) Public input submitted to the board. The licensee must post written notices to its patrons at fixed points of alcohol sales on the premises and in programs at events where hawking occurs for at least sixty days prior to the review period, stating that the facility's hawking authorization is up for review by the board, and directing comment to the board. The wording and method of notice must be approved by the board.))~~



Washington State
Liquor and Cannabis Board

Date: August 26, 2015

To: Jane Rushford, Board Chair
 Ruthann Kurose, Board Member
 Russ Hauge, Board Member

From: Karen McCall, Agency Rules Coordinator

Copy: Rick Garza, Agency Director
 Randy Simmons, Deputy Director
 Justin Nordhorn, Chief of Enforcement
 Becky Smith, Licensing Director

Subject: **Approval for filing proposed rules (CR 102) a new rule in chapter 314-03 WAC Allowed activities.**

This rulemaking is a result of a petition for rulemaking submitted by Doug Engler, the licensee of Malt & Vine. Mr. Engler holds a beer/wine tavern license with an off-premises endorsement. The petition requests the board adopt a rule to allow a beer/wine on-premises licensee holding an off-premises endorsement to sell beer and wine over the internet and deliver the product to their customers.

Process

The Rules Coordinator requests approval to file the proposed rules (CR 102) for the rule making described above. An issue paper on this rule was presented at the Board meeting on August 26, 2015, and is attached to this order.

If approved for filing, the tentative timeline for the rule making process is outlined below:

August 26, 2015	Board is asked to approve filing the proposed rules (CR 102 filing)
Sept 16, 2015	Code Reviser publishes notice, LCB sends notice to rules distribution list
Oct 7, 2015	Public hearing held
Oct 7, 2015	End of written comment period
Oct 21, 2015	Board is asked to adopt rules
Oct 21, 2015	Agency sends notice to those who commented both at the public hearing and in writing.
Oct 21, 2015	Agency files adopted rules with the Code Reviser (CR 103)
Nov 21, 2015	Rules are effective (31 days after filing)



Washington State
Liquor and Cannabis Board

_____ Approve _____ Disapprove _____
Jane Rushford, Chairman Date

_____ Approve _____ Disapprove _____
Ruthann Kurose, Board Member Date

_____ Approve _____ Disapprove _____
Russ Hauge, Board Member Date

Attachment: Issue Paper
Proposed Rules

Washington State Liquor and Cannabis Board

Issue Paper

Rules for Internet Sales & Delivery by Beer/Wine Restaurants and Taverns with an off-premises endorsement

Date: August 26, 2015

Presented by: Karen McCall, Agency Rules Coordinator

Description of the Issue

The purpose of this Issue Paper is to request approval from the Board to file the proposed rules (CR 102) for a new rule in Chapter 314-03 WAC Allowed Activities.

Why is rule making necessary?

A petition for rulemaking was submitted by Doug Engler, the licensee of Malt & Vine. Mr. Engler holds a beer/wine tavern license with an off-premises endorsement. The petition requests the board adopt a rule to allow a beer/wine on-premises licensee holding an off-premises endorsement to sell beer and wine over the internet and deliver the product to their customers.

There are no current rules that allow a beer/wine on-premises licensee holding an off-premises endorsement to sell beer and wine over the internet and deliver the beer and wine to their customers. There are rules that allow grocery stores and beer/wine specialty shops to sell beer and wine over the internet and deliver to their customers.

What changes are being proposed?

New Section. WAC 314-03-035 Consumer orders, internet sales, and delivery for on-premises beer and/or wine liquor licensees. Outlines requirements for a beer and/or wine on-premises licensee with an off-premises endorsement to sell beer and/or wine over the internet and deliver product to their customers.

NEW SECTION

WAC 314-03-035 Consumer orders, internet sales, and delivery for on-premises beer and/or wine liquor licensees. An on-premises beer and/or wine licensee may accept orders for beer or wine from, and deliver beer or wine to, customers.

(1) **Resale.** Beer and wine shall not be for resale.

(2) **Stock location.** Beer and wine must come directly from a licensed on-premises retail location.

(3) **How to place an order.** Beer and wine may be ordered in person at a licensed location, by mail, telephone, internet, or by other similar methods.

(4) **Sales and payment.**

(a) Only a licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a licensee, except for transmittal of payment through a third-party service. A third-party service may not solicit customer business on behalf of a licensee.

(b) All orders and payments shall be fully processed before liquor transfers ownership or, in the case of delivery, leaves a licensed premises.

(c) **Payment method.** Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account. An existing prepaid account may not have a negative balance.

(d) **Internet.** To sell beer and wine via the internet, a new license applicant must request internet-sales privileges in his or her application. An existing licensee must notify the board prior to beginning internet sales. A corporate entity representing multiple stores may notify the board in a single letter on behalf of affiliated licensees, as long as the liquor license numbers of all licensee locations utilizing internet sales privileges are clearly identified.

(5) **Delivery location.** Delivery shall be made only to a residence or business that has an address recognized by the United States Postal Service; however, the board may grant an exception to this rule at its discretion. A residence includes a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(6) **Hours of delivery.** Beer and wine may be delivered each day of the week between the hours of 6:00 a.m. and 2:00 a.m. Delivery must be fully completed by 2:00 a.m.

(7) **Age requirement.**

(a) Per chapter 66.44 RCW, any person under twenty-one years of age is prohibited from purchasing, delivering, or accepting delivery of beer and wine.

(b) A delivery person must verify the age of the person accepting delivery before handing over beer and wine.

(c) If no person twenty-one years of age or older is present to accept a beer and wine order at the time of delivery, the beer and wine shall be returned.

(8) **Intoxication.** Delivery of beer and wine is prohibited to any person who shows signs of intoxication.

(9) **Containers and packaging.**

(a) Individual units of beer and wine must be factory sealed in bottles, cans or other like packaging. Delivery of growlers, jugs or other similar, nonfactory sealed containers is prohibited. Delivery of malt liquor in kegs or other containers capable of holding four gal-

lons or more of liquid is allowed, provided that kegs or containers are factory sealed and that the keg sales requirements (see WAC 314-02-115) are met prior to delivery. For the purposes of this subsection, "factory sealed" means that a unit is in one hundred percent resalable condition, with all manufacturer's seals intact.

(b) The outermost surface of a beer and wine package, delivered by a third party, must have language stating that:

- (i) The package contains liquor;
- (ii) The recipient must be twenty-one years of age or older; and
- (iii) Delivery to intoxicated persons is prohibited.

(10) **Required information.**

(a) Records and files shall be retained at a licensed premises. Each delivery sales record shall include the following:

- (i) Name of the purchaser;
- (ii) Name of the person who accepts delivery;
- (iii) Street addresses of the purchaser and the delivery location; and
- (iv) Times and dates of purchase and delivery.

(b) A private carrier must obtain the signature of the person who receives beer and wine upon delivery.

(c) A sales record does not have to include the name of the delivery person, but it is encouraged.

(11) **Web site requirements.** When selling over the internet, all web site pages associated with the sale of beer and wine must display a licensee's registered trade name.

(12) **Accountability.** A licensee shall be accountable for all deliveries of beer and wine made on its behalf.

(13) **Violations.** The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement or restriction.



Liquor and Cannabis Board Revised Interim Policy BIP-06-2015

Subject: Beer and Cider Growler Sales in Grocery Stores

Effective Date: August 26, 2015

Ending Date: Upon adoption of rules to implement this policy.

Approved:

Jane Rushford, Chairman

Ruthann Kurose, Board Member

Russ Hauge, Board Member

Purpose:

SSB 5280 created an endorsement for grocery store licensees to allow the sale of beer and cider growlers for off-premises consumption. The bill becomes effective July 24, 2015. This interim policy will provide assistance and clarity to persons applying for the endorsement until permanent rules can be adopted by the board.

Policy Statement

- (1) The endorsement is for grocery store licensees.
- (2) The licensee must have sales from beer and wine exceeding 50% of their total revenues or maintain an alcohol inventory of not less than 15,000.
- (3) Beer and cider must be sold in sanitary containers provided by the purchaser, licensee or the manufacturer.
- (4) The taps must be located behind a counter where only employees have access or the taps must have locks preventing use unless unlocked and operated by an employee.
- (5) Only employees of the licensee are permitted to operate the taps.
- (6) All employees operating a tap must hold a class 12 alcohol server permit.
- (7) The cost for the endorsement is one hundred twenty dollars.





Washington State Liquor Control Board

Issue Paper

AIA Petition for Mandatory Alcohol impact Area – City of Tacoma West End

Date: June 9, 2015

Presented by: Patrick Woods, Education and Outreach Manager

Background

The city of Tacoma has two Board approved Alcohol Impact Areas including the Downtown and Hill Top districts that was approved in 2002 and the Lincoln district that was approved in 2008.

The city has stated that alcohol related incidents involving police calls for service have decreased since the AIAs have been established in the Downtown and Lincoln districts.

The city of Tacoma is currently requesting the approval of a third AIA for the West End of the city.

Summary of Petition

1. The city of Tacoma's Alcohol Impact Area Timeline for the West End is as follows:

February 26, 2013, city ordinance #28135 created an Alcohol Impact Area within the West End of the City of Tacoma. This was in response to a 40% increase in calls for service for alcohol related incidents between 2011 and 2012. In addition the city estimates a 400% increase in alcohol related calls within the West End since the establishment of the Lincoln AIA in 2008;

August 23, 2013 through February 28, 2014 Voluntary AIA product ban was granted by Tacoma City Council. During the voluntary ban the City estimates that participation by retail licensees ranged from 17% at the outset, rose to a height of 49% and then declined to 38.5% at the closing phase;



December 5, 2014 letter from Donald L. Ramsdell, Police Chief, City of Tacoma to WSLCB requesting a hearing to establish a Mandatory Alcohol Impact Area in the West End.

June 10, 2015 Board Reviews Tacoma's AIA Petition: Board opens public comment period on AIA petition and receives staff briefing and initial comments from stakeholders.

2. The City of Tacoma's Petition for a Mandatory AIA Highlights: The City outlined the following challenges and risks associated with having a CPI population and the related benefits of establish an AIA within its West End District. The following information was provided by the city to validate their concerns and support their petition: (Please note this information has not been independently validated by WSLCB staff.)

A. **CPI Population Consume High Levels of Public Services:** Individuals experiencing chronic homelessness are heavy users of costly public resources, with an estimated 10% of CPI's using 50% of first responder services. The services include:

- ❖ Emergency Medical
- ❖ Psychiatric Treatment
- ❖ Detox Facilities
- ❖ Shelters
- ❖ Law Enforcement & Corrections

B. **Public Health Risks Associated with CPI's:** Rise in Methicillin-Resistant Staphylococcus Aureus MSRA from 716 new cases in 2001 to 5,344 in 2008 and 2176 in 2012. (Please note information did not specify direct link to West End district)

C. **City's Comprehensive Approach to CPI Problem:** City partnered with Franciscan Health Care Services, Multi-care Hospital, community members and other service providers to provide the following services: Detox Center and Healthcare for Homeless People within the Metropolitan Development Center; Encampment Outreach initiative; Tacoma's Homeless Services; and "Project for Assistance from Homelessness PATH Team" providing housing, case management and mental health services.

D. **Voluntary Compliance Program Not Successful:** The voluntary AIA Program was in effect from August 2013 to February 2014. The city reported that the program was not successful in limiting access to products used by the CPI population and as a



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result did not have the desired public health and safety benefits it set out to achieve. The city highlighted the low level of retail licensee participation and lack of ongoing support from the local distributor.

The City’s Voluntary Compliance Program included the following

components: Retailer Information Packet: Good Neighbor Agreement; Banned Product List; Tacoma City Ordinance #28135; West End AIA Map; AIA WAC 314-12-125; Homeless & Alcohol City Services Information Book Marker with contact information; Window decal for participating retail stores; and site-visit and periodic check-ins from Officer Donald Stodola, Community Liaison Officer with Tacoma PD.

E. Alcohol Related Fire-Detox-DUI & Sobering Admissions: The statistics submitted by the City of Tacoma indicate a general pattern of incident growth during the time period under consideration. This includes:

Type of Services	2009	2010	2011	2012	2013	2014 Thru May
Fire Department- Incidents	236	234	271	307	286	
Detox Services- Adult				1535	1582	655
Detox Services- Youth				28	49	17
DUI-Incidents				307	259	132
Sobering Recipients				1029	1857	576

F. Alcohol Related Police Calls: The City provided alcohol related police calls from an array of neighborhoods that spans a time period prior to the establishment of their first AIA in 2002 (Downtown Tacoma) and the second AIA (Lincoln district) through 2013. The city provided the data to indicate a pattern of reduction in CPI related incidents where AIAs are established and a significant increase (200% increase over 14 years) in the West End area as compared with other non AIA areas in the City (under 100%), where AIAs are not in place. The information includes:



Alcohol Related Calls-Tacoma Police Department 2000-2013

Area	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Downtown AIA	413	633	653 AIA	391	246	269	264	281	381	249	237	332	307	223
Lincoln AIA	95	138	202	253	176	192	262	302	274 AIA	187	127	131	181	144
West End AIA	65	83	118	165	165	206	149	160	142	174	175	159	213	179
Sector 3 -Non AIA	43	41	51	75	52	79	57	63	86	83	74	74	78	74
Rest of City-Non AIA	41	40	49	52	56	58	56	64	57	77	68	64	67	57

G. Community Support for West End AIA: The following organizations and individuals are in support of establishing an AIA in the West End, including: Tacoma-Pierce County Health Department; Tacoma Mayor's Office; North End Neighborhood Council; Central Neighborhood Council; Central Neighborhood Council; University of Puget Sound; Tacoma School District & Tacoma Public Schools; Bellarmine Preparatory School; St. Charles Borromeo Parish; Old Town Business Association; Sixth Avenue Business District; West End Puget Sound Kiwanis Club; Allenmore Ridge Condominium Association; City of Tacoma Fire Department; Pierce Transit; Metro Parks Commissioners;

3. West End Proposed Banned Products List

The City has requested that the Banned Products list be consolidated between the existing two AIAs in the Downtown and Lincoln Districts and the West End Region. This list includes:

Manufacturer	Brand Name *New Products added in 2009	Alcohol Content by Volume
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Cisco Wine Co.	Cisco- all flavors (wine)	13.5%-20%
The 20/20 Wine Company	MD 20/20- all flavors (wine)	13%-18%
E&J Gallo	Night Train Express (wine)	17.5%
Canandaigua Wine	Richards Wild Irish Rose (wine)	18%
E&J Gallo Winery	Thunderbird (wine)	17.5%
United Brands Co.	3 Sum (energy drink)	6%
Drink Four Brewing Co.	Four Loko- all flavors (energy drink)	12%
Drink Four Brewing Co.	Four Max (energy drink)	10%
Hard Wired Brewing	Hard Wine X (energy drink)	6.9%
United Brands Co.	Joose- all products (energy drink)	9.9%
Charge Beverage Co.	Liquid Charge- all flavors (energy drink)	6.9%
Steel Brewing Co.	Sparks-all flavors (energy drink)	6%-8%
Anheuser Busch	Tilt-all flavors (energy drink)	6.6%-8%
Pabst Brewing Co.	Big Bear (malt beverage)	7.5%
Pabst Brewing Co.	Blast by Colt 45*-all flavors (malt bev.)	8%-12%
Anheuser-Busch	Bud Ice	5.5%
Pabst Brewing Co.	Bull Ice	8.2%
Anheuser Busch	Busch Ice	5.9%
Camo Brewing Co.	Camo-all flavors	6.3%-10.7%
G. Heileman Brewing Co.	Colt 45 Ice-all flavors	6.1%-8.5%
Miller Coors	Colt 45 Malt Liquor & HG*	8.5%
Charge Beverage Corporation	Core High Gravity	6.9-12%
Rock Wall Brewing Co.	Dog Bite *	8%-10%
Drink Four Brewing Co.	Earth Quake HG*	8.1%
Miller	Edge by Ice House *	8%
Anheuser Busch	Hurricane High Gravity	8.1%
Miller	HG 800	7.9%
Anheuser-Busch	Hurricane Ice Malt Liquor	7.5%
Miller Brewing Co.	Ice House	5.5%
Coors Brewing Co.	Keystone Ice	5.9%
Anheuser Busch	King Cobra Malt Liquor	6%
Labatt Brewing Co.	Labatt Ice-all flavors	7.1%
Mike's Hard Lemonade Co.	Mike's Harder Lemonade -all flavors	8%-9.9%
Mickey's Brewing Co.	Mickey's Ice Brew Ale	5.8%
Miller Coors Brewing Co.	Milwaukee's Best Ice	5.9%
Molson Coors Canada	Molson Ice	5.6%
Anheuser Busch	Natty Daddy *	8%
Joseph Schlitz Brewing	Old Milwaukee Ice-all flavors	5.9%



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Miller Brewing Co.	Old English 800-all flavors	5.9%
Pabst Brewing Co.	Rainier Ale	7.2%
Miller Coors	Red Dog	4.9%
Miller Brewing Co.	Schlitz High Gravity	8.5%
Pabst Brewing Co.	Schmidt's Ice	5.9%
Diageo-Guinness USA	Smirnoff Ice Black*	8%
Miller Coors	Special 800 Reserve-all flavors	6%
United Brands	Stack HG*	9.9%
Saint Ides Brewing	St. Ides Liquor & Special Brews-all flavor.	6%-7.3%
The Steel Brewing Co.	Steel Reserve-all flavors	8.1%

Link to City of Tacoma's West End AIA Petition Documents:

<http://lcb.wa.gov/licensing/alcohol-impact-areas-existing-locations>

Staff Recommendation

Clarifications: The following issues required additional information in order to complete the staff recommendation:

1. Did the City of Tacoma conduct a litter survey?

City of Tacoma's Response: *Only collected photos because the Tacoma City Council said that they did not need us to bring in garbage or counts of trash as in the past since this will be our 3rd AIA. The Council said that photos would suffice for them.*

2. What criteria did the City of Tacoma use in developing the "Banned Products List" for the proposed West End AIA?

City of Tacoma's Response: *Started with current list from Lincoln District which was enforced in 2009. The newly added products were from the trash we observed in transient camps, day camps and regular drinking sites in the proposed area and banned areas in the city. We continue to see the major banned products from the current list so we kept those on the list too (Steele Reserve, Olde English 800, etc...)*

Staff Recommendation: The material provided by the city of Tacoma meets the requirements for a public hearing and public comment on their petition for a mandatory alcohol impact area.

Consolidated Banned Product List
City of Tacoma Alcohol Impact Areas
New Products Effective July 1, 2015
All Flavors and Container Sizes

WINE

Cisco
MD 20/20
Night Train Express
Richard's Wild Irish Rose
Thunder Bird

MALT BEVERAGE

Big Bear
Blast by Colt 45
Bud Ice
Bull Ice
Bush Ice
Camo
Colt 45 Ice
Colt 45 Malt Liquor & HG
Core High Gravity
Dog Bite
Earthquake HG
Edge by Icehouse
Four Loco
Hurricane High Gravity
HG 800
Hurricane Ice Malt Liquor
Ice House
Joose
Keystone Ice
King Cobra Malt Liquor
Labatt Max Ice
Liquid Charge

MALT BEVERAGE (CONTINUED)

Mike's Harder Lemonade (or other flavors)
Mickey's Ice Brewed Ale
Milwaukee's Best Ice
Milwaukee's Best Premium Ice Beer
Molson Ice
Natty Daddy
Natural Ice
Old Milwaukee Ice
Olde English 800
Rainier Ale
Red Dog
Schlitz High Gravity
Schmidt's Ice
Smirnoff Black Ice
Sparks
Special 800 Reserve
Stacks HG
St Ide's Liquor and Special Brews
Steele Reserve
Tilt



Washington State Liquor and Cannabis Board

Issue Paper

Rule Making on Fair Trade Practices

Date: July 15, 2015

Presented by: Karen McCall, Agency Rules Coordinator

Description of the Issue

The purpose of this Issue Paper is to request approval from the Board to file revised proposed permanent new rules (Supplemental CR 102) in **Chapter 314-23 WAC to clarify RCW 66.28.170 Discrimination in price to purchaser for resale prohibited—Price differentials.**

Why is rule making necessary?

Michael Cho, Washington Liquor Store Association, petitioned the board for rulemaking to clarify RCW 66.28.170. The board currently has Advisory No. 2012-02 on the website that clarifies this statute but wishes to place its current view of pricing issues in a new section in Chapter 314-23 WAC. The board held a work session on Fair Trade Practices on September 11, 2013, to hear comment from stakeholders on these issues. A public hearing on the proposed rules was held on April 23, 2014. Stakeholders provided testimony and written comments on the proposed rule language at the public hearing.

On May 14, 2014, the board gave their approval for the rules coordinator to draft revised proposed rules for fair trade practices to bring back to the board at a later date.

On June 4, 2014, the rules coordinator filed a supplemental CR 102 with the Code Reviser's Office.

On July 23, 2014, the rules coordinator posted a Small Business Economic Impact Survey with supplemental proposed rules for fair trade practices on the Liquor Control Board website. An email was sent to all stakeholders on the rules distribution list requesting they complete the survey and return to the board by August 8, 2014. Washington Restaurant Association requested the board accept responses to the survey until August 24, 2014, and the board agreed to do so.

On December 17, 2014, the rules coordinator filed a second supplemental CR 102 including the small business economic statement with the code Reviser's Office. A public hearing was held on February 11, 2015.

A new board chair and new board member started in February, 2015. The board members have spent time reviewing all of the comments and documentation received for this rulemaking and have requested changes to the rules that were proposed on December 17, 2014.

What changes are being proposed?

New Section. WAC 314-23-060 What are "volume discounts"? Defines "volume discounts".

New Section. WAC 314-23-065 What are "unfair trade practices"? Defines "unfair trade practices".

New Section. WAC 314-23-070 What is "local market"? Defines "local market". For purposes of volume discounts, sales to on-premises retailers and off-premises retailers constitute separate markets.

New Section. WAC 314-23-075 Are licensed distributors or other suppliers of spirits and wine allowed to provide discounts to on-premises or off-premises retail licensees based on a commitment from the retailer to purchase a particular percentage of the spirits back-bar, well-drinks, wine by the glass, or any combination of these? Addresses exclusivity.

New Section. WAC 314-23-080 Are licensed distributors or other licensed suppliers of spirits and wine allowed to provide volume discounts to on-premises or off-premises retail licensees? Explains what is allowed under "volume discounts". Exceptions are granted for different volume pricing on spirits to on-premises retailers and off-premises retailers for new products to the market. Wine may be sold at different prices to on-premises retailers and off-premises retailers.

New Section. WAC 314-23-085 What type of discounts are not allowed? Explains the following practices are not allowed under "volume discounts":

- Discounts for purchases over time. Combining volumes of spirits and wine purchased beyond the day of purchase period to qualify for a volume

discount is considered an extension of credit under 27 CFR 6.65 because state law does not allow the extension of credit; and

- Discounts on a combined order that is delivered to multiple sites (central warehousing rules were written to allow separate licensed entities to lease warehouse space and request a discount on goods delivered to a single warehouse location), unless the order is delivered to multiple liquor licensed locations owned and operated by the same liquor licensed entity.

NEW SECTION

WAC 314-23-060 What are "volume discounts"? Volume discounts are discounts that are based solely on the volume of the spirits and/or wine that is purchased by a retailer from a distributor or supplier. However, the limitations on interactions between the levels of licenses remain including, but not limited to, the prohibition on undue influence and sales below cost.

NEW SECTION

WAC 314-23-065 What are "unfair trade practices"? (1) "Unfair trade practice" means one retailer or industry member directly or indirectly influencing the purchasing, marketing, or sales decisions of another retailer or industry member by any agreement written or unwritten or any other business practices or arrangements such as, but not limited to, the following:

(a) Any form of coercion between industry members and retailers or between retailers and industry members through acts or threats of physical or economic harm, including threat of loss of supply or threat of curtailment of purchase;

(b) A retailer on an involuntary basis purchasing less than it would have of another industry member's product;

(c) Purchases made by a retailer or industry member as a prerequisite for purchase of other items;

(d) A retailer purchasing a specific or minimum quantity or type of a product or products from an industry member;

(e) An industry member requiring a retailer to take and dispose of a certain product type or quota of the industry member's products;

(f) A retailer having a continuing obligation to purchase or otherwise promote or display an industry member's product;

(g) An industry member having a continuing obligation to sell a product to a retailer;

(h) A retailer having a commitment not to terminate its relationship with an industry member with respect to purchase of the industry member's products or an industry member having a commitment not to terminate its relationship with a retailer with respect to the sale of a particular product or products;

(i) An industry member being involved in the day-to-day operations of a retailer or a retailer being involved in the day-to-day operations of an industry member in a manner that violates the provisions of this subsection;

(j) Discriminatory pricing practices as prohibited by law or other practices that are discriminatory in that the product is not offered to all retailers in the local market at the same price.

(2) The exercise of undue influence is an unfair trade practice and is prohibited.

NEW SECTION

WAC 314-23-070 What is "local market"? Local market is limited to businesses in geographic recognized market areas such as town, city, county or other recognized geographic area in which distribution services are provided. For the purposes of differential pricing, sales to on-premises retailers and off-premises retailers constitute separate markets.

NEW SECTION

WAC 314-23-075 Are licensed distributors or other suppliers of spirits and wine allowed to provide discounts to on-premises or off-premises retail licensees based on a commitment from the retailer to purchase a particular percentage of the spirits back-bar, well-drinks, wine by the glass, or any combination of these? (1) It is unlawful for a distributor or other supplier of spirits or wine to offer a lower price to an on-premises or off-premises retailer if the retailer is required to purchase a specific portion of some or all of its wine or spirits from that distributor or supplier in order to qualify for the lower price. Such requirements include, but are not necessarily limited to, agreeing to devote certain percentage of the spirits back-bar, well-drinks, wine by the glass, or any combination of these or other types of purchases to products sold by that distributor or supplier.

(2) Such exclusive discounts are prohibited under RCW 66.28.170 and federal law 27 C.F.R. 6.72.

NEW SECTION

WAC 314-23-080 Are licensed distributors or other licensed suppliers of spirits and wine allowed to provide volume discounts to on-premises or off-premises retail licensees? (1) Yes, distributors or other licensed suppliers are allowed to provide volume discounts to licensed on-premises and off-premises retailers. The discounts must be based solely on the volume of the spirits and/or wine that is purchased by a retailer from a distributor or other licensed suppliers. However, the limitations on interactions between the levels of licenses remain, including the prohibition on undue influence and sales below cost of acquisition.

(2) Differential pricing between on-premises licensed retailers and off-premises licensed retailers is allowed under the following exceptions:

(a) For spirits: A new product to the market may be sold to on-premises retailers at an "introductory price" for a maximum of six months. After the six-month introductory period the price for on-premises and off-premises retailers must be the same price for the same volume purchased.

(i) "New product" means the product has not previously been offered for sale to retailers.

(ii) "Introductory price" means the price of the spirits product when it first becomes available for purchase.

(b) For wine: Wine may be sold to on-premises retailers and off-premises retailers at different prices.

NEW SECTION

WAC 314-23-085 What type of discounts are not allowed? The following types of discounts are not allowed. Please note that this list is representative and not inclusive of all practices that are not allowed:

- (1) **Volume discounts that violate local, state, or federal laws.**
- (2) **Discounts on purchases over time.** Prices must be based on the spirits or wine delivered in a single shipment or single invoice.
- (3) **Discounts on a combined order that is delivered to multiple licensed sites.** Volume discounts may only be provided based on combined orders by one or more licensees to the "central warehouse" or a single location to which the order is delivered. The delivery of product to multiple sites cannot be used in determining the volume discount for a combined order unless the order is delivered to multiple liquor licensed locations owned and operated by the same liquor licensed entity.

