



Notice of Permanent Rules for Alcohol Impact Areas

This explanatory statement concerns the Washington State Liquor and Cannabis Board's adoption of the revisions to WAC 314-12-215 Alcohol Impact Areas

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. This statement must be provided to anyone who gave comment about the proposed rulemaking.

Once persons who gave comment during this rulemaking have had a chance to receive this document, the Liquor and Cannabis Board will file the amended rules with the Office of the Code Reviser. These rule changes will become effective 31 days after filing (approximately December 17, 2016).

The Liquor and Cannabis Board appreciates your involvement in this rule making process. If you have any questions, please contact Karen McCall, Rules Coordinator, at (360) 664-1631 or e-mail at rules@lcb.wa.gov.

What are the agency's reasons for adopting this rule?

This rulemaking is a result of a stakeholder request..

Summary of all public comments received on this rule proposal.

Two comments were received at the public hearing held on September 7, 2016. Five written comments were received.

Mark Renfrow – city of Olympia. Supports the adoption of the rules.

Katie Jacoy – Wine Institute. Opposes the board adopting a standardized list of banned products that contain wine products.

LCB response: The standardized banned products list the board will adopt does not contain wine products.

Priscilla Lisicich – President Washington Association for Substance Abuse & Violence Prevention. Supports minimum requirements for an alcohol impact area recognition packet. Support restricting all product sizes of a banned product, and/or restricting hours of operations for off-premises sales of certain products. Support removal of a minimum alcohol content on banned products. Support a standardized list



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of banned products in an alcohol impact area. Support the clarification for annual report data.

Richard Van Wagenen – Olympia resident. Opposes the following:

The duration and frequency of required litter/trash surveys can be unnecessarily burdensome on smaller cities.

LCB response: If a city is requesting products be banned in their jurisdiction there must be a basis for that product to be banned. Litter/trash surveys are the only way to provide data on which products are linked to the problem of chronic public inebriation. Once the standardized banned products list is adopted by the board the local jurisdiction will only need to provide links to products not listed on the standardized banned products list.

The requirement that police reports link crime and other alcohol-related behavior to specific products is unnecessarily burdensome.

LCB response: This data points to a link between the product and the problem of chronic public inebriation.

The ambiguity about board requests for supplemental materials may leave cities trying to guess what the board is looking for.

LCB response: The revised rule clearly states what supplemental material may include.

The ambiguity between required attempts to achieve voluntary agreements and the requirement to implement these voluntary agreements.

LCB response: The rule clearly states that the local authority must make a good faith effort for at least six months to achieve licensee compliance to mitigate chronic public inebriation. If the local jurisdiction has not been successful after six months they may petition the board for an alcohol impact area recognition.

The rule requires cities to act in good faith but it fails to require any good faith by the licensees.

LCB response: Once the board has adopted an alcohol impact area licensees are held accountable. If they sell a banned product they will receive enforcement action by the board.

Scott Hazelgrove – Washington Beer and Wine Distributors Association. Opposes the following:

Product ban listing criteria. There should be a threshold of alcohol content to allow products to be banned. Trash should not be included in trash/litter surveys. Only litter should be considered.

LCB response: Over the past 16 years the board has noticed that some of the products preferred by chronic public inebriates are not considered “high” alcohol. The purpose of the banned products list is to ban products that are preferred by chronic public inebriates. Local jurisdictions are not going through trash cans to find product containers. The term trash/litter survey is about a local jurisdiction making an effort to



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collect and observe product containers that are being left behind by chronic public inebriates.

Clarity of information required for recognition of an alcohol impact area. The new rule does not take the approach of focusing on a voluntary alcohol impact area.

LCB response: The revised rule does include what is required before the local jurisdiction can request the board recognize an alcohol impact area. A minimum of six months in a good faith effort to get licensees to voluntarily stop selling the products the local jurisdiction wants to ban is part of the revised rule. Clarifying language was added to inform local jurisdictions the type of data and statistics are needed to justify an alcohol impact area.

Standardized banned products list.

LCB response: Items listed on the standardized banned products list are on a minimum of six of the current ten banned products lists in alcohol impact areas. Having a standardized banned products list may save local jurisdictions time they would normally spend on trash/litter surveys if the only products they want banned are on the standardized banned products list.

The board needs to have discussions with stakeholders rather than adopt this rule.

LCB response: The board met with stakeholders prior to drafting this rule. Meetings were held with the Beer and Wine Distributors Association as well as the Association of Washington Cities.

David A. Condon – Mayor of Spokane. The city of Spokane has limited objections to the revised rule. The list of required elements that needs to be submitted in a petition packet is too much. Trash/litter surveys should not be required to identify banned products. They are too expensive and require additional resources.

LCB response: The list of required elements that needs to be submitted in a petition packet was created so local jurisdictions would know why type of information is needed. WAC 314-12-215 (2)(c)(ii) uses the word “or” in the list of what can be used to demonstrate a need for an alcohol impact area. WAC 314-12-215 (2)(d) explains in detail what each type of data involves. This was a request from local jurisdictions when we met.

If a local jurisdiction is requesting products be banned that are not on the standardized banned products list a trash/litter survey is required. The board cannot ban a product when a direct link has not been established from the product to the problem of chronic public inebriation.

Darren Nienaber – Olympia Deputy City Attorney. The city of Olympia supports the revised rule. There seems to be a redundancy in section (2)(c) and (2)(d).

LCB response: Section (2)(c) states what types of information can be used to demonstrate the need for an alcohol impact area and (2)(d) explains in detail what each type of data involves.



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Three comments were received at the public hearing held on November 2, 2016. One written comment was received.

Matthew Folsom – City of Spokane.

David A Condon – Mayor of Spokane.

The City of Spokane would like the Board to take into consideration the Mayors written comments. They have concerns with the rule change and feel that the requirements are unreasonable and burdensome. The requirements are an “and” and it would be easier if it was an “or”. The requirements would require the law enforcement to partner with other organizations to obtain the information. The realm of expertise is crime data. The one month requirement for trash survey cost the city of Spokane over \$5,000. Would like to remove the reasonable person standard and significant materials similar standard. These two changes take away the power of the local law enforcement agency to control the alcohol that is actually negatively impacting their community. It puts this authority in Olympia so that one group is deciding what is impacting all the communities.

LCB response: The requirements are and “or” not an “and” in section (2)(c). Section (2)(d) explains in detail what each type of data involves.

If a local jurisdiction is requesting products be banned that are not on the standardized banned products list a trash/litter survey is required. The board cannot ban a product when a direct link has not been established from the product to the problem of chronic public inebriation.

The reasonable person standard and significantly materially similar language was removed from the final rule.

Melissa Gombosky – Anheuser Busch Companies. Appreciate the work on the final products listed.

Scott Hazelgrove – Washington Beer and Wine Distributors Association. Mr.

Hazlegrove originally requested reopening these rules. These rules really do deserve the time provided. Mr. Hazlegrove submitted written comments. There are a number of changes that are beneficial. Fundamentally for the distributors they believe the standard should be that a particular product has been shown to be a cause to be a particular harm in a particular community. Some of the changes do further this but there are other changes do not support this. Should look at similar types of crime data over a long length of time. Look at the limitations that were imposed and see if they had an effect of reducing those statistics and keeping them down. Have concerns with a statewide list and believe that it needs to be included in a statewide rule. The rule needs to include the criteria must be met to add a product to the statewide list. They believe the local governments should report yearly at least the first five years.

LCB response: Local jurisdictions will need to show a link between a product they want banned and the problem of chronic public inebriation unless the product unless they only want the products on the standardized banned products list. Local jurisdictions do look at crime data and other data over a length of time. They need to establish what areas are a problem by using the data. Whatever data they use to establish the need for an alcohol impact area must be used in their reports. Items listed



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on the standardized banned products list are on a minimum of six of the current ten banned products lists in alcohol impact areas. Having a standardized banned products list may save local jurisdictions time they would normally spend on trash/litter surveys if the only products they want banned are on the standardized banned products list. The board feels that a report one year after the alcohol impact area goes into effect and then every five years is sufficient.

WAC Changes

See attachment.