



Notice of Permanent Rule Banning Alcohol Energy Drinks in the State of Washington

This explanatory statement concerns the **Washington State Liquor Control Board's adoption of a new rule prohibiting the importation, manufacture, distribution, and sale of alcohol energy drinks in the State of Washington.**

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 rule making.

Once persons who gave comment during this rule making have had a chance to receive this document, the Liquor Control Board will file the amended rules with the Office of the Code Reviser. These rule changes will become effective 31 days after filing (approximately April 2, 2011).

The Liquor Control 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@liq.wa.gov.

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

The mission of the Washington State Liquor Control Board (WSLCB) includes ensuring the responsible sale, and preventing the misuse of, alcohol. As part of this mission, the Board endeavors to ensure that products which pose a threat to public safety are handled appropriately. The board is particularly concerned about alcohol energy drinks, which are marketed in a way that implies the consumption of these beverages has a stimulating or energizing effect. Alcohol energy drinks have become increasingly popular, especially among underage drinkers. These beverages promote a situation where people may become inebriated, but cannot judge their own condition, which is contrary to human health and public safety. This is contrary to the mission of the WSLCB.

Summary of all public comments received on this rule proposal.

The Liquor Control Board did not receive public comment on the proposed alcohol energy rule at the public hearing on February 23, 2011, but did receive public comment in writing during the comment period that ended February 23, 2011.

Comments:

David Dickinson, Director – DSHS – Division of Behavioral Health and Recovery –

Thank you for your ongoing leadership and support in reducing underage drinking, our number one prevention policy. The Liquor Control Board's leadership in enacting a temporary ban on all alcoholic energy drinks in Washington State has helped to protect young people from these dangerous products. I appreciate your support in helping to keep our youth safe and alcohol-free.

B. Hammock – People have choices and that is what makes this country great. Most nightclubs serve/mix Red Bull in a variety of drinks. Just because it's sold premixed doesn't make it evil or bad.

Karla Gates – Please continue the ban on alcohol energy drinks.

Derek Franklin – WASAVP Board Member & Parent – I fully support the ban on AEDs. They are a threat to public safety in part because of the abuse potential they cause minors, young adults, and particularly girls to whom they are marketed (sweet flavors, youthful artwork/imagery, advertising in youth oriented media).

Guadalupe Aragon – Chemical Dependency Counselor – I support the proposed rule on alcohol energy drinks.

Cydney Velez – FSS Case Manager – I am in favor of the prohibition on the sale, importation, and distribution of alcohol energy drinks.

Adam Dean Halvorsen – WA state CSAP Prevention Fellow – I recommend the language instead of "similar substances" to say "stimulants" for the sake of clarity and to prevent having to always revamp the rule or fight it in court.

Maddie O'Callin – Chemical Dependency Counselor – I would like to support the proposed rule on alcohol energy drinks.

Don Lupien, Ph.D., Substance Abuse Treatment Coordinator – I wholeheartedly support a permanent ban on alcohol energy drinks. In my opinion we have too many "instant fixes" for any form of personal problem a person has. Not to mention, if these products are allowed to be sold in Washington State the message we send to our youth could be devastating.

Ed McKay, Chair – Port Angeles Healthy Youth Coalition – We support rolling the temporary rule on alcohol energy drinks into a permanent rule. We support prohibiting the sale or distribution of alcohol energy drinks in the state of Washington. This is a very important issue in our community that affects the quality of life for our children, families, and our state. We urge you to do all that you can to ensure everyone's safety and well being in our communities, especially our children. Let's make their health and safety a priority.

Keith Anderson, Admin. – Klickitat County Juvenile Department – Please allow this to serve as my strongest endorsement that the temporary ban on caffeinated alcohol

drinks in Washington State be permanently codified. It is apparent from the high alcohol content of these drinks that the manufacturer is already targeting our society's youngest/most inexperienced alcohol consumers. The fact that these drinks contain stimulants in addition to their excessive alcohol content is sufficient proof that the company's manufacturing such lethal substances require government regulations that prohibit them from exploiting youth – not to mention unnecessarily endangering society.

Kathryn Martin – Lifeline Connections – Please do permanently ban alcohol energy drinks. I have seen first-hand some of devastating results to young people who would not normal be able to buy alcoholic beverages. The alcohol content in some of these so-called energy drinks is the same as a bottle of wine or an imported or micro-brewery beer. Because the labeling implies the drinks provide energy, people get drunk and then drive, operate dangerous machinery, and otherwise put themselves and others at risk.

Rob McKenna, Attorney General of Washington – The Attorney General's Office supports the adoption of this rule and thanks the Board for its leadership in helping to reduce underage drinking. Our own state vividly learned first-hand of the dangers of these drinks last fall. On October 25, 2010, investigators announced alcoholic energy drinks plays a significant role in the alcohol poisoning which hospitalized nine Central Washington University (CWU) students after a party in Roslyn earlier that month. In response to events like the CWU incident, several states, including Michigan, Oklahoma, Montana, and Utah have banned alcohol energy drinks, as have individual college campuses like CWU. The Board's proposed rule demonstrates a commitment by the state of Washington to reduce underage drinking and to promote responsible behavior in the marketplace. Thank you.

David Wojnar, VP/Control States – Distilled Spirits Council of the United States – It is unnecessary for the WSLCB to pursue the proposed initiative in light of the action taken by the U.S. Food and Drug Administration regarding alcohol energy drinks with caffeine and the responsive actions taken by the manufacturers of those products to reformulate. If the board decides to move forward in this rulemaking, the proposed rule is both ambiguous and much broader in scope than the FDA's action and should not be used as the basis of any regulatory action. Further, we urge the Board not to adopt the proposed language that would provide exceptions to its proposed prohibition. There are a wide array of product formulations that may not fall within the "four corners" of the "exception clause", yet meet all of the FDA's rulings and directives governing product composition. Colas with caffeine are just one example of a "substance" not included in the proposed "exceptions clause".

LCB response: Caffeine, guarana, and taurine are all stimulants. The board feels the prohibition on beer, strong beer, and malt liquor containing these products is necessary to protect the health and safety of the citizens of Washington. The proposed rule only applies to products that combine beer, strong beer, or malt liquor with caffeine, guarana, taurine, or similar substances. The proposed rule has no jurisdiction over non-alcohol products such as colas.

WAC Changes

NEW SECTION

WAC 314-20-022 Alcohol energy drinks. (1) No product that combines beer, strong beer, or malt liquor with caffeine, guarana, taurine, or other similar substances, which are commonly referred to as "alcohol energy drinks," may be imported into the state, produced, manufactured, distributed, sold or offered for sale by a licensed retailer in the state of Washington.

(2) Beer, strong beer, or malt liquor with coffee, chocolate, or other natural substances used for flavorings, are not prohibited under this section.