



Notice of Rule Change – Explanatory Statement Alcohol Impact Areas

This explanatory statement concerns the **Washington State Liquor Control Board's adoption of changes to rules regarding 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 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 October 16, 2010).

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 revising these rules?

As part of the Board's ongoing regulatory improvement efforts, this chapter of rules is being reviewed for relevance, clarity, and accuracy. In addition, rules need to be revised to clarify the process for local governments

What changes are being made?

The Board adopted these rule changes September 15, 2010. The rules will be filed on September 15, 2010 and will be effective on October 16, 2010.

Summary of all public comments received on this rule proposal.

No public comment was received.

Testimony at Public Hearing – September 8, 2010 Olympia, WA

Phil Wayt – Washington Beer and Wine Wholesalers Association

Comment: Thanked the board for allowing his inclusion in this rulemaking process.

Steve Gano – Miller Brewing Company

Comment: Thanked the board for allowing his inclusion in this rulemaking process.

WAC Changes

AMENDATORY SECTION (Amending WSR 99-13-042, filed 6/8/99, effective 7/9/99)

WAC 314-12-210 Chronic public inebriation (~~((CPI))~~) and alcohol impact areas (~~((AIA)–Definitions)~~)--Purpose. (1) What is the purpose of (~~((these))~~) the rules concerning chronic public inebriation and alcohol impact areas?

(a) The enabling statutes for the (~~((liquor control))~~) board are contained in chapter 66.08 RCW. These statutes authorize the board to exercise the police powerss of the state for the protection of the welfare, health, peace, and safety of the people of Washington.

(b) The board's mandate to protect the welfare, health, peace, and safety of the people is to ensure that a liquor licensee(~~((s))~~) conductss (~~((their))~~) his or her business in a lawful manner and that the presence of a licensee's (~~((alcohol))~~) liquor sales does not unreasonably disturb the welfare, health, peace(~~((r))~~) or safety of the surrounding community.

(c) The purpose of (~~((these))~~) the rules concerning chronic public inebriation and alcohol impact areas is to establish a

framework under which the board, in partnership with local government and community organizations, ~~((can))~~ may act to mitigate negative impacts on a community's welfare, health, peace~~((r))~~ or safety that result from the presence of chronic public inebriation.

(d) For the purpose of these rules, chronic public inebriation exists when the effects of the public consumption of ~~((alcohol—and/))~~ liquor or public intoxication occur in concentrations that endanger the welfare, health, peace~~((r))~~ or safety of a neighborhood or community.

(2) What do ~~((these))~~ the rules concerning chronic public inebriation and alcohol impact areas seek to do? WAC 314-12-210 and 314-12-215 seek to:

(a) Establish an expanded local review process for liquor license applications, ~~((assumptions*,—and—renewals—inside))~~ license assumptions, and renewals of active liquor licenses for businesses located within a recognized alcohol impact area ~~((AIA))~~;

(b) ~~((Create))~~ Establish standards under which the board may refuse to issue a liquor license; may refuse to permit ~~((the))~~ a license assumption or renewal of a liquor license; may place conditions or restrictions upon the issuance, assumption~~((r))~~ or renewal of a license; or may place conditions or restrictions on an existing license ~~((inside—a—recognized—AIA))~~ located within the geographical boundaries of a recognized alcohol impact area; and

(c) Allow the board(~~(T)~~) in specific circumstances(~~(T)~~) to restrict the off-premises sale of certain (~~(alcohol)~~) liquor products or (~~(alcohol)~~) liquor product containers inside a recognized (~~(AIA)~~) alcohol impact area.

~~((Note: A liquor license assumption refers to an application by a prospective new owner/operator for an existing licensed business. Under certain conditions, such applicants may apply for a temporary license to continue operations during the new license application review period.))~~

[Statutory Authority: RCW 66.08.030 and 66.24.010. 99-13-042, § 314-12-210, filed 6/8/99, effective 7/9/99.]

AMENDATORY SECTION (Amending WSR 99-13-042, filed 6/8/99, effective 7/9/99)

WAC 314-12-215 Alcohol impact areas--Definition--Guidelines. (1) What is an alcohol impact area (~~(AIA)~~), and how is it different?

(a) An alcohol impact area is a geographic area located within a city, town(~~(T)~~) or county, and that is adversely affected by chronic public inebriation or illegal activity associated with (~~(alcohol)~~) liquor sales or consumption. (~~(The area must be designated by ordinance by the government subdivision and recognized by resolution of the board before any enhanced processes described by these rules are applied.)~~)

(b) The board may place special conditions or restrictions upon off-premises sales privileges, liquor products, applicants, license assumptions or licensees that sell liquor for off-premises consumption (see subsection (3) of this section).

(c) The board applies a unique investigative and review process when evaluating liquor license applications, license assumptions or renewals for businesses located in an alcohol impact area.

(2) (~~(What guidelines will the board use to recognize an alcohol impact area (AIA)?~~ The board, by resolution, may recognize an AIA adopted by a city, town, or county and subsequently referred to the board by that government subdivision. To achieve recognition, the AIA must meet all of the following conditions:

~~(a) The AIA comprises a geographic area that does not include the entire territory of the local jurisdiction;~~

~~(b) The government subdivision has given a rationale, expressed in the ordinance, for the establishment of the proposed boundaries of the AIA;~~

~~(c) The government subdivision has described the boundaries of the AIA in the ordinance))~~ **How is an alcohol impact area**

formed? A local authority (that is, a city, town or county) must first designate an alcohol impact area by ordinance and make good faith efforts for at least six months to mitigate the effects of chronic public inebriation with such ordinance before petitioning the board to recognize an alcohol impact area. The

board must recognize an alcohol impact area before any unique review process, condition or restriction described in this rule may be applied. A local authority must meet certain conditions to achieve recognition.

(a) The geographic area of an alcohol impact area must not include the entire territory of a local authority. However, when a local authority designates a street as a boundary, the board encourages that the local authority include both sides of the street for greater effectiveness.

(b) Local authority ordinance must explain the rationale of the proposed boundaries, and describe the boundaries in such a way that:

(i) The board can determine which liquor licensees are in the proposed alcohol impact area; and

(ii) The boundaries are understandable to the public at large.

~~((d) The AIA ordinance includes findings of fact which establish:))~~ (c) A local authority must:

(i) Submit findings of fact that demonstrate a need for an alcohol impact area and how chronic public inebriation or illegal activity associated with ((alcohol)) liquor sales ((and/)) or consumption within ((the)) a proposed ((AIA is contributing)) alcohol impact area:

(A) Contributes to the deterioration of the general quality of life within ((the)) an alcohol impact area; or

(B) Threatens the welfare, health, peace ~~((τ))~~ or safety of ~~((the))~~ an alcohol impact area's visitors ~~((and))~~ or occupants;

(ii) ~~((There is))~~ Submit findings of fact that demonstrate a pervasive pattern of public intoxication ~~((and/))~~ or public consumption of ~~((alcohol))~~ liquor as documented in crime statistics, police reports, emergency medical response data, detoxification reports, sanitation reports, public health records, ~~((or))~~ other similar records, community group petitions, public testimony or testimony by current or former chronic public inebriants; ~~((and))~~

~~((A good faith effort has been made by the government subdivision to control the problem through voluntary efforts that may include cooperation with neighborhood citizen and/or business organizations, and must include the notification of licensees within the proposed AIA of public intoxication problems and of voluntary remedies available to them to resolve the problem.~~

~~((e) The AIA will take effect on the date of the board's resolution extending recognition to the AIA))~~ Submit documentation that demonstrates a local authority's past good faith efforts to control the problem through voluntary measures (see subsection (4) of this section);

(iv) Explain why past voluntary measures failed to sufficiently resolve the problem; and

(v) Request additional conditions or restrictions and explain how the conditions or restrictions will reduce chronic

public inebriation or illegal activity associated with off-premises sales or liquor consumption (see subsection (3) of this section).

~~(3) ((Once an AIA is recognized by the board, what processes, conditions, or restrictions may the board apply?))~~
What conditions or restrictions may the board recognize for an alcohol impact area?

~~(a) ((The board will apply a unique local license review process for liquor license applications, assumptions, and renewals within the AIA.~~

~~(b) The board may place conditions or restrictions on the off-premises sale privilege of liquor licenses within the AIA. These restrictions must be reasonably related to reducing chronic public inebriation or illegal activity associated with off-premises alcohol sales and/or consumption. These))~~
Restrictions may include, but are not limited to:

~~(i) ((Restrictions on the))~~ Business hours of operation for off-premises ~~((alcohol))~~ liquor sales ~~((within the AIA))~~;

~~(ii) ((Restrictions on the))~~ Off-premises sale of certain ~~((alcohol))~~ liquor products within ~~((the AIA))~~ an alcohol impact area; ~~((and))~~ or

~~(iii) ((Restrictions on alcohol))~~ Container sizes available for off-premises sale ~~((within the AIA))~~.

(b) Product restrictions (for example, prohibition of certain liquor products or container sizes) must originate from a local authority's law enforcement agency or public health

authority, whereas restrictions affecting business operations (for example, hours of operation) may originate from a local authority's law enforcement agency, public authority or governing body.

(c) Product restrictions must be reasonably linked to problems associated with chronic public inebriation or illegal activity. Reasonable links include, but are not limited to: Police, fire or emergency medical response statistics; photographic evidence; law enforcement, citizen or medical-provider testimonial; testimony by current or former chronic public inebriants; litter pickup; or other statistically documented evidence that a reasonable person may rely upon to determine whether a product is associated with chronic public inebriation or illegal activity.

(d) Restricted beer and wine products must have minimum alcohol content of five and seven-tenths percent by volume and twelve percent by volume, respectively.

(e) Upon board approval and upon an individual product by individual product basis, a local authority may restrict a product that is already restricted in another board-recognized alcohol impact area provided that a product is significantly materially similar (for example, comparable alcohol percent content, container size or liquor category such as alcoholic energy drinks) to products already restricted in its own alcohol impact area. Upon board approval and upon an individual product by individual product basis, a local authority may also restrict

a product that is significantly materially similar to products already restricted in its own alcohol impact area. In both cases, a local authority must demonstrate to the board, in writing, the material similarities and need for product inclusion, but the board will not require a local authority to submit extensive documented evidence as described in (c) of this subsection.

(f) A local authority may propose the removal of a condition, restriction or product from its alcohol impact area's restricted product list provided that a local authority demonstrates its reason (such as, a product is no longer produced or bottled) to the board in writing.

~~(4) What ((are the circumstances required for the board to restrict the off-premises sale of alcohol within an AIA)) types of voluntary efforts must a local authority attempt before the board will recognize an alcohol impact area? ((The board may restrict the off-premises sale of alcohol within an AIA, subject to all of the following conditions:~~

~~(a) Product restrictions must be requested by the government subdivision's law enforcement agency or public health authority;~~

~~(b) The board must find that the off-premises sale of such alcohol products is reasonably linked to the problems associated with chronic public inebriation; and~~

~~(c) The government subdivision must have shown that voluntary efforts have failed to significantly reduce the impact~~

~~of chronic public inebriation, or that voluntary efforts need augmentation by license restrictions described in subsection (3) of this section.~~

~~(5) **What type of voluntary efforts must the government subdivision attempt before the board will implement mandatory product restrictions?** Before the board will implement mandatory product restrictions, the government subdivision's voluntary efforts must include:~~

~~(a) Notification of all off-premises sales licensees in the proposed AIA that behavior associated with alcohol sales is having an impact on chronic public inebriation.~~

~~(b) Documentation that the government subdivision has made reasonable efforts to implement voluntary agreements to promote business practices that reduce chronic public inebriation and promote public welfare, health, peace, and safety with licensees within the AIA who sell alcohol for off-premises consumption.)~~

(a) A local authority must notify all off-premises sales licensees in a proposed alcohol impact area that:

(i) Behavior associated with liquor sales and associated illegal activity is impacting chronic public inebriation; and

(ii) Existing voluntary options are available to them to remedy the problem.

(b) A local authority's efforts must include additional voluntary actions. Examples include, but are not limited to:

(i) Collaborative actions with neighborhood citizens, community groups or business organizations to promote business practices that reduce chronic public inebriation;

(ii) Voluntary agreements with off-premises sales licensees to promote public welfare, health, peace or safety;

(iii) Licensees voluntarily discontinuing to sell a product;

(iv) Distribution of educational materials to chronic public inebriants or licensees;

(v) Detoxification services;

(vi) Business incentives to discourage the sale of problem products; or

(vii) Change in land use ordinances.

~~((Implementation of these voluntary agreements must have been attempted))~~ A local authority must implement these voluntary agreements for at least six months before ~~((information is presented))~~ a local authority may present documentation to the board that voluntary efforts ~~((have))~~ failed ~~((or))~~ to adequately mitigate the effects of chronic public inebriation and need augmentation.

~~((6) If restrictions are approved for an AIA, the board will:))~~ **(5) What will the board do once it recognizes an alcohol impact area?**

~~((Notify the appropriate beer and wine distributors of the product restrictions placed on off-premises licensees within the AIA.~~

~~(b) When product restrictions on the off-premises sale of alcohol products are placed on licensees within an AIA, no state liquor store or agency within the AIA may sell these restricted products.)~~ The board will notify, in a timely manner, the appropriate liquor distributors of the product restrictions.

(b) No state liquor store or agency located within an alcohol impact area may sell that alcohol impact area's restricted products.

(c) The board will notify, in a timely manner, all off-premises sales licensees in a proposed or existing alcohol impact area whenever the board recognizes, or recognizes changes to, an alcohol impact area (see subsection (7) of this section).

~~((7))~~ **(6) What is the review process for liquor license applications, license assumptions, and renewals (for licensees) inside ((a recognized AIA)) an alcohol impact area?**
~~((Subject to the provisions of RCW 66.24.010(8):))~~

(a) When the board receives an application for a new liquor license or a license assumption that includes an off-premises sales privilege, the board will establish an extended time period of sixty calendar days for ~~((the government subdivision))~~ a local authority to comment ~~((on))~~ upon the ~~((liquor license))~~ application ~~((or assumption))~~.

(i) ~~((The government subdivision))~~ A local authority may, and is encouraged to, submit comment before the end of ~~((this sixty day period, but))~~ a comment period. A local authority may request an extension of ~~((this))~~ a comment period when unusual

circumstances, which must be explained in the request, require additional time for comment.

(ii) ~~((The requesting government subdivision))~~ A local authority will notify ~~((the))~~ a licensee or applicant when ~~((an extension of the))~~ a local authority requests the board to extend a sixty-day comment period ~~((is requested))~~.

(b) For renewals, ~~((notice will be mailed to the government subdivision not less than))~~ the board will notify a local authority at least ninety calendar days before ~~((the))~~ a current license expires. The same requirements in (a)(i) and (ii) of this subsection apply to the ninety-day comment period for problem renewals. For the purposes of this section, a problem renewal means a licensee, a licensed business or a licensed location with a documented history of noncompliance or illegal activity.

~~((+8))~~ **(7) When and for how long will an ((AIA)) alcohol impact area be in effect, and may an alcohol impact area be changed?** ~~((An AIA will remain in effect until:~~

~~(a) The sponsoring government subdivision repeals the specific enabling ordinance that originally defined the specific AIA recognized by the board; or~~

~~(b) The board repeals its recognition of an AIA as the result of a public hearing, called by the board acting on its own initiative or at the request of a community organization within the AIA, made after the AIA has been in effect for at least two years.)~~

(a) An alcohol impact area takes effect on the day that the board passes a resolution to recognize an alcohol impact area. However, product prohibitions take effect no less than thirty calendar days after the board passes such resolution in order to give retailers and distributors sufficient time to remove products from their inventories.

(b) An alcohol impact area remains in effect until:

(i) A local authority repeals the enabling ordinance that defines an alcohol impact area;

(ii) A local authority requests that the board revoke its recognition of an alcohol impact area;

(iii) The board repeals its recognition of an alcohol impact area of its own initiative and following a public hearing; or

(iv) A local authority fails to comply with subsection (8) of this section.

(c) A local authority may petition the board to modify an alcohol impact area's geographic boundaries, repeal or modify an existing condition or restriction, or create a new condition or restriction. The board may agree to do so provided that a local authority shows good cause and submits supporting documentation (see subsections (2) and (3) of this section).

(d) Prohibition of a new product added to an existing prohibited products list takes effect no less than thirty calendar days following the board's recognition of a modified prohibited products list.

(8) Reporting requirements and five-year assessments.

(a) A local authority shall submit annual reports to the board that clearly demonstrate the intended effectiveness of an alcohol impact area's conditions or restrictions. Reports are due no later than sixty calendar days following each anniversary of the board's recognition of an alcohol impact area.

(b) The board will conduct an assessment of an alcohol impact area once every five years following the fifth, tenth, fifteenth, et cetera, anniversary of the board's recognition of an alcohol impact area. The five-year assessment process is as follows:

(i) Within ten calendar days of receiving a local authority's fifth, tenth, fifteenth, et cetera, annual report, the board shall notify affected parties of the upcoming assessment, whereupon an affected party has twenty calendar days to comment upon, or petition the board to discontinue its recognition of, an alcohol impact area (see (d) of this subsection). Affected parties may include, but are not limited to: Licensees, citizens or neighboring local authorities.

(ii) An affected party may submit a written request for one twenty calendar-day extension of the comment/petition period, which the board may grant provided that an affected party provides sufficient reason why he or she is unable to meet the initial twenty-day deadline.

(iii) The board will complete an assessment within sixty calendar days following the close of the final comment/petition period.

(c) An assessment shall include an analysis of:

(i) Comments or petitions submitted by affected parties;
and

(ii) Each annual report submitted during a five-year period.

An assessment shall also include modifications that a local authority must make to an alcohol impact area as required by the board, or the board's reasons for revoking recognition of an alcohol impact area.

(d) To successfully petition the board to discontinue its recognition of an alcohol impact area, an affected party must:

(i) Submit findings of fact that demonstrate how chronic public inebriation, or illegal activity associated with liquor sales or consumption, within a proposed alcohol impact area does not or no longer:

(A) Contributes to the deterioration of the general quality of life within an alcohol impact area; or

(B) Threatens the welfare, health, peace or safety of an alcohol impact area's visitors or occupants;

(ii) Submit findings of fact that demonstrate the absence of a pervasive pattern of public intoxication or public consumption of liquor as documented in crime statistics, police reports, emergency medical response data, detoxification

reports, sanitation reports, public health records or similar records; and

(iii) Demonstrate how the absence of conditions or restrictions will reduce chronic public inebriation or illegal activity associated with off-premises sales or liquor consumption (see subsection (3) of this section).

(e) An affected party may submit a written request for one twenty-day extension of the comment period, which the board may grant provided that an affected party provides sufficient reason why he or she is unable to meet the twenty-day deadline.

[Statutory Authority: RCW 66.08.030 and 66.24.010. 99-13-042, § 314-12-215, filed 6/8/99, effective 7/9/99.]