



Washington State
Liquor and Cannabis Board

Date: December 9, 2020

To: Jane Rushford, Board Chair
Ollie Garrett, Board Member
Russ Hauge, Board Member

From: Audrey Vasek, Policy and Rules Coordinator

Copy: Rick Garza, Agency Director
Megan Duffy, Deputy Director
Justin Nordhorn, Chief of Enforcement
Becky Smith, Licensing Director
Kathy Hoffman, Policy and Rules Manager

Subject: **Request for approval of final rules (CR 103) regarding 2019 legislation implementation and rules review for Chapter 314-38 WAC (Student Tastings/ Permits).**

The Policy and Rules Coordinator requests that the Board adopt the final rules, and approve the CR 103 to implement the law as established by 2019 legislation Engrossed House Bill (EHB) 1563 (Chapter 112, Laws of 2019) and update, modernize, and clarify existing language in Chapter 314-38 WAC.

The Board has been briefed on the rule development background and public comment received for this rule making project. A CR 103 memorandum, draft CR 103 form, and rule text are attached.

If approved, the Policy and Rules Coordinator will send the concise explanatory statement concerning this rulemaking to all persons who provided comments. The Policy and Rules Coordinator file the rules with the Office of the Code Reviser. The effective date of the rules will be 31 days after filing, or January 9, 2021.

_____ Approve _____ Disapprove _____
Jane Rushford, Chair Date

_____ Approve _____ Disapprove _____
Ollie Garrett, Board Member Date

_____ Approve _____ Disapprove _____
Russ Hauge, Board Member Date

Attachment: CR 103 Memorandum
Concise Explanatory Statement



CR 103 Memorandum

Regarding 2019 Legislation Implementation and Rules Review for Chapter 314-38 WAC (Student Tastings/Permits).

Date: December 9, 2020

Presented by: Audrey Vasek, Policy and Rules Coordinator

Background

The Washington State Liquor and Cannabis Board (WSLCB) began to consider revisions to implement Engrossed House Bill (EHB) 1563 (Chapter 112, Laws of 2019; effective July 28, 2019) and to update, modernize, and clarify existing language in the permits chapter 314-38 WAC by initiating a formal rule inquiry under WSR # 19-12-037 on May 29, 2019.

The WSLCB held a virtual Listen and Learn session on September 3, 2020, to gather public feedback on conceptual draft rule language. The CR 102 rule proposal filed as WSR # 20-20-039 on September 30, 2020, incorporated some of the public feedback received during the Listen and Learn session.

Under chapter 314-38 WAC, the WSLCB may issue permits to certain entities to purchase, use, donate, or undertake other activities involving liquor, consistent with RCW 66.20.010 and 66.20.400. EHB 1563 amended the special permit for student tastings under RCW 66.20.010(12) to allow an enrolled student who is at least eighteen years of age to taste alcoholic beverages while on the premises of the college or university at which the student is enrolled, or while on a field trip to a grape-growing area or production facility, as long as the enrolled student is accompanied and supervised by a faculty or staff member with a mandatory alcohol server permit.

The adopted rules amend, reorganize, clarify, and modernize the existing requirements related to permits. Specifically, the adopted rules consolidate and reorganize WAC sections related to the same permit types (e.g., by repealing WAC 314-38-010 and adding the repealed language to WAC 314-38-050); modernize and clarify language (e.g. by removing references to “class” titles and updating section captions); and add references to authorizing statutes as appropriate. The adopted rules also revise WAC 314-38-060 to align the rule with and implement the law as established by EHB 1563. These adopted rules more clearly describe existing processes, and are anticipated to result in consistent rule application, interpretation, and guidance to support permit applicants.

Rule Necessity

The adopted rules are needed to support WSLCB permit applicants by confirming existing standards through language clarification and modernization. The adopted rules are also needed to implement the law as established by EHB 1563 concerning special permits for student tastings of alcohol.

Description of Rule Changes

Amended Section. WAC 314-38-020. This amended section reaffirms, streamlines, and updates existing rule language related to the fees for permits authorized under RCW 66.20.010 and 66.20.400. Revisions include adding subsections (12) and (18). Section (12) clarifies that there is no fee for the special permit for student tastings and incorporates RCW 66.20.010(12) by reference. Subsection (18) clarifies that the fee for the day spa permit is established in a different rule section and incorporates the appropriate state statute and rule by reference. Revisions also include non-substantive technical and clarifying changes, such as rearranging the sentence structure from “The fee of X dollars is established for Y permit” to “The fee for Y permit is X dollars,” and modernizing the style.

Amended Section. WAC 314-38-030. This amended section reaffirms, streamlines, and updates existing rule language related to the fee for replacement of a lost or destroyed license or permit. Revisions include replacing the term “agent’s license” with “representative’s license” in subsection (1) to align with the language in the referenced statute. Revisions also include non-substantive technical and clarifying changes, such as rearranging the sentence structure from “The fee of X dollars is established for Y” to “The fee for Y is X dollars,” and modernizing the style.

Amended Section. WAC 314-38-040. This amended section reaffirms, streamlines, and updates existing rule language related to the alcohol raffle permit. Revisions include non-substantive technical and clarifying changes, such as revising the section caption from “Beverage alcohol raffle permit—Fee” to “Alcohol raffle permit—Fee,” streamlining the phrase “beverage alcohol” to “alcohol” throughout, correcting the term “organization officer” to “organization’s officer,” and modernizing the style.

Amended Section. WAC 314-38-050. This amended section reaffirms, streamlines, and updates existing rule language related to the special permit to serve employees and guests. Revisions include non-substantive technical and clarifying changes, such as revising the section caption from “Serve employees and guests permit—Purpose—Use” to “Special permit to serve employees and guests—Purpose—Use—Fee” and modernizing the style. Language from WAC 314-38-010 (related to this same permit type and repealed by this rule proposal), including the fee, is rearranged and consolidated with the language in this

section. Subsection (15) regarding suspension or cancelation of the permit is streamlined and revised to incorporate a reference to RCW 66.20.070.

Amended Section. WAC 314-38-060. This amended section related to the special permit for student tastings of alcohol aligns the existing rule language with the law as established and dictated by Engrossed House Bill 1563, and reaffirms, streamlines, and updates the rule language. Revisions include non-substantive technical and clarifying changes, such as revising the section caption from “Special permit for technical or community colleges, regional university, or state university as authorized by RCW 66.20.010(12) shall be called a class 15 permit” to “Special permit for community or technical colleges, regional universities, or state universities.” The language in this section is rearranged, the style is modernized, and references to “class” titles of special permits are removed to better align the language with statute.

Amended Section. WAC 314-38-070. This amended section reaffirms, streamlines, and updates existing rule language related to the day spa permit. Revisions include non-substantive technical and clarifying changes, such as revising the section caption from “Class 16 day spa permit” to “Day spa permit— Fee.” The language in this section is rearranged and references to “class” titles of special permits are removed to better align the language with statute. Subsection (5) regarding suspension or cancelation of the permit is streamlined and revised to incorporate a reference to RCW 66.20.070.

Amended Section. WAC 314-38-080. This amended section reaffirms, streamlines, and updates existing rule language related to the special winery permit. Revisions include non-substantive technical and clarifying changes, such as revising the section caption from “Class 18 special winery permit” to “Special winery permit.” Subsection (1) is streamlined and revised to incorporate a reference to the authorizing statute, RCW 66.20.010(14). Subsection (2) is revised to include “on-premises” and off-premises consumption, which is consistent with the statute. The language in this section is rearranged, the style is modernized, and references to “class” titles of special permits are removed to better align the language with statute.

Amended Section. WAC 314-38-090. This amended section reaffirms, streamlines, and updates existing rule language related to the special distillery permit. Revisions include non-substantive technical and clarifying changes, such as revising the section caption from “Class 19 special distillery permit” to “Special distillery permit.” Subsection (1) is streamlined and revised to incorporate a reference to the authorizing statute, RCW 66.20.010(13). Subsection (2) is revised to include “on-premises” and off-premises consumption, which is consistent with the statute. The language in this section is rearranged, the style is modernized, and references to “class” titles of special permits are removed to better align the language with statute.

Amended Section. WAC 314-38-095. This amended section reaffirms, streamlines, and updates existing rule language related to the special brewery permit. Revisions include non-substantive technical and clarifying changes, such as revising the section caption from “Class 20 special brewery permit” to “Special brewery permit.” Subsection (1) is streamlined and revised to incorporate a reference to the authorizing statute, RCW 66.20.010(15), and the phrase “Washington breweries” is replaced with the term “Domestic breweries,” which is defined in RCW 66.04.010. Subsection (2) is revised to include “on-premises” and off-premises consumption, which is consistent with the statute. The language in this section is rearranged, the style is modernized, and references to “class” titles of special permits are removed to better align the language with statute.

Amended Section. WAC 314-38-100. This amended section reaffirms, streamlines, and updates existing rule language related to the accommodation sale permit. Revisions include non-substantive technical and clarifying changes, such as revising “WSLCB” to “board,” as well as other stylistic and grammatical revisions. Subsection (1) is revised to incorporate a reference to the authorizing statute, RCW 66.20.010(16).

Amended Section. WAC 314-38-110. This amended section reaffirms, streamlines, and updates existing rule language related to the nonprofit wine auction permit. Revisions include non-substantive technical and clarifying changes, such as revising the section caption and language in subsection (1) from “Nonprofit wine auction permit” to “Nonprofit private wine auction permit.” Subsection (1) is also revised to incorporate a reference to the authorizing statute, RCW 66.20.010(17).

Repealed Section. WAC 314-38-010. This section related to the “serve employees and guests permit” is repealed in order to streamline the permits chapter 314-38 WAC by consolidating this section with WAC 314-28-050, the other section in this chapter related to the serve employees and guests permit. Repealed language from this section is updated, rearranged, and consolidated with the language in amended section WAC 314-38-050.

Variance between proposed rule (CR102) and final rule:

There is no variance between the proposed rule and the final rule.

Rule Implementation

Informing and Educating Persons Impacted by the Rule

To help inform and educate persons impacted by the rule, the WSLCB will:

- Email notice with the adoption materials to persons who commented on the rules, the rule making and licensee distribution lists, and the general WSLCB 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.
- Provide information and training on request.

Promoting and Assisting Voluntary Compliance

WSLCB will promote and assist voluntary compliance through technical assistance.

- WSLCB staff are available to respond to phone and email inquiries about the rules.
- Licensing and Enforcement/Education leadership and staff have participated in rule revisions, and are familiar with the final product. Internal and external education efforts to share knowledge and assure consistent application of rule have will be supported.
- Rule and guidance documents will be available on the WSLCB website.
- WSLCB 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 WSLCB Staff

Several WSLCB 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 WSLCB 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

The WSLCB will evaluate the effectiveness of these rules in the following ways, including but not limited to:

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

Attachments: Final Rules
Concise Explanatory Statement



RULE-MAKING ORDER

PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

Agency: Washington State Liquor and Cannabis Board

Effective date of rule:

Permanent Rules

- 31 days after filing.
 Other (specify) (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: Chapter 314-38 WAC – Permits. The Washington State Liquor and Cannabis Board (WSLCB) has adopted revisions to existing permit rules to update, modernize, and clarify existing language. The WSLCB has also adopted revisions to WAC 314-38-060 to align existing rules with and implement the law as established by Engrossed House Bill (EHB) 1563 (Chapter 112, Laws of 2019), concerning special permits for alcohol tastings by students at least eighteen years of age enrolled in certain degree-related programs at community or technical colleges, regional universities, or state universities.

Citation of rules affected by this order:

New:

Repealed: WAC 314-38-010

Amended: WAC 314-38-020, 314-38-030, 314-38-040, 314-38-050, 314-38-060, 314-38-070, 314-38-080, 314-38-090, 314-38-095, 314-38-100, 314-38-110

Suspended:

Statutory authority for adoption: RCW 66.08.030.

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 20-20-039 on September 30, 2020 (date).

Describe any changes other than editing from proposed to adopted version: There were no changes from the proposed rules to the adopted rules.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: Audrey Vasek

Address: 1025 Union Avenue SE, Olympia WA 98501

Phone: 360-664-1758

Fax: 360-664-9689

TTY:

Email: rules@lcb.wa.gov

Web site: www.lcb.wa.gov

Other:

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New		Amended	1	Repealed	

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
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The number of sections adopted on the agency's own initiative:

New		Amended	11	Repealed	<u>1</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	___	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New		Amended	11	Repealed	1

Date Adopted: December 9, 2020

Name: Jane Rushford

Title: Chair

Signature:

Place signature here

WAC 314-38-020 Permits—Fees established. The fees for permits authorized under RCW 66.20.010 and 66.20.400 are ~~((hereby))~~ established as follows:

(1) ~~((A))~~ The fee ~~((of five dollars is established))~~ for a special permit ~~((as))~~ authorized by RCW 66.20.010(1) is five dollars.

(2) The fee for a special permit ~~((as))~~ authorized by RCW 66.20.010(2) for purchase of five gallons or less is ~~((established as))~~ five dollars and for purchase of over five gallons is ~~((established as))~~ ten dollars.

(3) ~~((A))~~ The fee for a banquet permit ~~((as))~~ authorized by RCW 66.20.010(3) ~~((as))~~ is established in WAC 314-18-040.

(4) The fee for a special business permit ~~((as))~~ authorized by RCW 66.20.010(4) ~~((as))~~ is established in WAC ~~((314-38-010(2)))~~ 314-38-050.

(5) The fee ~~((of ten dollars is established))~~ for a special permit ~~((as))~~ authorized by RCW 66.20.010(5) is ten dollars.

(6) ~~((A))~~ The fee ~~((of five dollars is established))~~ for a special permit ~~((as))~~ authorized by RCW 66.20.010(6) is five dollars.

(7) There is no fee for a special permit ~~((as))~~ authorized by RCW 66.20.010(7) ~~((shall be issued without charge to those eligible entities)).~~

(8) The fee ~~((of twenty-five dollars is established))~~ for a special permit ~~((as))~~ authorized by RCW 66.20.010(8) is twenty-five dollars.

(9) The fee ~~((of twenty-five dollars is established))~~ for a special permit ~~((as))~~ authorized by RCW 66.20.010(9) is twenty-five dollars.

(10) The fee ~~((of thirty dollars is established))~~ for a special permit ~~((as))~~ authorized by RCW 66.20.010(10) is thirty dollars.

(11) The fee ~~((of seventy-five dollars is established))~~ for a special permit ~~((as))~~ authorized by RCW 66.20.010(11) is seventy-five dollars.

(12) There is no fee for a special permit authorized by RCW 66.20.010(12).

~~((13))~~ The fee ~~((of ten dollars is established))~~ for a special permit ~~((as))~~ authorized by RCW 66.20.010(13) is ten dollars.

~~((13))~~ (14) The fee ~~((of ten dollars is established))~~ for a special permit ~~((as))~~ authorized by RCW 66.20.010(14) is ten dollars.

~~((14))~~ (15) The fee ~~((of ten dollars is established))~~ for a special permit ~~((as))~~ authorized by RCW 66.20.010(15) is ten dollars.

~~((15))~~ (16) The fee ~~((of twenty-five dollars is established))~~ for a special permit ~~((as))~~ authorized by RCW 66.20.010(16) is twenty-five dollars.

~~((16))~~ (17) The fee ~~((of twenty-five dollars is established))~~ for a special permit ~~((as))~~ authorized by RCW 66.20.010(17) is twenty-five dollars for each winery selling wine at the auction.

(18) The fee for a day spa permit authorized by RCW 66.20.400 is established in WAC 314-38-070.

AMENDATORY SECTION (Amending WSR 83-23-123, filed 11/23/83)

WAC 314-38-030 Fee for replacement of a lost or destroyed license or permit. (1) ((A)) The fee ((of five dollars is established)) for replacement by the board of a lost or destroyed ((agent's)) representative's license issued pursuant to RCW 66.24.310 is five dollars.

(2) The fee ((of five dollars is established)) for replacement by the board of a lost or destroyed retail or wholesale liquor license of any class is five dollars.

AMENDATORY SECTION (Amending WSR 92-01-079, filed 12/16/91, effective 1/16/92)

WAC 314-38-040 ((Beverage)) Alcohol raffle permit—Fee. (1) Any organization authorized to conduct a raffle under RCW 9.46.0315 may raffle ((beverage)) alcohol upon obtaining a raffle permit from the board. The fee for a raffle permit ((shall be)) is ten dollars for a one-time raffle permit or twenty-five dollars for an annual permit.

(2) An application for a raffle permit ((shall be on a form prescribed by the board and filed with the board at the headquarters of office in Olympia)) must be submitted at least thirty days in advance of ((the commencement of)) ticket sales.

(3) An application for a raffle permit must contain the following information:

(a) The full name of the bona fide charitable or bona fide non-profit organization with verification of qualification as ((prescribed)) referenced in RCW 9.46.0209;

(b) The name, address, and phone number of the ((organization)) organization's officer in charge of the raffle;

(c) The date the raffle ticket sales will ((commence)) begin;

(d) The date, time, and exact location of the drawing;

(e) A description of the ((beverage)) alcohol being raffled including its estimated value; and

(f) ((And)) The source of the alcohol to be raffled (purchased at retail or donated by a private citizen).

(4) An ((organization)) organization's officer must certify that:

(a) Only organization members may purchase tickets or be awarded prizes;

(b) The organization meets the qualifications of a bona fide charitable or bona fide nonprofit organization ((as provided in)) under RCW 9.46.0209;

(c) The organization will not sell more than ((\$5,000)) five thousand dollars ((worth)) of raffle tickets in a calendar year; and

(d) The organization will not sell raffle tickets to anyone under twenty-one years of age when alcohol is awarded as a prize.

(5) Alcohol to be raffled must have all applicable Washington State taxes paid and may only be:

(a) Purchased at retail; or

(b) Donated by a private citizen.

(6) ((Upon application being filed and fee paid the board may issue a raffle permit.)) The issued raffle permit will ((state the)) include:

- (a) The organization name (~~(b)~~) and address (~~(c)~~);
- (b) The date and time of the drawing (~~(d)~~);
- (c) The effective dates of the raffle permit (~~(e)~~); and
- (d) A description of the alcohol to be raffled.

(7) The raffle permit (~~shall~~) must be posted at the location of the drawing prior to and during the drawing. The organization or person in charge of the raffle (~~shall; when requested by~~) must allow any representative (~~(or agent)~~) of either the board (~~(and/or)~~) or any law enforcement officer (~~(; exhibit to such person the raffle permit and shall allow such person)~~), or both, to inspect the raffle permit and raffle items at any time.

AMENDATORY SECTION (Amending WSR 12-17-006, filed 8/1/12, effective 9/1/12)

WAC 314-38-050 Special permit to serve employees and guests
((permit))—Purpose—Use—Fee. (1) (~~The purpose of a serve employees and guests permit as~~) Businesses that are not licensed under Title 66 RCW may apply for a special permit authorized by RCW 66.20.010(4) (is to:

~~(a) Allow for the consumption of liquor products in private businesses; and~~

~~(b) Not to compete with liquor licensed establishments.~~

~~(2) All liquor served by holders of a serve employees and guests permit must be purchased at retail from the board or a retail liquor licensee.~~

~~(3) Liquor may not be sold by holders of a serve employees and guests permit, but may be provided at no charge for consumption on the premises of the permit holder.~~

~~(4) The holder of a serve employees and guests permit) to serve alcohol free of charge to employees and invited guests of the business.~~

(2) The annual fee for each permit is five hundred dollars.

(3) A separate permit is required for each business premises at which alcohol will be served or consumed.

(4) A permit is not transferable to another business or organization.

(5) A permit is valid for twelve months from the first day of the month in which it is issued.

(6) Permits may only be issued to businesses at which the service and consumption of alcohol is incidental to, and is not part of, the service of the business.

(7) The permit may not be used to stimulate or increase business from the general public.

(8) All alcohol served by permit holders must be purchased at retail from a Washington state retail liquor licensee.

(9) Alcohol service and consumption must be limited to either hospitality rooms or dining rooms, or both, on the premises of the permit holder's business.

(10) The general public may not enter an area of the business where alcohol is being served or consumed.

(11) Permit holders may not charge for admission to an area where alcohol is being served.

(12) Permit holders may not advertise the service of alcohol.

(13) Alcohol may not be sold by permit holders, including by scrip, donation, contribution, or other means.

(14) Permit holders may serve (~~liquor~~) alcohol for no more than twenty-four hours during any weekly (~~(168)~~) one hundred sixty-eight hour period.

~~((5) While the serve employees and guests permit holder may advertise their business services, no liquor service shall be advertised.)~~ (15) Consistent with RCW 66.20.070, failure to comply with applicable laws and rules may result in the suspension or cancellation of the permit.

AMENDATORY SECTION (Amending WSR 16-01-102, filed 12/16/15, effective 1/16/16)

WAC 314-38-060 Special permit for (~~technical or~~) community or technical colleges, regional (~~university~~) universities, or state (~~university as authorized by RCW 66.20.010(12) shall be called a class 15 permit~~) universities. (1) ~~((The class 15 permit allows tasting of alcohol by persons between eighteen and twenty years old. The requirements for a class 15 permit are as follows:~~

~~(a) The permit applicant is a technical or community college, regional university, or state university;~~

~~(b) The permit allows tasting, not consuming of alcohol.)~~ Community or technical colleges, regional universities, or state universities may apply for a special permit authorized by RCW 66.20.010(12) to allow tasting of alcohol by persons at least eighteen years of age who are enrolled as students in a required or elective class that is part of a culinary, sommelier, wine business, enology, viticulture, wine technology, beer technology or spirituous technology-related degree program.

(2) Students at least eighteen but under twenty-one years of age may not consume or purchase alcohol, but may taste alcohol for the purposes of educational training as part of the class curriculum with approval of the educational provider(;

~~(c) The student must be enrolled in a required or elective class at the college premises as part of a culinary, sommelier, wine business, enology, viticulture, beer technology, wine technology, or spirituous technology-related degree program;~~

~~(d) The alcohol served to any person in the program under twenty-one years of age is tasted but not consumed for the purpose of educational training as part of the class curriculum with the approval of the educational provider;~~

~~(e) Faculty or staff of the educational provider must be at least twenty-one years of age, supervise the service and tasting, and hold a class 12 or class 13 alcohol server permit; and~~

~~(f) Students may not purchase the alcoholic beverages)).~~

(3) Tastings may occur on the premises of the college or university at which the student is enrolled or while on a field trip to a grape-growing area or production facility.

(4) All tastings must be done under the supervision of a faculty or staff member of the college or university who is at least twenty-one years of age and possesses a class twelve or thirteen alcohol server permit under the provisions of RCW 66.20.310.

~~((2))~~ (5) There is no ~~((annual))~~ fee for this permit.

AMENDATORY SECTION (Amending WSR 14-20-046, filed 9/24/14, effective 10/25/14)

WAC 314-38-070 ((Class-16)) Day spa permit—Fee. (1) The annual fee for a day spa permit authorized by RCW 66.20.400 is one hundred twenty-five dollars.

(2) "Day spa" is defined as a business that offers at least three of the following four service categories:

- (a) Hair care (haircut, hair color, perms, etc.);
- (b) Skin care (facials, makeup application);
- (c) Nail care (manicure, pedicure); and
- (d) Body care (massage, wraps, waxing).

~~((2))~~ (3) The holder of a ~~((Class-16))~~ day spa permit may offer complimentary wine or beer by the individual glass under the following conditions:

- (a) Customers must be at least twenty-one years of age;
- (b) Spa services must last more than one hour;
- (c) A customer may consume no more than one six ounce glass of wine or one twelve ounce glass of beer per day;
- (d) Employees involved in the service of wine or beer must complete a board-approved limited alcohol server training program;
- (e) Permit holders may not advertise the service of complimentary wine or beer;
- (f) Wine and beer must be purchased from a Washington state licensed retailer;
- (g) The permit must be posted in a conspicuous area at the point of sale; and
- (h) At least three of the service area categories must be in separate areas of the spa.

~~((3))~~ (4) The board has the right to inspect the premises and business records at any time.

~~((4))~~ ~~The annual fee for this permit is one hundred twenty-five dollars.)~~

~~(5) ((Where the holder of any permit issued under this title violates any provision of this title or of the regulations, or is an interdicted person, or is otherwise disqualified from holding a permit, the board, upon proof to its satisfaction of the fact or existence of such violation, interdiction, or disqualification, and in its discretion, may with or without any hearing, suspend the permit and all rights of the holder thereunder for such period as the board sees fit, or may cancel the permit.))~~ Consistent with RCW 66.20.070, failure to comply with applicable laws and rules may result in the suspension or cancellation of the permit.

AMENDATORY SECTION (Amending WSR 17-08-099, filed 4/5/17, effective 5/6/17)

WAC 314-38-080 ((Class-18)) Special winery permit. (1) ~~((The special winery permit is for))~~ Domestic wineries may apply for a special permit authorized by RCW 66.20.010(14).

(2) ~~((A special winery))~~ The permit allows a manufacturer of wine to be present at a private event not open to the general public at a specific place and date for the purpose of tasting wine and selling wine of its own production for on-premises and off-premises consumption.

(3) ~~((The winery must obtain the special permit by submitting an application for a class 18 special winery permit to the board with a ten dollar permit fee.~~

~~((a-))~~ The application and fee must be submitted to the board at least ten days prior to ~~((the))~~ each event.

~~((b-))~~ (4) The special permit must be posted at the event.

~~((4-))~~ (5) The winery is limited to twelve events per calendar year.

AMENDATORY SECTION (Amending WSR 17-08-099, filed 4/5/17, effective 5/6/17)

WAC 314-38-090 ((Class-19)) Special distillery permit. (1) ~~((A special distillery/craft distillery permit is for))~~ Washington ~~((distillers only))~~ distilleries or craft distilleries may apply for a special permit authorized by RCW 66.20.010(13).

(2) ~~((A special distillery/craft distillery))~~ The permit allows a manufacturer of spirits to be present at a private event not open to the general public at a specific place and date for the purpose of tasting spirits and selling spirits of its own production for on-premises and off-premises consumption.

(3) The activities at the event are limited to the activities allowed on the distillery~~((/))~~ or craft distillery premises.

(4) ~~((The distillery or craft distillery must obtain the special permit by submitting an application for a class 19 special distillery/craft distillery permit to the board with a ten dollar permit fee.~~

~~((a-))~~ The application and fee must be submitted to the board at least ten days prior to ~~((the))~~ each event.

~~((b-))~~ (5) The special permit must be posted at the event.

~~((5-))~~ (6) The licensee is limited to twelve events per calendar year.

AMENDATORY SECTION (Amending WSR 17-08-099, filed 4/5/17, effective 5/6/17)

WAC 314-38-095 ((Class-20)) Special brewery permit. (1) ~~((A special brewery/microbrewery permit is for Washington brewers only))~~ Domestic breweries and microbreweries may apply for a special permit authorized by RCW 66.20.010(15).

(2) ~~((A special brewery/microbrewery))~~ The permit allows a manufacturer of beer to be present at a private event not open to the general public at a specific place and date for the purpose of tasting beer and selling beer of its own production for on-premises and off-premises consumption.

(3) ~~((The brewery or microbrewery must obtain the special permit by submitting an application for a class 20 special brewery/microbrewery permit to the board with a ten dollar permit fee.~~

~~(a))~~ The application and fee must be submitted to the board at least ten days prior to ~~((the))~~ each event.

~~((b))~~ (4) The special permit must be posted at the event.

~~((4))~~ (5) The licensee is limited to twelve events per calendar year.

AMENDATORY SECTION (Amending WSR 17-08-099, filed 4/5/17, effective 5/6/17)

WAC 314-38-100 Accommodation sale permit. (1) An accommodation sale permit ~~((is for))~~ authorized by RCW 66.20.010(16) allows an individual or business to sell a private collection of wine or spirits to another individual or business.

(2) The seller must ~~((complete))~~ submit an application ~~((for accommodation sale permit and submit with a fee of twenty-five dollars))~~ and twenty-five dollar fee to the ~~((WSLCB))~~ board.

(3) Once the ~~((WSLCB))~~ board verifies the information on the application, a permit for the sale will be issued to the seller.

(4) The seller must wait at least five business days after receiving the permit to release either the wine ~~((and/or))~~ or spirits, or both, to the buyer.

(5) Within twenty calendar days of the sale, the seller must complete an accommodation sale inventory report and submit it to the ~~((WSLCB))~~ board.

(6) The following are definitions for the purposes of this section:

(a) "Accommodation sale" means the sale of a private collection of wine or spirits to an individual or business. Both the seller and the buyer must be located in Washington state.

(b) "Buyer" means the individual or business buying a private collection of wine or spirits. A buyer may be a liquor licensee.

(c) "Private collection" means a privately owned collection of wine or spirits. There is no minimum or maximum quantity to be considered a collection.

(d) "Seller" means the individual or business selling a private collection of wine or spirits. The seller cannot be a liquor licensee.

AMENDATORY SECTION (Amending WSR 18-04-116, filed 2/7/18, effective 3/10/18)

WAC 314-38-110 Nonprofit private wine auction permit. (1) A nonprofit private wine auction permit ~~((is for))~~ authorized under RCW

66.20.010(17) allows a nonprofit organization to sell wine through a private auction not open to the public.

(2) The nonprofit organization must (~~complete a nonprofit wine auction permit application and~~) submit (~~the~~) an application and fee to the (~~WSLCB~~) board.

(a) The date and location of the auction must be specified on the application.

(b) Consistent with RCW 66.20.010(17), the one-time event fee is twenty-five dollars multiplied by the number of wineries that are selling wine at the auction event.

(c) A list of event attendees must be submitted with the wine auction permit application.

(3) The holder of the permit may conduct wine tastings of the wine to be auctioned at the event.

(4) All wine sold by auction cannot be consumed during the event.

(5) Wine from multiple wineries may be sold at the auction. Each winery must be listed on the application.

(6) The permit must be posted in a conspicuous location at the premises for which the permit was issued during all times the permit is in use.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 314-38-010 Serve employees and guests permit under
 Title 66 RCW.



Notice of Permanent Rules

Regarding 2019 Legislation Implementation and Rules Review for Chapter 314-38 WAC (Student Tastings/ Permits).

This concise explanatory statement concerns the Washington State Liquor and Cannabis Board's (WSLCB) adoption of amendments to existing rules regarding chapter 314-38 WAC – Permits.

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. The concise explanatory statement must be provided to any person upon request, or from whom the WSLCB received comment.

The WSLCB appreciates and encourages your involvement in the rule making process. If you have questions, please contact Audrey Vasek, Policy and Rules Coordinator, at (360) 664-1758 or e-mail at rules@lcb.wa.gov.

Background and reasons for adopting these rules

The Washington State Liquor and Cannabis Board (WSLCB) began to consider revisions to implement Engrossed House Bill (EHB) 1563 (Chapter 112, Laws of 2019; effective July 28, 2019) and to update, modernize, and clarify existing language in the permits chapter 314-38 WAC by initiating a formal rule inquiry under WSR # 19-12-037 on May 29, 2019.

Under chapter 314-38 WAC, the WSLCB may issue permits to certain entities to purchase, use, donate, or undertake other activities involving liquor, consistent with RCW 66.20.010 and 66.20.400. EHB 1563 amended the special permit for student tastings under RCW 66.20.010(12) to allow an enrolled student who is at least eighteen years of age to taste alcoholic beverages while on the premises of the college or university at which the student is enrolled, or while on a field trip to a grape-growing area or production facility, as long as the enrolled student is accompanied and supervised by a faculty or staff member with a mandatory alcohol server permit.

The adopted rules amend, reorganize, clarify, and modernize the existing requirements related to permits. Specifically, the adopted rules consolidate and reorganize WAC sections related to the same permit types (e.g., by repealing WAC 314-38-010 and adding the repealed language to WAC 314-38-050); modernize and clarify language

(e.g. by removing references to “class” titles and updating section captions); and add references to authorizing statutes as appropriate. The adopted rules also revise WAC 314-38-060 to align the rule with and implement the law as established by EHB 1563. These adopted rules more clearly describe existing processes, and are anticipated to result in consistent rule application, interpretation, and guidance to support permit applicants.

These rules are needed to support WSLCB permit applicants by confirming existing standards through language clarification and modernization. These rules are also needed to implement the law as established by EHB 1563 concerning special permits for student tastings of alcohol.

Rulemaking history for this adopted rule:

CR 101 – filed May 29, 2019 as WSR #19-12-037;
CR 102 – filed September 30, 2020 as WSR #20-20-039;
Public hearing held November 18, 2020.

One person testified at the November 18 public hearing. One written comment was received.

Public comment received on the rule proposal

The following comments were received as indicated below, and are presented in their native form, including text and spelling. A response to each comment is provided, along with an indication regarding whether the comment was reflected in the adopted rule.

1. Email received September 30, 2020:

From Josh McDonald:

To: Chair Rushford, Board Members Hauge and Garrett
Re: CR 102 on 2019 Legislative Implementation and Rules Review for Chapter 314-38 WAC (Student Tastings/Permits)

Dear Chair Rushford, Board Members Hauge and Garrett

Please accept these comments as the Washington Wine Institute’s formal comments on today’s request to approve the CR 102 on 2019 Legislative Implementation and Rules Review for Chapter 314-38 WAC (Student Tastings/Permits). My apologies for the delay in providing these written comments.

The Washington Wine Institute is supportive of the WSLCB moving forward with the CR 102. We want to compliment your team working on these rules, specifically Rules and Policy Coordinator Audrey Vasek, for engaging us in the process early on and creating an open dialogue to provide any comments and suggested changes we felt were needed to strengthen the proposed CR 102. As authors of the numerous pieces of legislation making these changes to student tastings as well as the creation of various other wine industry permits impacted under this rule revision work, our participation in this process is appropriate and we believe provides the understanding of intent and purpose so crucial to creating a set of rules that properly guide what is allowed under each permit utilized by your Washington wine industry.

Thank you for your continued willingness to engage with your licensees on this important work and value the importance of treating us as partners in this important work. We look forward to continuing to work on this CR 102 and all future WSLCB Rules Review efforts moving forward.

Kind Regards

Josh McDonald
Executive Director
WA Wine Institute

WSLCB response: The WSLCB appreciates these comments and the demonstration of interest in collaborative participation in the rulemaking process.

Was the comment reflected in the adopted rule? This comment is not reflected in the final rule.

2. **Oral testimony provided November 17, 2020:**

From Jim MacRae:

My name is Jim MacRae I am testifying basically as just a member of the public today. The testimony I am giving—I noticed it in the section where you are amending WAC 314-38-100. One of the editorial type changes you are making, semantic, is to change the “WSLCB” to “board.” Now I’ve given similar testimony in another context, but I wanted to reiterate it today. I believe “board” should be capitalized in this case. Just for proper grammar, it’s a note of respect. The “board” in this case unambiguously refers to the Washington State Liquor and Cannabis Board, and as such it’s considered proper and should be capitalized. If it was just a general board, that would be great, but it’s not. All references to it in this section are to the WSLCB as an entity, as such I believe the title should take it. Now, I’ll repeat the tongue in cheek suggestion I made at a Listen and Learn last year: If we can take liberties with grammar and do “board” lower case, I would submit as alternate language to capitalize “Board” and put the letters “DA” before it for “DABoard.”

WSLCB response: The WSLCB appreciates these comments and the demonstration of interest in collaborative participation in the rulemaking process. The change suggested to capitalize “board” is contrary to the instructions on style for the Washington Administrative Code (WAC) 2017 published by the Office of the Code Reviser and used by the Order Typing Service (OTS), which prepares proposed and adopted rules for state agencies. The instructions on style for the WAC provide a list of terms that should not be capitalized: “Do not capitalize . . . names of boards, bureaus, departments, or officers . . . state agencies.”¹ This is consistent with the instructions on style for the Revised Code of Washington provided in the Bill Drafting Guide published by the Office of the Code Reviser.²

Was the comment reflected in the adopted rule? This comment is not reflected in the final rule.

¹ Statute Law Committee, Office of the Code Reviser, Order Typing Service, *Instructions on Style for the Washington Administrative Code 2017*, at 9, <https://leg.wa.gov/CodeReviser/Documents/InstructionsOnStyle.pdf>.

² Statute Law Committee, Office of the Code Reviser, *Bill Drafting Guide 2019*, at Part IV Instructions on Style, (3) Capitalization, https://leg.wa.gov/CodeReviser/Pages/bill_drafting_guide.aspx#CAPITALIZATION. (“Do not capitalize . . . names of boards, bureaus, departments, or officers thereof”).