



Notice of Permanent Rules to for Chapters 314-02, 314-07, 314-11, and 314-12 WAC

This explanatory statement concerns the Washington State Liquor and Cannabis Board's adoption of rules for Chapters 314-02, 314-07, 314-11, and 314-12 WAC

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 September 1, 2017).

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 these rules?

As part of the Liquor and Cannabis Board's on-going rules review process, rules in these WAC Chapters were reviewed for relevance, clarity, and accuracy.

Summary of all public comments received on this rule proposal.

No comments were received at the public hearing held May 17, 2017.

CR 102 filed November 2, 2016 WSR 16-22-094. The following written comments were received:

Holly Chisa – Northwest Grocers Association

Comment: WAC 314-02-103 poses a "per day" limit on sales between on-premises and off-premises retailer. The court struck this language so it needs to be removed.

LCB response: The language was removed in the supplemental CR 102, filed March 22, 2017.

Julia Gorton – Washington Hospitality Association

Comment: WAC 314-02-103 poses a "per day" limit on sales between on-premises and off-premises retailer. The court struck this language so it needs to be removed.



LCB response: The language was removed in the supplemental CR 102, filed March 22, 2017.

Comment: WAC 314-02-015(3) definition of a restaurant. The proposed rule changes the definition of "restaurant". The proposed rule lacks clarity and is subjective.

LCB response: The proposed rule language was taken from RCW 66.24.410. The current rule referred to the RCW. The proposed rule adds statute language.

Comment: The WHA feels the barrier requirement needs to be revised.

LCB response: The barrier requirement is not addressed in this rulemaking. The board may, at a later date, look into this issue.

Comment: WAC 314-02-035 food service requirements. The proposed rule further restricts what items can and cannot be used to determine a complete meal.

LCB response: The only change to this rule was to clarify that garnishes do not qualify as a side dish. The complete meal language did not change.

Dan Sharp – Washington State Fair

Comment: Self-service of alcohol should be allowed if self-serving dispensing machines are used as in Interim Board Policy BIP 07-2011.

LCB response: Interim Board Policy BIP 07-2011 was adopted to allow self-service beer taps in a restaurant or tavern setting, not a sports/entertainment facility where the crowds are much larger than patrons at a restaurant or tavern. The board will not be changing the rules to allow self-service alcohol at a sports/entertainment facility.

Brett Enright – Juicys

Comment: Allow self-service of alcohol at sports/entertainment facilities.

LCB response: The board will not be changing the sports/entertainment facility rules to allow self-service of alcohol.

Dave Malone – Miller, Malone & Tellefson

Comment: WAC 314-02-058 – the proposed rule change requires submission of all operating plan changes to the WSLCB's Licensing division for approval. The language doesn't designate what changes would require approval. Only changes that materially alter the size of the facility, its attendance capacity or seek to increase the facility's alcohol beverage service capacity should be required to obtain an approval.

LCB response: Any changes to an operating plan need to be reported and a revised operating plan approved. The board has found many issues where sports/entertainment facilities have made substantial changes to how they operate without notification to the board. The operating plan needs to be correct and represent the operation of the facility.

Comment: WAC 314-02-058 site plans and beer gardens. Licensees don't necessarily use beer gardens for all of their events. The board should approve a maximum number of beer gardens at a facility so the licensee doesn't have to obtain an approval each time they want to add additional beer gardens.

LCB response: The site plan for the facility should include the location of all beer gardens. It is then up to the licensee to decide which, if not all, of the beer gardens they



will use for a given event. The board will already have approved all the beer garden locations whether they are used or not.

Comment: WAC 314-02-058 approval for walk around consumption at trade shows and special events. Requests for this activity should go to enforcement as they do now.

LCB response: These requests will go to enforcement as they do now. The language was added to clarify what information the licensee needs to provide.

Comment: WAC 314-02-058 darkened house rules. Darkened house has been a board policy since 2006. Intervening statutory and rule changes call into question whether the proposed rules are necessary.

LCB response: There have been no law or rule changes regarding sports/entertainment facility licenses. The rules are needed to clarify the process to get alcohol consumption in a darkened sports/entertainment facility. Local jurisdictions are required to approve of this activity and take full responsibility for control of the darkened area of the establishment.

Supplemental CR 102 was filed March 22, 2017, WSR 17-07-134. The following comments were received:

Josh McDonald – Washington Wine Institute

Comment: WAC 314-03-100 requires prior written notice to the board if a licensee is having a one-time event outside service extending beyond their licensed premises. This requirement would impose an unnecessary burden on wineries.

LCB response: The language of this rule was not changed in any way. The rule was moved from WAC 314-02-125 to Chapter 314-03. The language has been in rule since 2010. The rule has not appeared to create a burden to wineries.

Comment: WAC 314-07-055 temporary retail licenses. The privilege of having a temporary license is currently not available for wineries or breweries. We would ask the board to allow temporary licenses for wineries and breweries.

LCB response: RCW 66.24.010 does not authorize a temporary license for breweries or wineries.

Comment: WAC 314-03-200 would negatively impact our wineries that hold outdoor events.

LCB response: The language of this rule was not changed in any way. The rule was moved from WAC 314-02-130 to Chapter 314-03. The rule has not appeared to negatively impact wineries.

Dan Sharp – Washington State Fair

Comment: Operating plan changes should be submitted to enforcement, not licensing.

LCB response: All license information and approvals are kept in the licensing division. Licensing staff will send copies of any approvals to the appropriate enforcement office.

Comment: Self-service of alcohol should be allowed if self-serving dispensing machines are used as in Interim Board Policy BIP 07-2011.

LCB response: Interim Board Policy BIP 07-2011 was adopted to allow self-service beer taps in a restaurant or tavern setting, not a sports/entertainment facility where the



Washington State Liquor and Cannabis Board

crowds are much larger than patrons at a restaurant or tavern. The board will not be changing the rules to allow self-service alcohol at a sports/entertainment facility.

Adam Smith, Distilled Spirits Council

Comment: We urge the board to include spirits consumption in all seating areas of a sports/entertainment facility. We also urge the board to allow roving servers to sell spirits and wine (not only beer) in seating areas at professional sporting events.

LCB response: The board will not be revising the sports/entertainment rules to allow spirits consumption or roving servers at this time.

Comment: Eliminate the revised definition of “building” that does not include a licensed premises if it is not a “stationary structure” or is a “food truck”

LCB response: The board revised the definition to clarify to applicants and licensees what type of structure is required to obtain a liquor license.

Comment: The ration of staff to attendees appears to be excessive (1:50).

LCB response: This is not new language. Staff includes alcohol servers and security. The number is not excessive when you combine the staff. Sports/entertainment facility licensees have not had issues with this current requirement.

Comment: A limit of two beverage alcohol drinks per patron to be sold and served per transaction creates unnecessary burdens for both the patron and the venue.

LCB response: This is not new language. Sports/entertainment facility licensees have not had issues with this current rule.

Comment: Requiring sports/entertainment facility licensees to have different containers for alcoholic and non-alcoholic beverages needs to be removed.

LCB response: This is not new language. Sports/entertainment facility licensees have not had issues with this current rule. This is also a public safety issue.

Comment: The board should not require a sports/entertainment facility to obtain prior approval for a special event.

LCB response: This is not new language. The sports/entertainment facility licensees have not had issues with this current rule. Enforcement needs to be aware of special events in order to coordinate enforcement resources for the event.

WAC Changes

See attachment.