



CR103 Memorandum

Regarding Chapter 314-05 WAC – Special Occasion Licenses.

Date: September 30, 2020

Presented by: Audrey Vasek, Policy and Rules Coordinator

Background

In January of 2019, the WSLCB began the initial stages of rule review regarding special occasion licenses. This regulatory review was designed to determine whether the rules described in current chapter 314-05 WAC should be retained in their current form, amended, or repealed. The review also concentrated on rules or portions of rule that have been the subject or source of complaints, concerns, or other difficulties that related to matters other than the specific mandates of the statute or statutes on which the rules are based.

The following criteria are used for the review of each rule WSLCB identifies for review:

- **Need.** Is the rule necessary to comply with the statutes that authorize it? Is the rule obsolete, ambiguous or duplicative that suggests a revision? Have laws or other circumstances changed so that the rule should be amended or repealed? Is the rule necessary to protect or safeguard the health and safety of Washington's citizens?
- **Effectiveness and Efficiency.** Is the rule providing the results that it was originally designed to achieve in a reasonable manner? Are there regulatory alternatives or new technologies that could more effectively or efficiently achieve the same objectives?
- **Clarity.** Is the rule written and organized in a clear and concise manner so that it can be readily understood by those to whom it applies?
- **Intent and Statutory Authority.** Is the rule consistent with the legislative intent of the statutes that authorize it? Is the rule based upon sufficient statutory authority? Is there a need to develop more specific legislative authorization in order to protect the health, safety, and welfare of Washington citizens?
- **Coordination.** Could additional consultation and coordination with other governmental jurisdictions and state agencies with similar regulatory authority eliminate or reduce duplication and inconsistency?

- **Cost.** Have the qualitative and quantitative benefits of the rule been considered in relation to its cost?
- **Fairness.** Does the rule result in equitable treatment of those required to comply with it? Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community? Should it be strengthened to provide additional protection?

The original CR102 regarding special occasion licenses was filed on November 13, 2019 as WSR 19-23-046 setting a hearing for January 8, 2020. A number of comments were offered before and during that hearing that resulted in WSLCB reconsidering the original rule proposal. Some suggested substantive changes were made to the original proposal. RCW 34.05.340 provides that an agency may not adopt a rule that is substantially different from the rule proposed in the published notice of proposed rule adoption or a supplemental notice in the proceeding. If an agency contemplates making a substantial variance from a proposed rule described in a published notice, it may file a supplemental notice with the code reviser meeting the requirements of RCW 34.05.320 and reopen the proceedings for public comment on the proposed variance. A supplemental CR 102 was filed on May 27, 2020 setting a hearing for July 8, 2020. That hearing was held as scheduled.

The adopted rule revisions amend, reorganize, clarify, and modernize existing requirements related to special occasion licenses. Specifically, the adopted rule clarifies that a special occasion license is a retail license; updates application requirements and adds information from the current on-line application; provides clarifying updates for special occasion events; and adds statutory references that clarify requirements for alcohol and monetary donations, advertising, ticket and alcohol sales, and payment information. These revisions more clearly describe existing processes, and are anticipated to result in increased access to and use of on-line licensing resources by applicants and licensees, as well as consistent rule application, interpretation, and guidance designed to support applicant and licensee success.

Rule Necessity

The adopted rules are needed to support WSLCB applicants and licensees by confirming existing standards through language clarification and modernization describing those standards. The adopted rules are designed to assure applicants and licensees have clear and relevant guidelines in place regarding special occasion licenses and events, and assure access to licensing resources and guidance. The adopted rules are anticipated to increase agency efficiency and effective delivery of services to applicants and licensees.

Description of Rule Changes

Amended Section. WAC 314-05-020 – Revised title from “What is a special occasion license?” to “Special occasion license.” Reaffirms, streamlines
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and updates existing rule language and guidance related to the issuance of special occasion licenses. Revisions include assuring language consistency throughout the section, and retains the current licensing fee of \$60 per day, per event. Strikes existing language relocated to WAC 314-05-030. Updates also include non-substantive word additions.

Amended Section. WAC 314-05-025 – Reaffirms, streamlines, and updates existing rule language and guidance regarding the application process for a special occasion license, mirroring the structure of the current special occasion application. Provides specific reference to chapter 314-07 WAC, regarding how to apply for and maintain a liquor license. Updates also include non-substantive word additions.

Amended Section. WAC 314-05-030 – Revised title from “Guidelines for special occasion license events” to “Requirements for special occasion license events.” Reaffirms, clarifies, and updates existing language by adding specific, relevant elements of:

- RCW 66.28.070, regarding restrictions on purchases of spirits, beer, or wine by retail spirits, beer, or wine licensees or special occasion licensees;
- RCW 66.28.310, regarding three-tier promotional items; and
- RCW 66.28.040, regarding exceptions to prohibition of giving away liquor, specifically alcohol that may be donated to special occasion licensees registered as 501(c)(3) and 501(c)(6) businesses;
- RCW 66.24.375, regarding portion of the profits from events sponsored by a not-for-profit group that may be paid directly or indirectly to members, officers, directors, or trustees except for services performed for the organization;
- RCW 66.24.380, regarding sale, service, and consumption of spirits, beer, and wine is to be confined to specified premises or designated areas.

Updates also include non-substantive word additions.

Amended Section. WAC 314-05-035- Revised title from, “Branded promotional items” to “Advertising and branded promotional items for special occasion events.” Reaffirms, clarifies, and updates existing language with specific reference to statutory construction of RCW 66.28.285 through 66.28.310 regarding the three-tier system, direct and indirect interests between industry members and retailers, undue influence, exclusive agreements, and money advances. Although these statutes apply to all WSLCB liquor licensees, these statutory references had not previously been provided in rule.

Substantive updates to this section include specific statutory elements described in subsection (2); branding and advertising arrangements in subsections (4)(c) and (d); and alcohol-related promotional materials described in subsection (5). Language was removed from subsections (6) and (8). The word “retailer” was removed from section 10(a) and replaced with “special occasion licensee.”

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 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 program 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. Also, the WSLCB will consider:

- Provision of internal and external training and education, as needed, including webinars, training and potentially YouTube 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, and other metrics as appropriate.

Attachments: Final Rules
Concise Explanatory Statement