



RULE-MAKING ORDER PERMANENT RULE ONLY

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

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STATE OF WASHINGTON
FILED

DATE: January 20, 2021

TIME: 10:16 AM

WSR 21-03-095

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: Implementation of 2020 Alcohol Legislation. The Washington State Liquor and Cannabis Board (Board) has adopted new rule sections and amendments to existing rule sections to align existing rules with and implement the law as established by the following four alcohol-related bills enacted during the 2020 legislative session:

- House Bill (HB) 2412 (chapter 230, Laws of 2020), which is codified in RCW 66.24.240(4), 66.24.244(4), 66.28.200(2) and (3), 66.28.210(1) and (2), and 66.28.220(1), (3), and (4);
- Engrossed Substitute Senate Bill (ESSB) 5006 (chapter 186, Laws of 2020), which is codified in RCW 66.24.246;
- Engrossed Substitute Senate Bill (ESSB) 6095 (chapter 200, Laws of 2020), which is codified in RCW 66.28.310(1), (5), (7), (11) and (12), and 66.24.395(2) and (3); and
- Substitute Senate Bill (SSB) 6392 (chapter 210, Laws of 2020), which is codified in RCW 66.24.165.

Specifically, the adopted rules:

- Amend WAC 314-20-017 and 314-02-115 to align existing rule language with the changes made to statute by HB 2412;
- Create two new rule sections WAC 314-20-019 and 314-24-163 to implement the new brewery/winery on-premise consumption endorsement created in ESSB 5006;
- Amend WAC 314-27-010, 314-52-080, 314-52-090, 314-52-110, and 314-12-140 to align existing rule language with the changes made to statute by ESSB 6095; and
- Create a new rule section WAC 314-24-270 to implement the new local wine industry association license created by SSB 6392.

The following section in chapter 314-02 WAC is revised: WAC 314-02-115 "What are the requirements for licensees that sell keg beer?"

The following section in chapter 314-12 WAC is revised: WAC 314-12-140 "Prohibited practices—Contracts—Gifts—Rebates, etc."

The following sections in chapter 314-20 WAC are revised or new: WAC 314-20-017 "Brewery and microbrewery retail liquor licenses—Selling kegs and containers."; WAC 314-20-019 "Domestic brewery or microbrewery endorsement for on-premises consumption of wine."

The following sections in chapter 314-24 WAC are new: WAC 314-24-163 "Domestic winery endorsement for on-premises consumption of beer."; WAC 314-24-270 "Local wine industry association license."

The following section in chapter 314-27 WAC is revised: WAC 314-27-010 "Liquor purchases by Interstate Common Carrier licensees—Reports."

The following sections in chapter 314-52 WAC are revised: WAC 314-52-080 "Novelty advertising."; WAC 314-52-090 "Advertising sponsored jointly by retailers and manufacturers, imports, or distributors."; WAC 314-52-110 "Advertising by retail licensees."

Citation of rules affected by this order:

New: WAC 314-20-019, 314-24-163, 314-24-270

Repealed:

Amended: WAC 314-02-115, 314-12-140, 314-20-017, 314-27-010, 314-52-080, 314-52-090, 314-52-110

Suspended:

Statutory authority for adoption: RCW 66.08.030.

Other authority: For WAC 314-20-017 and 314-02-115: RCW 66.24.240, 66.24.244, 66.28.200, 66.28.210, and 66.28.220 (HB 2412); for WAC 314-20-019 and 314-24-163: RCW 66.24.246 (ESSB 5006); for WAC 314-27-010, 314-52-080, 314-52-090, 314-52-110, and 314-12-140: RCW 66.28.310 and 66.24.395 (ESSB 6095); and for WAC 314-24-270: RCW 66.24.165 (SSB 6392).

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 20-23-125 on November 18, 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: 360-704-5027

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	3	Amended	7	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		Repealed	
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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	3	Amended	7	Repealed	

Date Adopted: January 20, 2021

Name: Jane Rushford

Title: Chair

Signature:

A handwritten signature in black ink, appearing to read "Jane Rushford". The signature is written in a cursive style with a large initial "J".

WAC 314-02-115 (~~(What are the)~~) **Requirements for licensees that sell keg beer(?)**. (~~(Per)~~) Consistent with RCW 66.28.200 and 66.28.210(~~(, any)~~):

(1)(a) Any licensee, except for a domestic brewery or microbrewery selling beer of its own production as provided in subsection (3) of this section, who sells beer for off-premises consumption in kegs or other containers holding four or more gallons of beer must(~~(+~~

~~(1))~~ require the purchaser to provide at least one piece of identification (see ((RCW 66.16.040)) WAC 314-11-025 for acceptable forms of identification); and

~~((2))~~ (b) The licensee or employee and purchaser must fill out a keg registration form, provided by the board, which contains:

~~((a))~~ (i) The name and address of the purchaser;

~~((b))~~ (ii) The type and number of the identification presented by the purchaser;

~~((c))~~ (iii) The address where the beer will be consumed and the date on which it will be consumed; and

~~((d))~~ (iv) A sworn statement, signed by the purchaser under penalty of perjury, that ((the purchaser)):

~~((i))~~ (A) The purchaser is at least twenty-one years of age;

~~((ii))~~ (B) The purchaser will not allow persons under twenty-one years of age to consume the beer purchased;

~~((iii))~~ (C) The purchaser will not remove or obliterate the keg registration form affixed to the keg or allow it to be removed or obliterated; and

~~((iv))~~ (D) The address listed in ((c)) (b)(iii) of this subsection is the true and correct address at which the beer will be consumed or physically located.

~~((3))~~ (2) It is the licensee's or employee's responsibility to distribute the properly completed keg registration form as follows:

(a) One copy to the purchaser;

(b) One copy affixed to the keg or container holding four gallons or more of beer, prior to it leaving the licensed premises; and

(c) One copy must be retained on the licensed premises for one year, available for inspection and copying by any law enforcement officer.

(3) Domestic breweries and microbreweries and their licensed retail locations are not subject to the keg registration and container identification requirements when selling kegs or other containers containing four gallons or more of beer of the licensee's own production, and purchasers of these kegs or containers are not subject to the related purchaser requirements, except that the purchaser must be at least twenty-one years of age and must not allow persons under twenty-one years of age to consume any beer purchased.

(4) Except in cases involving sales by domestic breweries and microbreweries of beer of the licensee's own production as described in subsection (3) of this section, possession of a keg or other container which holds four gallons or more of beer without a properly completed keg registration form affixed to it, other than on the licensee's premises, will be a violation of this title.

WAC 314-12-140 Prohibited practices—Contracts—Gifts—Rebates, etc. (1) No industry member or retailer shall enter into any agreement which causes undue influence over another retailer or industry member. This regulation shall not be construed as prohibiting the placing and accepting of orders for the purchase and delivery of liquor which are made in accordance with the usual and common business practice and which are otherwise in compliance with the regulations.

(2) Except as permitted under RCW 66.28.310, no industry member shall advance and no retailer, any employee thereof, or applicant for a retail liquor license shall receive money or money's worth under any written or unwritten agreement or any other business practice or arrangement such as:

- (a) Gifts;
- (b) Discounts;
- (c) Loans of money;
- (d) Premiums;
- (e) Rebates;
- (f) Free liquor of any kind; or
- (g) Treats or services of any nature whatsoever except such services as are authorized in this regulation.

(3) Pursuant to RCW 66.28.310 and 66.44.318 an industry member or licensed agent may perform the following services for a retailer:

(a) Build, rotate, and restock displays, utilizing filled cases, filled bottles or filled cans of its own brands only, from stock or inventory owned by the retailer.

(b) Rotate, rearrange or replenish bottles or cans of its own brands on shelves or in the refrigerators but is prohibited from rearranging or moving displays of its products in such a manner as to cover up, hide or reduce the space of display of the products of any other industry member.

(c) Industry members or any employees thereof may move or handle in any manner any products of any other manufacturer, importer or distributor on the premises of any retail licensee when a two-day notice is given to other interested industry members or their agents and such activity occurs during normal business hours or upon hours that are mutually agreed.

(d) Provide price cards and may also price goods of its own brands in accordance with the usual and common business practice and which are otherwise in compliance with the regulations.

(e) Provide point of sale advertising material and brand signs.

(f) Provide sales analysis of beer and wine products based on statistical sales data voluntarily provided by the retailer involved for the purpose of proposing a schematic display for beer and wine products. Any statistical sales data provided by retailers for this purpose shall be at no charge.

(g) Such services may be rendered only upon the specific approval of the retail licensee. Displays and advertising material installed or supplied for use on a retailer's premises must be in conformity with the board's advertising rules as set forth in chapter 314-52 WAC.

(h) Licensees holding nonretail class liquor licenses are permitted to allow their employees between the ages of eighteen and twenty-one to stock, merchandise, and handle liquor on or about the:

- (i) Nonretail premises if there is an adult twenty-one years of age or older on duty supervising such activities on the premises; and
- (ii) Retail licensee's premises, except between the hours of 11:00 p.m. and 4:00 a.m., as long as there is an adult twenty-one years of age or older, employed by the retail licensee, and present at the retail licensee's premises during the activities.

Any act or omission of the nonretail class liquor licensee's employee occurring at or about the retail licensee's premises, which violates any provision of this title, is the sole responsibility of the nonretail class liquor licensee.

(4) No industry member or employee thereof shall, directly or indirectly, give, furnish, rent or lend to, or receive from, any retailer, any equipment, fixtures, supplies or property of any kind, nor shall any retail licensee, directly or indirectly, receive, lease or borrow from, or give or offer to, any industry member any equipment, fixtures, supplies or property of any kind. Sales authorized in this regulation shall be made on a cash on delivery basis only.

(5) No industry member or employee thereof shall sell to any retail licensee or solicit from any such licensee any order for any liquor tied in with, or contingent upon, the retailer's purchase of some other beverage, alcoholic or otherwise, or any other merchandise, property or service.

(6) In selling equipment, fixtures, supplies or commodities other than liquor, no industry member shall grant to any retailer, nor shall such retailer accept, more favorable prices than those extended to nonlicensed retailers. The price thereof shall be not less than the industry member's cost of acquisition. In no event shall credit be extended to any retailer.

(7) Any industry member who sells what is commonly referred to as heavy equipment and fixtures, such as counters, back bars, stools, chairs, tables, sinks, refrigerators or cooling boxes and similar articles, shall immediately after making any such sales have on file and available for inspection, records including a copy of the invoice covering each such sale, which invoice shall contain the following information:

- (a) A complete description of the articles sold;
- (b) The purchase price of each unit sold together with the total amount of the sale;
- (c) Transportation costs and services rendered in connection with the installation of such articles; and
- (d) The date of such sale and affirm that full cash payment for such articles was received from the retailer as provided in subsection (4) of this section.

(8) If the board finds in any instance that any licensee has violated this regulation, then all licenses involved shall be held equally responsible for such violation.

Note: WAC 314-12-140 is not intended to be a relaxation in any respect of section 90 of the Liquor Act (RCW 66.28.010). As a word of caution to persons desiring to avail themselves of the opportunity to sell to retail licensees fixtures, equipment and supplies subject to the conditions and restrictions provided in section 90 of the act and the foregoing regulation, notice is hereby given that, if at any time such privilege is abused or experience proves that as a matter of policy it should be further curtailed or eliminated completely, the board will be free to impose added restrictions or to limit all manufacturers and distributors solely to the sale of liquor when dealing with retail licensees. WAC 314-12-140 shall not be considered as granting any vested right to any person, and persons who engage in the business of selling to retail licensees property or merchandise of any nature voluntarily assume the risk of being divested of that privilege and they will undertake such business subject to this understanding. The board also cautions that certain trade practices are prohibited by rulings issued under the Federal Alcohol Administration Act by the United States Bureau of Alcohol, Tobacco and Firearms, and WAC 314-12-140 is not intended to conflict with such rulings or other requirements of federal law or regulations.

WAC 314-20-017 Brewery and microbrewery retail liquor licenses—Selling kegs and containers. A brewery or microbrewery licensed under RCW 66.24.240 or 66.24.244 may hold up to ~~((two))~~ four retail liquor licenses to operate a spirits, beer, and wine restaurant, a tavern, a beer and/or wine restaurant, or any combination thereof.

(1) Definitions. For the purposes of this section, a "container" is a sealable receptacle, such as a carton, jug, growler or keg, and has no minimum holding requirement. A "keg" is a container holding four gallons or more beer.

(2) Applicable to retail licenses for spirits, beer, and wine restaurants, beer and/or wine restaurants, and taverns.

(a) A retail license is separate from a brewery or microbrewery license.

(b) All containers of beer must be sold from the retail premises.

(c) A retail location may be located on or off the brewery or microbrewery premises.

(3) A brewery-operated or microbrewery-operated spirits, beer, and wine restaurant may sell containers of beer of its own production and cider as defined in RCW 66.24.210~~((+6))~~ without a kegs-to-go endorsement provided that it sells this beer and cider for off-premises consumption only. A brewery or microbrewery may supply the container or use a container brought to the premises by a customer, and filled at the tap at the time of sale.

(4) A brewery-operated or microbrewery-operated spirits, beer, and wine restaurant may sell kegs of malt liquor of another brewery's or microbrewery's production provided that it:

(a) Sells this malt liquor for off-premises consumption only;

(b) Has a kegs-to-go endorsement; and

(c) Supplies the kegs.

(5) A tavern or beer and/or wine restaurant that is operated by a brewery or microbrewery and has an off-premises beer and wine retailer's privilege may:

(a) Sell kegs of malt liquor for off-premises consumption. The malt liquor may be of the licensee's own production or the production of another brewery or microbrewery;

(b) Sell containers of beer for off-premises consumption provided that the customer supplies the container. The beer may be of the licensee's own production or the production of another brewery or microbrewery; and

(c) Sell containers of cider as defined in RCW 66.24.210(6) for off-premises consumption in a sanitary container brought to the premises by the customer or provided by the licensee and filled at the tap at the time of sale, provided the licensee has a license to sell wine. The licensee must comply with federal regulations.

NEW SECTION

WAC 314-20-019 Domestic brewery or microbrewery endorsement for on-premises consumption of wine. Consistent with RCW 66.24.246:

(1) A domestic brewery or microbrewery may apply for an endorsement to sell wine for on-premises consumption.

(2) The endorsement holder must comply with each of the following requirements:

(a) The wine must be produced in Washington;

(b) The wine must be sold by the single serving for on-premises consumption; and

(c) The number of wine offerings for sale at any one time is limited to three.

(3) The annual fee for the on-premises consumption endorsement is two hundred dollars.

NEW SECTION

WAC 314-24-163 Domestic winery endorsement for on-premises consumption of beer. Consistent with RCW 66.24.246:

(1) A licensed domestic winery may apply for an endorsement to sell beer for on-premises consumption. A separate endorsement is required for each location.

(2) The endorsement holder must comply with each of the following requirements:

(a) The beer must be produced in Washington;

(b) The beer must be sold by the single serving for on-premises consumption; and

(c) The number of beer offerings for sale at any one time is limited to three.

(3) The annual fee for the on-premises consumption endorsement is two hundred dollars for each location.

NEW SECTION

WAC 314-24-270 Local wine industry association license. Consistent with RCW 66.24.165:

(1) A nonprofit society or organization that is specifically created with the express purpose of encouraging consumer education of and promoting the economic development for a designated area of the Washington state wine industry, including both Washington statewide and Washington regional organizations, may apply for a local wine industry association license. Consistent with RCW 66.24.010(9), the board will send a local authority notice before issuing a local wine industry association license.

(2) A local wine industry association licensee may conduct a maximum of twelve events per year, and must provide notification to the board at least forty-five days before an event or the start of a marketing program conducted under the license. The board will send a local authority notice to the jurisdiction in which the event or marketing program is to be conducted under the license.

(3) A local wine industry association licensee may also apply for special occasion licenses under RCW 66.24.380 (see chapter 314-05 WAC) and special permits under RCW 66.20.010 (see chapter 314-38 WAC). The twelve events allowable under the local wine industry association license are separate and distinct from the twelve events allowable under the special occasion license.

(4) Wine furnished to a local wine industry association licensee is subject to taxes under RCW 66.24.210 (see WAC 314-19-015).

(5) The annual fee for the local wine industry association license is seven hundred dollars.

WAC 314-27-010 ((Liquor purchases by)) Interstate common carrier ((licensees)) license—Reports. (1) Any licensee authorized by the board to sell liquor may sell liquor to the holder of an interstate common carrier license upon presentation of a special permit issued by the board to such licensee.

(2) Sales of liquor to such properly licensed interstate commercial common passenger carriers shall be treated as sales for export.

(3) Every federally licensed interstate commercial common passenger carrier, holding an interstate common carrier license shall, on or before the twentieth day of each month, make a report to the board, upon forms approved by the board, of all ((spirituous liquor,)) beer and wine served or sold at retail for passenger consumption by such common carrier within or over the territorial limits of the state of Washington during the preceding calendar month.

(4) Licensed beer and wine importers and distributors who sell beer or wine to such properly licensed interstate commercial common passenger carriers shall treat such sales as exports from the state.

(5) Licensed interstate common carriers may provide complimentary alcoholic beverages to passengers aboard passenger trains, vessels, or airplanes as authorized under RCW 66.24.395.

(6) Licensed interstate common carriers and industry members may engage in promotional, advertising, and other activities permitted under RCW 66.28.310.

WAC 314-52-080 Novelty advertising. (1) Novelty branded promotional advertising items which are of nominal value, singly or in the aggregate, may be provided to retailers by industry members. Singly or in the aggregate is per licensed location. Such items include, but are not limited to: Trays, lighters, blotters, post cards, pencils, coasters, menu cards, meal checks, napkins, clocks, mugs, glasses, bottle or can openers, corkscrews, matches, printed recipes, shirts, hats, visors, and other similar items. Branded promotional items:

(a) Must be used exclusively by the retailer or its employees in a manner consistent with its license;

(b) Must bear imprinted advertising matter of the industry member only;

(c) May only be provided by industry members to retailers and their employees;

(d) May not be provided by or through retailers or their employees to retail customers.

(2) An industry member is not obligated to provide any branded promotional items, and a retailer may not require an industry member to provide such branded promotional items as a condition for selling any alcohol to the retailer.

(3) Any industry member, retailer, or other person asserting the provision of branded promotional items has resulted or is more likely than not to result in undue influence or an adverse impact on public health and safety, or is otherwise inconsistent with the criteria in subsection (1) of this section, may file a complaint with the board.

Upon receipt of a complaint the board may conduct an investigation as it deems appropriate in the circumstances.

(a) The board may issue an administrative violation notice to the industry member, to the retailer, or both.

(b) The recipient of the administrative violation notice may request a hearing under chapter 34.05 RCW.

(4) An industry member or their employee, may sell, and a retail licensee may purchase, for use, resale, or distribution on the licensed premises any novelty advertising items. The price shall be not less than the industry member's cost of acquisition. In no event shall credit be extended to any retail licensee. The purchase by retail licensees of such items shall be supported by invoices or signed vouchers which shall be preserved for three years on the licensed premises and available for immediate inspection by board enforcement officers.

(5) An industry member who sells novelty advertising items to retail licensees shall keep on file the original or copy of all sales slips, invoices, and other memoranda covering all purchases of novelty advertising items by the industry member and shall also keep on file a copy of all invoices, sales slips, or memoranda reflecting the sales to retail licensees or other disbursement of all novelty advertising items. Such records shall be maintained in a manner satisfactory to the board and must be preserved in the office of the industry member for a period of at least three years after each purchase or sale. Any manufacturer which does not maintain a principal office within the state shall, when requested, furnish the above required records at a designated location within the state for review by the board.

(6) Licensed interstate common carriers and industry members may engage in promotional, advertising, and other activities permitted under RCW 66.28.310.

AMENDATORY SECTION (Amending WSR 10-06-122, filed 3/3/10, effective 4/3/10)

WAC 314-52-090 Advertising sponsored jointly by retailers and manufacturers, importers, or distributors. (1) The name of a retail licensee shall not appear in, or as a part of, or supplementary to, any advertising of a manufacturer, importer or distributor, except:

(a) To produce brochures and materials promoting tourism in Washington state;

(b) A manufacturer, importer, or distributor may list on their web sites information related to retailers who sell or promote their products.

(2) The brand name of liquor may appear in or as a part of advertising by a retail licensee: Provided, such advertising is upon the retail licensee's free initiative and no moneys or moneys' worth has been offered or solicited as an inducement to secure such mention of any manufacturer, importer, or distributor's product.

(3) A professional sports team who holds a liquor license may accept liquor advertisements from manufacturers, importers, or distributors for use in sports entertainment facilities and may allow a manufacturer, importer, or distributor to use the name and trademark of the professional sports team in their advertising and promotions, if such advertising:

(a) Is paid for by the manufacturer, importer, or distributor at reasonable fair market value; and

(b) Carries no express or implied offer by the manufacturer, importer, or distributor on the part of the retail licensee to stock or list any particular brand of liquor to the total or partial exclusion of any other brand.

(4) Licensed interstate common carriers and industry members may engage in promotional, advertising, and other activities permitted under RCW 66.28.310.

AMENDATORY SECTION (Amending WSR 10-06-122, filed 3/3/10, effective 4/3/10)

WAC 314-52-110 Advertising by retail licensees. (1) Every advertisement by a retail licensee shall carry the licensed trade name or the registered franchise name or the trademark name. The term "trade name" shall be defined as the name as it appears on the license issued to the licensee:

(a) Words such as tavern, cafe, grocery, market, wine shop, and other similar words used to identify the type of business licensed, and numbers used to identify chain licensees, shall neither be required nor prohibited as part of the trade name in advertisements.

(b) Advertisements by a spirit, beer and wine restaurant licensee may also refer to cocktails, bar, lounge and/or the "room name." The

term "room name" shall be defined as the name of the room designated as the cocktail lounge and/or the dining room.

(2) No retail licensee shall offer for sale any liquor for on premises consumption under advertising slogans where the expressed or implied meaning is that a customer, in order to receive a reduced price, would be required to purchase more than one drink at a time, such as "two for the price of one," "buy one—get one free," or "two for \$_____."

(3) Beer, wine, or spirituous liquor shall not be advertised, offered for sale, or sold by retail licensees at less than acquisition cost. The provisions of this section shall not apply to any sales made:

(a) For the purpose of discontinuing the trade of any product or disposing of seasonal goods after the season has passed;

(b) When the goods are damaged or deteriorated in quality, or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation provided notice is given to the public;

(c) By an officer acting under the orders of any court; or

(d) In an endeavor to meet the prices of a competitor selling the same article or product in the same locality or trade area and in the ordinary channels of trade.

(4) Specialty shops, wineries, breweries, and craft distilleries acting as a retail licensee, providing free tastings to the public, are prohibited from using any term that implies the product is free in their advertising for such events.

(5) Licensed interstate common carriers and industry members may engage in promotional, advertising, and other activities permitted under RCW 66.28.310.