



Notice of Rule Change – Explanatory Statement Advertising

This explanatory statement concerns the **Washington State Liquor Control Board's adoption of changes to rules regarding Advertising.**

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. This statement must be provided to anyone who gave comment about the proposed rule making.

Once persons who gave comment during this rule making have had a chance to receive this document, the Liquor Control Board will file the amended rules with the Office of the Code Reviser. These rule changes will become effective 31 days after filing (approximately April 4, 2010).

The Liquor Control Board appreciates your involvement in this rule making process. If you have any questions, please contact Karen McCall, Rules Coordinator, at (360) 664-1631 or e-mail at rules@liq.wa.gov.

What are the agency's reasons for revising these rules?

As part of the Liquor Control Board's on-going rules review process, rules regarding advertising are being reviewed for relevance, clarity, and accuracy. In addition, the following bills enacted during the 2006 and 2007 legislative sessions require the advertising rules to be revised:

- SHB 3150 / 2006 session – Allows joint advertising by wineries and retailers to promote tourism
- SSB 5721 / 2007 session – Allows financial arrangements between sports/entertainment facility licensees and liquor manufacturers or distributors
- HB 2240 / 2007 – For wineries only, allows "personal services" to be performed by wineries, including COA holders, when these services are conducted at a licensed retail premises and are intended to inform,

educate, or enhance a customer's knowledge or experience of the manufacturer's product. For wineries and breweries, retailer and manufacturer listings and links are allowed on each other's Web sites.

The following Board Policies and Guidelines were also incorporated in this rulemaking:

- Policy Number 1-02: Use of licensed sports team name and trademark;
- Policy Number 1-05: Advertising events held at sports/entertainment facilities licensed under RCW 66.24.570;
- Interim Policy dated March 1, 2000, regarding criteria for approval of alcohol advertising;
- Interim Policy on advertising vs. information for the purpose of determining the extension of money's worth;
- Board Guidelines on coupon offers.

In 2008, a comparison was conducted on the LCB's advertising rules based on a 2003 Center on Alcohol Marketing and Youth (CAMY) report. It was determined the LCB needed to update their alcohol advertising rules to reflect the agency's focus on public safety by minimizing youth access and exposure to alcohol advertising. Also in 2008, a Legislative Committee reviewed the state's beer and wine regulations. Rules regarding advertising were identified by the prevention community as needing revisions to minimize youth access and exposure to alcohol and alcohol advertising.

What changes are being made?

The Board adopted these rule changes on March 3, 2010. The rules will be filed on March 3, 2010 and will be effective on April 4, 2010.

Amendatory Section WAC 314-52-005 – Purpose and application of rules.

Replaced the preamble with more of an "intent". Plain talked.

Amendatory Section WAC 314-52-010 – Mandatory statements.

Amended section (1)(a), (2)(a), and (3)(a) to conform to federal guidelines and label requirements. Amended section (1)(c) to conform with federal guidelines on alcoholic content of distilled spirits. Deleted section (4) - displays of beer based on alcohol content, since it is not enforced.

Amendatory Section WAC 314-52-015 - General.

Amended by adding additional restrictions on advertising content and removing some of the existing restrictions on advertising content.

Repealed 314-52-020 – Use of insignia or reference to liquor control board prohibited.

Repealed and added language to 314-52-015.

Amendatory Section WAC 314-52-030 – Liquor advertising prohibited in school publications.

Amended to cover advertising in any media, not just radio and television.

Amendatory Section WAC 314-52-040 – Contests, competitive events, premiums and coupons.

Amended by adding language prohibiting persons under 21 from participating in contents or competitive events. Also added language regarding coupons and rebates (taken from current board guidelines).

Amendatory Section WAC 314-52-070 – Outdoor advertising.

Amended language to restrict the number of signs advertising alcohol, brand names, and/or manufacturers that are visible from the public right of way on the outside of a retail premises to a total of four. The size of the signs is limited to 1600 square inches. Amended language to restrict outdoor advertising within 500 feet of places of worship, schools, public playgrounds, or athletic fields used primarily by children. Added back language “where the administrative body of said church, school, public playground or athletic field object to such placement”. The 500 feet is measured from the property line of the place of worship, school, public playground or athletic field to the outdoor sign. Added language that gives a local jurisdiction the option to exempt liquor licenses in their jurisdiction from the outdoor advertising restrictions in this section through a local ordinance. “Tourist Oriented Designation Signs” per RCW 47.36.320 are exempt from this requirement.

Amendatory Section WAC 314-52-085 – Programs and program folders.

Specified sporting arenas are premises holding a sports entertainment facility liquor license.

Amendatory Section WAC 314-52-090 – Advertising sponsored jointly by retailers and manufacturers, importers, or distributors.

Amended by adding language to implement SHB 3150 (2006 legislation) which allows joint advertising by wineries and retailers to promote tourism. Added language to implement HB 2240 (2007 legislation) which allows wineries to perform personal services for retailers and allows wineries and breweries and retailers to list and link to each other on their websites. Added section (3) to implement Liquor Control Board policy 1-02 which allows use of licensed sports team name and trademark.

New Section WAC 314-52-095 – Financial arrangements between sports entertainment facility licensees and liquor manufacturers, importers, and distributors.

Created a new section to implement SSB 5751 (2007 legislation) which allows a sports entertainment facility licensee to enter into an arrangement with a manufacturer, importer, or distributor for brand advertising. This new section also implements Liquor Control Board policy 1-05 which allows the same arrangements for brand advertising.

Amendatory Section WAC 314-52-110 – Advertising by retail licensees.

Amended by adding the language from 314-52-114 to this WAC and plain talked. Added language to clarify that alcohol can't be advertised, offered for sale, or sold by retail licensees at less than acquisition cost except under listed exceptions.

Amendatory Section – WAC 314-52-113 – Brand signs and point-of-sale displays on retail licensed premises.

Amended by removing the reference to "animal" inflatables and "animal mascots" (costumed individuals), and added the restriction that inflatables and costumed individuals may not be targeted or appealing principally to children or persons under 21 years of age.

Repealed Section – WAC 314-52-114 – Advertising by retail licensees, offering for sale, or selling, beer, wine or spirituous liquor at less than cost – Prohibited – Exceptions.

Repealed and added language to WAC 314-52-110.

Amendatory Section – WAC 314-52-115 – Advertising by clubs – Signs.

Amended by adding language regarding annual membership drives and plain talked.

New Section – WAC 314-52-120 – Sponsorship of public and civic events.

Created a rule to address sponsorship of public and civic events by industry members. Industry members may provide the following:

- Signage with the industry members name or brand name of their products; and
- Programs or flyers to be disseminated at the event.

Acknowledgement of the industry member is allowed in any media advertisement where the function recognizes the sponsors of the event. The size of the alcohol industry member sponsor acknowledgement may not exceed the size of the event name.

Inflatables are not allowed inside the event area.

There may be no giveaways of alcohol promotional items of any kind to persons under 21 years of age.

Industry members may not sponsor a special occasion license at public and civic events. Money may not be given directly to the special occasion licensee or employees thereof, but industry members may provide the following advertising for a special occasion licensed event:

- Signage with the industry members name or brand name of their products;
- Media coverage of the event; and
- Programs or flyers to be disseminated at the event.

Inflatables are not allowed inside special occasion license areas unless the area is completely enclosed with no view to the inside from the public right of way.

There may be no giveaways if alcohol promotional items of any kind in the special occasion license areas.

Special occasion licensed premises are limited to a total of four signs referring to alcoholic beverages, brand names, or industry members that are affixed or hanging in the windows and on the outside of the special occasion licensed premises that are visible to the general public from the public right of way.

Brand advertising is allowed inside the special occasion license event area where alcohol sales and consumption occur.

Summary of all public comments received on this rule proposal.

The Liquor Control Board received public comment on the proposed Advertising rules at the public hearing on February 24, 2010 and public comment in writing during the comment period that ended February 24, 2010.

Public Hearing Comments

Rollin Fatland – One Reel

WAC 314-52-130: Public and civic events. One Reel has been operating with sponsorships from manufacturers and distributors since 1995.

Response: RCW 66.29.010 and RCW 66.28.305 prohibit an industry member from providing money or money's worth to a retail liquor licensee. The law will need to be changed to provide an exemption for this activity.

Erica Austin – Professor at WSU

WAC 314-52-015, WAC 314-52-070, and WAC 314-52-113: Your rules are extremely important to protect youth.

Katie Borgess- TOGETHER! Youth Assistance Program

WAC 314-52-070: Alcohol advertising signage restrictions - supports the proposed rule.

Heidi Dupree – TOGETHER! Youth Assistance Program

WAC 314-52-070: Alcohol advertising signage restrictions - supports the proposed rule.

Tony Reid – Attorney for One Reel

WAC 314-52-130: Public and civic events. Special occasion licenses and retail licenses are different and should be treated differently.

Response: RCW 66.24.380 states “There shall be a retailer’s license to be designated as a special occasion license”. RCW 66.29.010 and RCW 66.28.305 prohibit an industry member from providing money or money’s worth to a retail liquor licensee. The law will need to be changed to provide an exemption for this activity.

Chris Jury – Family Policy Council (Snohomish County)

WAC 314-52-070: Alcohol advertising signage restrictions - supports the proposed rule.

Angel Lynch and Brianna Wollard – 7th grade students in Central Kitsap

WAC 314-52-070: Alcohol advertising signage restrictions. Would like to see the size restriction on signs be 800 square inches.

Response: The size restriction on signs advertising alcohol is the industry standardized sign size.

Lance Hastings – MillerCoors

WAC 314-52-070: Alcohol advertising signage restrictions. Would like the proposed rule changed to limit the signs to no more than one sign per brand.

Response: It is the retail liquor licensee’s decision on what alcohol advertising signs to place at their premises.

WAC 314-52-040: Coupons. There is no reference to mail-in rebates.

Response: The proposed rule was written to clarify liquor advertisements that are prohibited. Mail-in rebates are not addressed because they are allowed.

Chase Foster – Naches Valley High School student and member of SADD

WAC 314-52-070: Alcohol advertising signage restrictions - supports the proposed rule.

Dustin Shattack – Naches Valley School District (SPIF-SIG)

WAC 314-52-070: Alcohol advertising signage restrictions - supports the proposed rule.

Michael Kissinger – Bravo! Vancouver

WAC 314-52-130: Public and civic events. Would like to see legislation to allow industry members to give money to special occasion licensees.

Raelynn Masters– Olympic High School student

WAC 314-52-070: Alcohol advertising signage restrictions – supports proposed rule.

WAC 314-52-130: Public and civic events – supports proposed rule.

Jim Cooper – WASAVP

WAC 314-52-070: Alcohol advertising signage restrictions – would like the language removed that states “where the administrative body objects” in (5).

Response: The language is in current rule. The Board sees no reason to remove the language.

Liz Wilhelm – President WASAVP

WAC 314-52-070: Alcohol advertising signage restrictions – would like the size restriction to be 800 square inches. Support the proposed advertising rules.

Response: The size restriction on signs advertising alcohol is the industry standardized sign size.

Cassandra Tuttle – RuAD

314-52-070: Alcohol advertising signage restrictions – supports proposed rule.

Mary Garcia – White Swan Community Coalition

Support proposed advertising rules.

Eric Hansen – White Swan Community Coalition

Support proposed advertising rules.

Michael Mitchell – Breast Cancer Research Center

WAC 314-52-130: Public and civic events. This statute is inconsistent with the Governor’s message of “Pro-Business”. The money and money’s prohibition hasn’t been enforced up to this point.

Response: RCW 66.29.010 and RCW 66.28.305 prohibit an industry member from providing money or money’s worth to a retail liquor licensee. The law will need to be changed to provide an exemption for this activity. The law has been enforced up to this point. The purpose of the rule is to clarify the law since enforcement has been finding money and money’s worth violations involving special occasion licensees and industry members.

John Guadnola – WBWWA

WAC 314-52-130: Public and civic events. The distributors thought that giving money to non-profit organizations holding a special event was legal for many years. John is happy to work with non-profit organizations to make their events a success. He is also willing to help work on legislation to change the law to allow an exception for industry members to give money to special occasion licensees.

Response: RCW 66.24.380 states “There shall be a retailer’s license to be designated as a special occasion license”. RCW 66.29.010 and RCW 66.28.305 prohibit an industry member from providing money or money’s worth to a retail liquor licensee. The law will need to be changed to provide an exemption for this activity.

Written Comments Received

Katie Jacoy –Wine Institute

In General: Throughout this rulemaking process, WSLCB staff has described the effort primarily as an attempt to draft new advertising rules to align with best practices identified by the Center on Alcohol Marketing and Youth (CAMY). We remain concerned that the WSLCB is basing significant advertising restrictions on the research which has not been independently verified and policy positions of CAMY, an advocacy group with a clear and stated bias against advertising of legal alcoholic beverages. Before adopting CAMY's conclusion that alcohol advertising causes underage drinking, we urge the WSLCB to conduct an independent review of all the scientific research relating to alcohol advertising and underage drinking.

Response: A comparison was conducted on the LCB's advertising rules based on a 2003 CAMY report on Alcohol Advertising and Youth. LCB also reviewed the 2007 Surgeon General's Call to Action to Prevent and Reduce Underage Drinking. It was determined the LCB needed to revise their alcohol advertising rules to reflect the agency's focus on public safety by minimizing youth access and exposure to alcohol advertising.

WAC 314-52-070 (2): The size and number on outside signs should be removed. The Wine Institute doesn't believe the board has the authority to restrict the size and number alcohol advertising signs on a retail liquor licensed premises. We urge you to eliminate this proposed restriction on size and number of signs unless the Legislature grants the WSLCB additional statutory authority. Failure to eliminate this proposed restriction invites a legal challenge.

Response: Several other states also restrict the number and size of outside signs advertising alcohol. We believe the Board has the authority to restrict the size and number of alcohol advertising signs on a retail liquor licensed premises.

WAC 314-52-015 (f): The Wine Institute would like this proposed rule changed to. The proposed rule reads, (All liquor advertising on products sold in the state of Washington may not contain any statement, picture, or illustration that :) "Depicts a child or other person under legal age to consume liquor."

The wine Institute would like the language to read, "Depicts a child or other person under legal age to consume liquor except in wine advertising in which the child or other person under legal age to consume liquor is not consuming wine and is incidental to the primary subject of the advertising."

Response: This language is in current rule. Changes to allow minors or persons under legal age to consume liquor in advertising on products sold in the state are contrary to our focus in this rulemaking.

Michael Transue – Washington Restaurant Association

WAC 314-52-015: General. The proposed rule changes use vague and subjective terms that will result in varying interpretations and inconsistent enforcement.

Response: The Board believes enforcement will be consistent.

WAC 314-52-070(2): Alcohol advertising signage restrictions. We continue to disagree that a sign limitation on restaurant is appropriate policy. Local

governments should not be allowed to exempt themselves for these rules. We strongly encourage the Board to adopt performance measures that ensure the proposed rules are achieving the stated goals of reducing underage drinking.

Response: The alcohol signage restriction applies to all retail liquor licensed premises. Youth is exposed to excessive signage at retail liquor licensed premises of all types.

David E. Wojnar – Distilled Spirits Council of the United States (DISCUS)

WAC 314-52-070 and WAC 314-52-130: The Board should not impose any size limits for signs. There is no evidentiary basis for any size limits.

Response: The agency's focus on public safety includes minimizing youth access and exposure to alcohol advertising. Several other states also restrict the number and size of outside signs advertising alcohol.

WAC 324-52-113(1): The Board should eliminate the prohibition against brand signs and point-of-sale material furnished to retailers from having any value to the retailer except as brand advertising. The Board should permit a retailer's name and address to appear on brand signs and point of sale material. The Board should retail section (2) which sets forth an illustrative list of permitted POS material and should add other commonly-utilized items to the list. The Board should eliminate the prohibition against costumed individuals purchasing a customer a drink from the retailer.

Response: Furnishing items of value to a retail liquor licensee is prohibited under RCW 66.28.010 and RCW 66.28.305 – prohibition against industry members giving money or money's worth to a retail liquor licensee. Any exceptions to law must be done through legislation.

WAC 314-52-130: We feel this proposed rule as drafted will have a detrimental impact on Washington nonprofit organizations and public and civic events. The Board should not limit the acknowledgement of a name and/or brand of a sponsor of a public or civic event in a media advertisement to a size not exceeding the event name size. We urge the Board to allow industry members to provide monetary support to special occasion licensees. We urge the Board to reject the proposal restricting brand advertising to inside the event area where alcohol sales and consumption occur.

Response: The proposed rule is to clarify RCW 66.29.010 and RCW 66.28.305, which prohibit an industry member from providing money or money's worth to a retail liquor licensee. The law will need to be changed to provide an exemption for this activity.

Shelley Sieveking – Anheuser Busch

WAC 314-52-130 (8): There should be additional language to clarify that the four sign limit doesn't include signs inside the special occasion license area.

Response: The language is clear that the four sign limit only applies to those signs affixed or hanging in the windows and on the outside of the special occasion licensed premises.

WAC 314-52-130: Public and civic events. Shelley has concerns that this proposed rule included events held at sports/entertainment facilities.

Response: The proposed rule only refers to those events not put on by a liquor licensee at a liquor licensed premises. There are other rules that address what type of advertising is allowed at a retail liquor licensed premises, and sports/entertainment facilities and industry members are given specific exemptions under current law.

Jesse Lyons – Davis Wright Tremaine, LLP

WAC 314-52-130: Public and civic events. The Board's proposed new rule prohibiting industry members from providing money to special occasion licensees will impact countless nonprofit organizations across the state. The result will be:

- Fewer and smaller events;
- Decreased civic and public activity;
- Reduced funds for nonprofit organizations to maintain the existence and fulfill their mission; and
- Reduced exposure for these organizations in their outreach efforts.

Response: Industry members have always been prohibited from giving money to special occasion licensees. This is a money's worth issue and prohibited in RCW 66.28.010 (1) and RCW 66.28.305.

Limits on signage: The Board's proposed rule also places an absolute limit on the number of signs, irrespective of the size or nature of the event. This rule has a disproportionate impact on large events which raise funds for some of the state's most significant charitable organizations.

Response: The restriction on signs is only for the special occasion license area, not the entire event. There is no restriction on the number of signs at the actual event, only the special occasion license area.

Dave Sandona – Pioneer Beverage Inc.

WAC 314-52-130: Public and civic events. Dave states "this proposed rule would put an end to any sponsorship of civic and/or special event programs. Rarely are there two separate entities involved in this type of event."

Response: If sponsorship dollars are given to the event organizer, the special occasion licensee must be a different entity than the event organizer. Even before the new rule on sponsorship, a non-profit organization wouldn't be allowed to accept money from a manufacturer or distributor if they were a retail liquor licensee (special occasion licensee). RCW 66.28.010 and RCW 66.28.305 both prohibit an industry member from providing money or money's worth to a retail licensee.

Vicky Webb – Silverdale Whaling Days, Inc.

WAC 314-52-130: Public and civic events. Vicky called because she is concerned the proposed rule will prohibit their organization from receiving sponsorship dollars from the distributor that has been providing sponsorship

dollars for several years. The event organizer and the special occasion licensee are one and the same.

Response: If sponsorship dollars are given to the event organizer, the special occasion licensee must be a different entity than the event organizer. Even before the new rule on sponsorship, a non-profit organization wouldn't be allowed to accept money from a manufacturer or distributor if they were a retail liquor licensee (special occasion licensee). RCW 66.28.010 and RCW 66.28.305 both prohibit an industry member from providing money or money's worth to a retail licensee.

Corey Hewitt – Walla Walla County Fairgrounds

WAC 314-52-130: Public and civic events. Corey called because she is concerned the proposed rule will prohibit their organization from receiving sponsorship dollars from the distributor that has been providing sponsorship dollars for several years. The event organizer and the special occasion licensee are different entities.

Response: The proposed rule will not have an effect on the sponsorship dollars the event organizer receives. The special occasion licensee is a different entity; therefore the event organizer is allowed to receive sponsorship dollars from an industry member.

Marlys Erickson – Pike Place Market Foundation

WAC 314-52-130: Public and civic events. The Pike Place Market Foundation (PPMF) produces two annual events that would be severely impacted by this rule. The PPMF also obtains a special occasion license for these events. For the past 15 years, manufacturers and distributors donations have funded both events marketing. This rule will prohibit the PPMF from receiving sponsorship dollars.

Response: The proposed rule does prohibit sponsorship dollars for the event since the same entity is organizing the event is obtaining a special occasion license for the event. If the PPMF finds another non-profit organization to obtain the special occasion license, the PPMF can still receive sponsorship dollars from manufacturers and distributors.

Dianne LaBissoniere – Central Washington Fair Association

WAC 314-52-130: Public and civic events. Dianne wanted clarification – does this rule prohibit them from receiving money from Budweiser for their main stage during the fair each year. The fair also obtains a special occasion license for the Wine Garden and Cantina during the fair.

Response: Central Washington Fair Association holds a sports/entertainment facility license; therefore they are prohibited from obtaining a special occasion license. They most likely have an agreement for brand advertising with Budweiser at their licensed location, which includes the “Budweiser Stage”. Another non-profit organization is obtaining the special occasion license. This purposed rule does not effect this arrangement.

Billie McKibben – Parent, Training Coordinator RAYS Family Support & Prevention Services

WAC 314-52-130: Public and civic events. Billie suggests the size of the alcohol industry sponsor name should be 1/4 to 1/3 the size of the event name.

Response: No other comments have been received on this issue. The proposed language sufficiently addresses the concerns of the board – to ensure the event name is dominant in any signs acknowledging the sponsors of the event.

Family Wineries of Washington State (FWWS)

WAC 314-52-130: Public and civic events. FWWS is concerned that the proposed rule restricts the giving of money to a special occasion licensee.

Response: RCW 66.29.010 and RCW 66.28.305 prohibit an industry member from providing money or money's worth to a retail liquor licensee. The law will need to be changed to provide an exemption for this activity.

Phil Megenhardt – Fremont Chamber of Commerce (FCC)

WAC 314-52-130: Public and civic events. FCC is requesting that special occasion licenses be excluded from the advertising rules, specifically the prohibition on receiving money from industry members.

Response: RCW 66.29.010 and RCW 66.28.305 prohibit an industry member from providing money or money's worth to a retail liquor licensee. The law will need to be changed to provide an exemption for this activity.