

Issue Paper

Rule Making on Advertising

Date: July 29, 2009

Presented by: Karen McCall, Agency Rules Coordinator

Description of the Issue

The purpose of this issue paper is to recommend that the Board proceed with proposed rule changes (CR 102) resulting from a review of Advertising rules under WAC 314-52.

Why is rule making necessary?

The Liquor Control Board (LCB) continues to review existing rules for timeliness, clarity, and necessity complying with Executive Order 06-02 issued by Governor Gregoire. As part of the Liquor Control Board's on-going rules review process, rules regarding advertising are being reviewed for relevance, clarity, and accuracy.

Background

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.

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.

What changes are being proposed?

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

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

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

Amended section (1)(c) to conform with federal guidelines (alcoholic content of distilled spirits). Deleted section (4) (displays of beer based on alcohol content).

Amended Section 314-52-015 – General.

Amended to add language to implement LCB interim policy dated March 1, 2000, added additional advertising content restrictions, plain-talked.

Repealed Section WAC 314-52-020 – Use of insignia or reference to liquor control board prohibited – exception.

Added language from this section to 314-52-015.

Amended Section WAC 314-52-030 – Liquor advertising prohibited in school publication.

Amended to refer to advertising in any media. Plain-talked.

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

Added language to implement Board Guidelines on coupon offers. Corrected RCW reference for gambling, and plain-talked.

Amended Section WAC 314-52-070 – Outdoor Advertising.

Amended to restrict the number and signs advertising alcohol, brand names, and manufacturers that are visible from the outside of a retail licensed premises to a total of four. Restricted the size of alcohol signs visible from the outside of a retail licensed premises to 600 square inches.

Amended to restrict outdoor advertising within 500 feet of churches, schools, public playgrounds, or athletic fields used primarily by children. "Tourist Oriented Designation Signs" pre RCW 47.36.320 are exempt from this requirement. Plain-talked.

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

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

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

Added language to implement SHB 3150, HB 2240, Board policy 1-02, and LCB interim policy on advertising vs. information. Plain-talked.

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

The new section was created to implement SSB 5751 and LCB policy 1-05.

Amended Section 314-52-110 – Advertising by retail licensees.

Moved language from 314-52-114 to this rule. Added language to clarify that alcohol can't be advertised, offered for sale, or sold by the retail licensee at less than acquisition cost except under listed exceptions. Plain-talked.

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

Removed the reference to "animal" inflatables and "animal mascot" costumed individuals. Added a restriction that inflatables and costumed individuals may not be appealing to children or persons under 21 years of age. Plain-talked.

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.

Added language to 314-52-110.

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

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 manufacturers, importers, and distributors.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-52-005 Purpose and application of rules. (1)

~~((PREAMBLE: The purpose of this title is to))~~ The liquor control board regulates alcohol advertising to promote public safety, prevent the misuse of alcohol and reduce youth exposure to alcohol advertising and marketing. These rules provide reasonable regulations as to the kind, character, size, and location of advertising of liquor, as authorized by RCW 66.08.060.

(2) No person engaged in business as a ~~((producer,))~~ manufacturer, ~~((bottler,))~~ importer, distributor, or retailer of liquor ~~((, directly or indirectly, or through an affiliate,))~~ shall publish or disseminate ~~((or cause to be published or disseminated))~~ in any media any advertisement of liquor, unless such advertisement is in conformance with these rules ~~((: Provided, That these provisions shall not apply to the publisher of any newspaper, magazine or similar publication, nor to the operator of any radio or television station unless such publisher or operator is engaged in business as a producer, manufacturer, bottler, importer, distributor, or retailer of liquor, directly or indirectly, or through an affiliate))~~.

(3) The board holds each ~~((producer,))~~ manufacturer, ~~((bottler,))~~ importer, distributor, or retailer of liquor responsible for complying with the advertising rules of the Washington state liquor control board in any advertising

material placed by them or on their behalf by their agents. If desired, advertising may be submitted prior to publication for an advisory opinion by the ~~((advertising coordinator of the))~~ Washington state liquor control board, but advisory opinions will be restricted to advertising material submitted by ~~((said producers,))~~ manufacturers, ~~((bottlers,))~~ importers, distributors, or retailers of liquor, or their agents.

(4) Liquor advertising materials, defined as institutional or educational advertising in WAC 314-52-015, intended for placement in retail outlets of the Washington state liquor control board shall be presented to the ~~((advertising coordinator of the))~~ Washington state liquor control board for prior approval before placement~~((:—Provided, however, That))~~. All other forms of advertising approved and accepted by the board ~~((advertising coordinator and which are acceptable to the board merchandising committee under the provisions of WAC 314-52-040))~~ shall not be prohibited under this rule.

[Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060 and 82.08.150. 98-18-097, §

314-52-005, filed 9/2/98, effective 10/3/98. Statutory Authority: RCW 66.08.060. 86-15-041 (Order 191, Resolution No. 200), § 314-52-005, filed 7/16/86. Statutory Authority: RCW 66.08.030 and 66.98.070. 82-17-031 (Order 108, Resolution No. 117), § 314-52-005, filed 8/11/82. Statutory Authority: RCW 66.08.030, 66.08.060 and 66.98.070. 80-09-078 (Order 73, Resolution No. 82), § 314-52-005, filed 7/18/80; Order 46, § 314-52-005, Rule 115.5, filed 6/9/76; Order 10, § 314-52-005, Rule 115.5, filed 10/27/70, effective 11/27/70.]

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-52-010 Mandatory statements. (1) Brand advertising of spirituous liquor by any manufacturer shall contain the following information:

(a) The name and address of the manufacturer responsible for its publication. (Street number may be omitted.)

(b) A conspicuous statement of the class to which the product belongs and the type (~~thereof~~) corresponding with the statement of class and type which is required by federal regulations to appear on the label of the product.

(c) A statement of the alcoholic content (~~by proof, except that for cordials and liqueurs, gin fizzes, cocktails, highballs, bitters and other specialties, the alcoholic content~~

~~may~~) for distilled spirits shall be stated in (~~percent age by volume or by proof~~) percent alcohol by volume.

(d) In the case of distilled spirits (~~(other than cordials, liqueurs and specialties)~~) produced by blending or rectification, if neutral spirits have been used in the production thereof, there shall be stated the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled.

(e) In the case of neutral spirits or of gin produced by a process of continuous distillation, there shall be stated the name of the commodity from which such neutral spirits or gin has been distilled.

(2) Brand advertising of wine by any manufacturer or distributor shall contain the following information:

(a) The name and address of the manufacturer or distributor responsible for its publication. (Street number may be omitted.)

(b) A conspicuous statement of the class, type or distinctive designation to which the product belongs, corresponding with the statement of class, type, or distinctive designation which is required by federal regulation to appear on the label of the product.

(3) Brand advertising of malt beverages by any manufacturer, importer, or distributor shall contain the following information:

(a) The name and address of the manufacturer, importer or distributor responsible for publication of the advertisement. (Street number may be omitted.)

(b) A conspicuous statement of the class to which the product belongs, corresponding to the statement of class which is required by federal regulations to appear on the label of the product.

~~((4) Alcoholic content of beer. Retail licensees who choose to offer beer for sale at both less than four percent by weight and more than four percent by weight, alcoholic content, packaged in identical packages, shall be required to separate the two strengths of beer in their displays, and shall be required to identify by point-of-sale advertising which is the higher strength and which is the lower strength beer. Manufacturers, importers and distributors of such beer shall supply such shelf tickets free of charge to retail licensees. Provided, however, That no promotion of the higher alcoholic content shall be included in such advertising.))~~

[Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310,

66.44.190, 66.44.310, 66.98.060 and 82.08.150. 98-18-097, § 314-52-010, filed 9/2/98, effective 10/3/98. Statutory Authority: RCW 66.08.030 and 66.98.070. 82-17-031 (Order 108, Resolution No. 117), § 314-52-010, filed 8/11/82. Statutory Authority: RCW 66.08.030, 66.08.060 and 66.98.070. 80-09-078 (Order 73, Resolution No. 82), § 314-52-010, filed 7/18/80; Order 46, § 314-52-010, Rule 116, filed 6/9/76; Rule 116, filed 6/13/63.]

AMENDATORY SECTION (Amending Order 108, Resolution No. 117, filed 8/11/82)

WAC 314-52-015 General. (1) Institutional advertising shall mean advertising which promotes company or brand name identification, but does not directly solicit purchase or consumption of liquor. Educational advertising shall mean factual information on liquor, its manufacture, history, consumption and methods of ascertaining the quality of various types of liquors (~~(such as German wines, French cognacs, or other classifiable types of product.~~ All liquor advertising shall be modest, dignified and in good taste and shall not contain:

~~(1) Any statement or illustration that)).~~ All liquor advertising on products sold in the state of Washington may not contain any statement, picture, or illustration that:

(a) Is false or misleading ((in any material particular.

~~(2) Any statement, picture, or illustration which))~~;

~~(b) Promotes over consumption((~~

~~(3) Any statement, picture, illustration, design, device, or representation which is undignified, obscene, indecent, or in bad taste.~~

~~(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which is likely to mislead the consumer.~~

~~(5) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which is likely to mislead the consumer.~~

~~Nothing in this section shall prohibit the use of any enforceable guaranty in substantially the following form: "We will refund the purchase price to the purchaser if he is in any manner dissatisfied with the contents of this package."~~

~~(6) Any statement that the product is produced, blended, made, bottled, packed or sold under, or in accordance with, any authorization, law, or regulation of any municipality, county, or state, federal or foreign government unless such statement is required or specifically authorized by the laws or regulations of such government; and if municipal, state or federal permit number is stated, such permit number shall not be accompanied by any additional statement relating thereto.~~

~~(7) Any statement, design or device representing that))~~;

~~(c) Shows a person who appears to be under twenty-one years of age consuming alcohol;~~

(d) Uses the Washington state liquor control board's seal or refers to Washington state liquor control board, except where required by law;

(e) Represents the use of liquor has curative or therapeutic effects, if such statement is untrue ((in any particular,)) or tends to create a misleading impression((-

~~(8) Any statement, picture, or illustration implying that))~~);

(f) Implies the consumption of liquor enhances athletic prowess, or any statement, picture, or illustration ((referring)) that refers to any known athlete, if such statement, picture, or illustration implies, or if the reader may reasonably infer, that the use of liquor contributed to ((such)) any known athlete's athletic achievements((-

~~(9) Any depiction of))~~);

(g) Depicts a child or other person under ((legal age to consume liquor; any depiction of)) twenty-one years of age, or includes:

(i) Objects, such as toys or characters, ((suggestive of)) suggesting the presence of a child((, nor any other depiction designed in any manner as to be especially appealing to children or other persons under legal age to consume liquor.

~~(10) Any reference to any religious character, sign or symbol, except in relation to kosher wines or where such are a part of an approved label))~~);

(ii) Is designed in any manner that would be especially appealing to children or other persons under twenty-one years of age.

(h) Is targeted principally to minors by implying that the consumption of alcoholic beverages is fashionable or the accepted course of behavior for persons under twenty-one years of age;

(i) Associates alcohol with social achievement; or

(j) Uses subliminal or similar techniques. "Subliminal or similar techniques" as used in this section, refers to any device or technique that is used to convey, or attempts to convey, a message to a person by means of images or sounds of a very brief nature that cannot be perceived at a normal level of awareness.

(2) If advertising claims the alcohol product has a curative or therapeutic effect or enhances health or performance, the licensee must:

(a) Cite the name of the author and date of the research or study supporting the claim; and

(b) Provide a copy of this research or study to the board's licensing and regulation division.

[Statutory Authority: RCW 66.08.030 and 66.98.070. 82-17-031 (Order 108, Resolution No. 117), § 314-52-015, filed 8/11/82. Statutory Authority: RCW 66.08.030, 66.08.060 and 66.98.070. 80-09-078 (Order 73, Resolution No. 82), § 314-52-015, filed 7/18/80. Statutory Authority: RCW 66.08.030, 66.08.060 and

66.08.070. 79-08-036 (Order 68, Resolution No. 77), § 314-52-015, filed 7/17/79; Order 46, § 314-52-015, Rule 116.5, filed 6/9/76; Order 10, § 314-52-015, Rule 116.5, filed 10/27/70, effective 11/27/70.]

AMENDATORY SECTION (Amending Order 108, Resolution No. 117, filed 8/11/82)

WAC 314-52-030 Liquor advertising prohibited in school publications. No liquor advertising shall:

(1) Be carried in any publication connected or affiliated with any elementary or secondary schools; (~~nor shall any liquor advertising~~) or

(2) Be connected with such schools (~~when broadcast over radio or television: Provided, That institutional advertising, as defined in WAC 314-52-015, may be carried, if the board advertising coordinator interposes no objection~~) in any media.

[Statutory Authority: RCW 66.08.030 and 66.98.070. 82-17-031 (Order 108, Resolution No. 117), § 314-52-030, filed 8/11/82. Statutory Authority: RCW 66.08.030, 66.08.060 and 66.98.070. 80-09-078 (Order 73, Resolution No. 82), § 314-52-030, filed 7/18/80; Order 46, § 314-52-030, Rule 118, filed 6/9/76; Order 10, § 314-52-030, filed 10/27/70, effective 11/27/70; Rule 118, filed 6/13/63.]

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-52-040 Contests, competitive events, premiums and coupons. (1) Liquor advertisements may offer consumers premiums or prizes, upon completion of any coupon, contest, or competitive event, which may or may not require proof of purchase of the advertised product~~((+))~~. Provided, ~~((however,))~~ that:

(a) No one under twenty-one years of age is allowed to participate, and no premiums, prizes, coupons, contests, or competitive events are targets to persons under twenty-one years of age;

(b) Contests or sweepstakes that offer prizes or premiums to consumers through a game of chance or random drawing, shall not require proof of purchase, and must comply with the requirements of RCW ~~((9.46.020(14)))~~ 9.46.0356 regarding ~~((lotteries: And provided further, That no))~~ gambling.

(2) Liquor advertisements are prohibited by manufacturers, importers, or distributors ~~((may))~~ that:

(a) Offer any premium or prize redeemable through a Washington state liquor store or any retail liquor outlet licensed by the state of Washington, such as "instant" or "in-store" redeemable offers;

(b) Offer an "instant rebate" on either liquor or nonliquor items; or

(c) Offer any premium redeemable through retail outlets prohibited by the advancement of "money or money's worth" from a nonretail licensee to a retail licensee in chapter 66.28 RCW.

(3) A retailer may have its own coupon offers, provided the "after rebate" price does not put the product below cost, and provided there is no undue influence by a nonretail licensee, the coupon is at the retailer's free initiative and the retailer is covering the entire cost.

[Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060 and 82.08.150. 98-18-097, § 314-52-040, filed 9/2/98, effective 10/3/98. Statutory Authority: RCW 66.08.030 and 66.98.070. 82-17-031 (Order 108, Resolution No. 117), § 314-52-040, filed 8/11/82. Statutory Authority: RCW 66.08.030, 66.08.060 and 66.98.070. 80-09-078 (Order 73, Resolution No. 82), § 314-52-040, filed 7/18/80; Order 46, § 314-52-040, Rule 119, filed 6/9/76; Order 10, § 314-

52-040, filed 10/27/70, effective 11/27/70; Rule 119, filed 6/13/63.]

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-52-070 Outdoor advertising. (1) "Outdoor advertising" by manufacturers, importers, distributors, and retail licensees for these purposes shall include all signs visible to the general public(~~(, whether permanent or temporary))~~) from the outside of the retail premises, advertising the sale and service of liquor (~~((excluding point-of-sale brand signs, which are defined and governed as otherwise provided in WAC 314-52-113) as well as))~~), trade name and room name signs.

(2) The board limits each retail licensed premises to a total of four signs referring to alcoholic beverages, brand names, or manufacturers that are visible from the outside of the retail licensed premises. The board also limits the size of a sign advertising alcohol, brand names, or manufacturers that are visible from the outside of a retail licensed premises to six hundred square inches.

(3) Outdoor signs shall be designed, installed, and (~~used in a manner not offensive to the public, and shall~~) comply with all liquor advertising rules. These rules include, but are not limited to:

(a) WAC 314-52-015(~~((1), which:~~

~~(i) Prohibits any statement or illustration that is false or misleading in any material particular;~~

~~(ii) Prohibits any statement, picture or illustration which promotes overconsumption;~~

~~(iii) Prohibits any statement, picture, illustration, design, device, or representation which is undignified, obscene, indecent, or in bad taste.))~~ which contains institutional advertising prohibitions; and

(b) WAC 314-52-110(~~(1)~~, ~~which requires that 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 mean the "licensed trade name" as it appears on the issued license~~) which contains advertising requirements by a retail licensee.

~~((3))~~ (4) Prior board approval is not required before installation and use of outdoor ~~((signs/))~~ advertising; however, outdoor ~~((signs/))~~ advertising ~~((excluding outdoor readerboard messages and/or interior signs visible through a window of a premises))~~ not in compliance with board rules will be required to be altered or removed at the licensee's expense. If prior approval is desired, the licensee, applicant or their agent may submit ~~((three copies))~~ a copy to the board ~~((advertising coordinator))~~ for approval.

~~((4))~~ (5) No outdoor advertising of liquor shall be placed ~~((in proximity to))~~ within five hundred feet of schools, churches, ((or playfields)) public playgrounds, or athletic fields used primarily by minors, ~~((where administrative body of~~

~~said schools, churches, playfields, object to such placement,~~
~~nor~~) or any place which the board in its discretion finds
contrary to the public interest. "Tourist Oriented Directional
Signs" per RCW 47.36.320, are exempt from this requirement.

[Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020,
66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300,
66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200,
66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244,
66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400,
66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455,
66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050,
66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310,
66.44.190, 66.44.310, 66.98.060 and 82.08.150. 98-18-097, §
314-52-070, filed 9/2/98, effective 10/3/98. Statutory
Authority: RCW 66.08.060. 86-15-041 (Order 191, Resolution No.
200), § 314-52-070, filed 7/16/86. Statutory Authority: RCW
66.08.030 and 66.98.070. 82-17-031 (Order 108, Resolution No.
117), § 314-52-070, filed 8/11/82. Statutory Authority: RCW
66.08.030, 66.08.060 and 66.98.070. 80-09-078 (Order 73,
Resolution No. 82), § 314-52-070, filed 7/18/80; 78-02-056
(Order 62), § 314-52-070, filed 1/20/78; Order 46, § 314-52-070,
Rule 122, filed 6/9/76; § 314-52-070, filed 10/27/70, effective
11/27/70; Order 2, § 314-52-070, filed 5/1/69; Rule 122, filed
6/13/63.]

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-52-085 Programs and program folders. Programs and program folders, for the purpose of this section, shall mean brochures for use at sporting arenas which have, as a part of their operations, whether directly or indirectly, a retail licensed premises. No manufacturer, importer, distributor, or their agent, shall provide, without cost, directly or indirectly, programs or program folders for retail licensees(~~(- Provided, however, That sporting arenas as described above, or their agents))~~) unless the following conditions are met:

(1) A premises holding a sports entertainment facility liquor license may accept bona fide liquor advertising from manufacturers, importers, distributors or their agents, for publication in the program or program folder of the (~~sporting arena: - Provided further, That such~~) sports entertainment facility liquor licensee; and

(2) Advertising is paid for by said manufacturer, importer, distributor or their agent at the published advertising rate for all program or program folder advertisers, including nonliquor advertisers(~~(- And also provided, That such advertising shall carry with it no express or implied offer on the part of the manufacturer, importer, distributor or their agent, or promise on the part of the retail licensee whose operation is directly~~

~~or indirectly part of the sporting arena, to stock or list any particular brand of liquor to the total or partial exclusion of any other brand)).~~

[Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060 and 82.08.150. 98-18-097, § 314-52-085, filed 9/2/98, effective 10/3/98. Statutory Authority: RCW 66.08.030 and 66.98.070. 82-17-031 (Order 108, Resolution No. 117), § 314-52-085, filed 8/11/82.]

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-52-090 Advertising sponsored jointly by retailers and manufacturers, importers, or distributors(~~(, prohibited)~~).

(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, ((That)) such advertising is upon the retail licensee's free initiative and no moneys or moneys' worth has been offered ((the retail licensee)) or solicited as an inducement to secure such mention ((by)) of any manufacturer, importer, or ((distributor or their agent, or solicited by the retail licensee or his agent.

~~(2) RCW 66.28.010 shall also apply to joint advertising insofar as it is relevant))~~ 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.

[Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060 and 82.08.150. 98-18-097, § 314-52-090, filed 9/2/98, effective 10/3/98. Statutory Authority: RCW 66.08.030 and 66.98.070. 82-17-031 (Order 108, Resolution No. 117), § 314-52-090, filed 8/11/82. Statutory Authority: RCW 66.08.030, 66.08.060 and 66.98.070. 80-09-078 (Order 73, Resolution No. 82), § 314-52-090, filed 7/18/80; 78-02-056 (Order 62), § 314-52-090, filed 1/20/78; Order 46, § 314-52-090, Rule 124, filed 6/9/76; Order 10, § 314-52-090, filed 10/27/70, effective 11/27/70; Rule 124, filed 6/13/63.]

NEW SECTION

WAC 314-52-095 Financial arrangements between sports entertainment facility licensees and liquor manufacturers, importers, and distributors. A sports entertainment facility licensee and affiliated business may enter into arrangements with a manufacturer, importer, or distributor for brand advertising or promotional events at the sports entertainment facility under the following conditions:

- (1) The facility has a capacity of five thousand or more;
- (2) Entities required by WAC 314-12-030 must be placed on the sports entertainment facility license due to financial interest, may receive advertising from liquor manufacturers, importers, or distributors;
- (3) The advertising agreement under the provisions of this section must be made by written agreement;
- (4) The license must stock and offer for sale other competitive brands of liquor in addition to those of the advertising manufacturer, importer, or distributor;
- (5) The agreement may not contain credit of money's worth to be provided by the manufacturer, importer, distributor, or sports entertainment facility licensee;

(6) There will be no exclusionary contracts between a sports entertainment facility licensee and manufacturer, importer, or distributor; and

(7) The advertising manufacturer, importer, or distributor may not exercise undue influence in any manner over the sports entertainment facility licensee's liquor purchasing and sales operations.

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AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

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 (~~"licensed trade~~) name(~~"~~) as it appears on the license issued to the licensee: (~~Provided, however, That such~~)

(a) Words as tavern, cafe, grocery, market, (~~food store, food center, delicatessen,~~) wine shop, (~~beer parlor~~) and other similar words used to identify the type of business licensed, and numbers used to identify chain licensees (~~of the same trade name~~), shall neither be required nor prohibited as part of the trade name in advertisements(~~:- And provided further, That~~)).

(b) Advertisements by ((public)) a spirit, beer and wine restaurant licensee((s)) may also ((refer)) be referred to as 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 ((if both are in the same 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," ((~~"two for one drinks,"~~)) "buy one--get one free," or "two for \$_____ ((~~," nor any similar phrase or slogan where the express or implied meaning is that a customer, in order to receive a reduced price, would be required to purchase more than one drink or quantity of liquor at one time~~))."

(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 and in the case of the sale of seasonal goods;

(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;

(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.

[Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060 and 82.08.150. 98-18-097, § 314-52-110, filed 9/2/98, effective 10/3/98. Statutory Authority: RCW 66.08.030, 66.98.070 and 66.08.060. 83-23-122 (Order 132, Resolution No. 141), § 314-52-110, filed 11/23/83. Statutory Authority: RCW 66.08.030 and 66.98.070. 82-17-031 (Order 108, Resolution No. 117), § 314-52-110, filed 8/11/82. Statutory Authority: RCW 66.08.030, 66.08.060 and 66.98.070. 80-09-078 (Order 73, Resolution No. 82), § 314-52-110, filed 7/18/80; Order 46, § 314-52-110, Rule 126, filed 6/9/76; Order

10, § 314-52-110, filed 10/27/70, effective 11/27/70; Rule 126, filed 6/13/63.]

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-52-113 Brand signs and point-of-sale displays on retail licensed premises. Manufacturers, importers or distributors may furnish brand signs and point-of-sale material to retailers under the following conditions:

(1) The brand signs and point-of-sale material shall have no value to the retailer except as brand advertisement; such signs as those ~~((which))~~ that provide illumination for cash registers, pool tables, and other parts of the premises, have a functional value and are not authorized. The brand signs and point-of-sale material shall remain the property of, and be the responsibility of, the manufacturers, importers or distributors.

(2) ~~((The term "point-of-sale material" as used herein, shall include such manufacturer, importer or distributor-supplied items as display cards, placards, table tents, recipes, display bins, decalcomanias, price cards, shelf strips, product information pamphlets, bottle hangers, matches, scorecards, calendars, and other such brand advertising material for display at the point of sale.~~

~~(3))~~ Giant inflatables, such as inflated beer cans, bottles, ~~((animals,))~~ and banners may be provided as point-of-

sale (~~((by manufacturers, importers, or distributors))~~) to retailers for display purposes (~~((on their property))~~) inside the licensed premises, provided the following conditions are met:

(a) (~~((All retail licensees are afforded equal opportunity to display item;~~

~~(b))~~) Novelty items as defined in WAC 314-52-080 are not provided by manufacturers, importers, or distributors to customers in conjunction with the display;

(b) Inflatables are not appealing to children or persons under twenty-one years of age; and

(c) The display shall be removed if objected to by local officials, or if the board(~~((, in its discretion,))~~) finds it contrary to the public interest.

~~((4) Animal mascots and))~~ (3) Costumed individuals representing beer, wine, or liquor manufacturers may be provided as point-of-sale (~~((by manufacturers, importers, or distributors))~~) to retailers for display and promotion purposes on their property, provided the following conditions are met:

(a) The costumed individual is limited to the manufacturer, importer, distributor, or employee thereof and the costumed individual's activities on-premises are limited to socializing with customers and not conducting any activity that the retail licensee would otherwise have to assign employees to;

(b) (~~((All retail licensees are afforded equal opportunity for such displays;~~

~~(c))~~) Novelty items as defined in WAC 314-52-080 and including the purchase of drinks, are not to be provided to

customers by the costumed individual in conjunction with such displays;

~~((d))~~ (c) The costumed individual must comply with the regulations regarding lewd and obscene conduct (WAC ~~((314-16-125))~~ 314-11-050);

(d) The costumed individual may not be appealing to children or persons under twenty-one years of age; and

~~((If the board finds it contrary to the public interest, it may prohibit the use of the above-mentioned activities.))~~ The board may prohibit the use of costumed individuals if the use is contrary to the public interest.

[Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060 and 82.08.150. 98-18-097, § 314-52-113, filed 9/2/98, effective 10/3/98. Statutory Authority: RCW 66.24.010, 66.08.010, 66.08.030, 66.08.060 and 66.98.070. 86-19-022 (Order 199, Resolution No. 208), § 314-52-113, filed 9/10/86. Statutory Authority: RCW 66.08.030 and 66.98.070. 82-17-031 (Order 108, Resolution No. 117), § 314-52-113, filed 8/11/82. Statutory Authority: RCW 66.08.030,

66.08.060 and 66.98.070. 80-09-078 (Order 73, Resolution No. 82), § 314-52-113, filed 7/18/80; 78-02-056 (Order 62, § 314-52-113, filed 1/20/78; Order 46, § 314-52-113, Rule 126.3, filed 6/9/76.]

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-52-115 Advertising by clubs--Signs. (1) Clubs shall not engage in any form of soliciting or advertising which may be construed as implying that the club operates a (~~public spirit, beer and wine restaurant~~) premises(~~(, a tavern)~~) open to the public, or that social functions at which club liquor may be consumed, are open to the public(~~(: Provided, however, Circularizing membership shall not be considered advertising, and where)~~). Clubs that provide lunch or dinner to the public(~~(, this)~~) may be advertised(~~(: Provided further, Such advertising)~~) but must specify no liquor service is available.

(2) Clubs and/or their auxiliary organizations may advertise social or other club events to their membership through the public media under the following conditions: (~~Provided, Such~~)

(a) Advertising (~~is~~) must be clearly directed to their membership only (~~and~~);

(b) Advertising cannot be construed as implying that the general public is welcome to attend(~~(-~~

~~(3) Advertising of the club functions by means of placards placed for public viewing shall be governed by the provisions of subsection (2) of this section.~~

~~(4))~~; and

(c) Advertising club functions with placards placed for public viewing shall be governed by (a) and (b) of this subsection.

(3) Advertising may be directed to the public generally in connection with events of special public interest ((such as Flag Day, Memorial Day, Veterans Day or such other occasions,)) under provisions set forth in WAC 314-40-080(3).

~~((5))~~ (4) A private club may hold a public membership function as outlined in WAC 314-40-040(6). The function must be advertised as a membership drive.

(5) Clubs shall not advertise the events held with the nonclub event endorsement per RCW 66.24.425(3).

(6) Clubs desiring to have radio or television broadcasts originating from their licensed premises may do so((+)) provided((,-That)):

(a) Such broadcasts consist only of entertainment or other matter which is in the public interest and may not contain:

(i) Any announcement of opening or closing hours((,-));

(ii) Any invitation to visit the club((,-)); or

(iii) Any statement which may be construed as advertising or any implication that the club is operated as a public place.

(b) The only reference to the club during such broadcasts shall be limited to a statement at the opening and closing of the program as originating from the club quarters.

[Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060 and 82.08.150. 98-18-097, § 314-52-115, filed 9/2/98, effective 10/3/98. Statutory Authority: RCW 66.08.030. 94-06-022, § 314-52-115, filed 2/22/94, effective 3/25/94. Statutory Authority: RCW 66.08.030 and 66.98.070. 82-17-031 (Order 108, Resolution No. 117), § 314-52-115, filed 8/11/82. Statutory Authority: RCW 66.08.030, 66.08.060 and 66.98.070. 80-09-078 (Order 73, Resolution No. 82), § 314-52-115, filed 7/18/80; Order 46, § 314-52-114 (codified as WAC 314-52-115), Rule 126.5, filed 6/9/76; Order 10, § 314-52-114, Rule 126.5, filed 10/27/70, effective 11/27/70. Formerly WAC 314-40-090 (part), Rule 111, filed 6/13/63.]

NEW SECTION

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

Manufacturers, importers, and distributors may sponsor public and civic events under the following conditions:

(1) Acknowledgment of the sponsor, either by name, brand, or both, is allowed in any media advertisement where the function recognizes the sponsors of the event. The size of the alcohol industry sponsor acknowledgment may not exceed the size of the event name;

(2) Brand advertising is allowed only in areas at the event where alcohol sales and consumption are conducted; and

(3) There may be no giveaways of promotional items of any kind at events held in public areas, including, but not limited to:

- (a) Street fairs;
- (b) Parks; and
- (c) Government buildings.

[]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-52-020	Use of insignia or reference to liquor control board prohibited--Exception.
WAC 314-52-114	Advertising by retail licensees, offering for sale, or selling beer, wine or spirituous liquor at less than cost--Prohibited--Exceptions.