

WSR 22-07-058
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed March 16, 2022, 10:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-20-067.

Title of Rule and Other Identifying Information: New WAC

314-03-060 Axe throwing at liquor licensed premises. The Washington state liquor and cannabis board (WSLCB) proposes a new rule section allowing axe throwing at liquor licensed premises with the approval of a safety operating plan. WAC 314-29-030 Group 3 license violations. WSLCB proposes a technical amendment to the penalty schedule for violations of a board-approved operating plan to add a cross-reference to the proposed new rule section related to axe throwing at liquor licensed premises.

Hearing Location(s): On April 27, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, WSLCB will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Board members, presenters, and staff will all participate remotely. The public may log in using a computer or device, or call-in using a phone, to listen to the meeting through the Microsoft Teams application. The public may provide verbal comments during the specified public comment and rules hearing segments. For more information about board meetings, please visit <https://lcb.wa.gov/Boardmeetings/Boardmeetings>.

Date of Intended Adoption: No earlier than May 11, 2022.

Submit Written Comments to: Audrey Vasek, Policy and Rules Coordinator, P.O. Box 43080, Olympia, WA 98504-3080, email rules@lcb.wa.gov, fax 360-704-5027, by April 27, 2022.

Assistance for Persons with Disabilities: Contact Anita Bingham, ADA coordinator, human resources, phone 360-664-1739, fax 360-664-9689, TTY 711 or 1-800-833-6388, email anita.bingham@lcb.wa.gov, by April 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule proposal is to establish a framework for axe throwing activities at liquor licensed premises. The proposed new rules require licensees that offer axe throwing to create a safety operating plan that includes protocols for monitoring patron intoxication and consumption of alcoholic beverages, and a floor plan designating where alcohol may be sold or consumed and identifying the axe throwing areas where alcohol is not allowed. The proposed rules also outline how to request a change in operating plan and include a reference to penalties for noncompliance.

Reasons Supporting Proposal: Axe throwing has become increasingly popular as an activity that liquor licensed businesses would like to offer to their customers. Beginning in 2018, the agency began receiving applications from businesses that either had axe throwing as their primary activity and wanted to add liquor service, or from established liquor licensed businesses that wanted to add axe throwing as an on-premises activity. WSLCB considers axe throwing at liquor licensed premises to be a high-risk activity with implications for public health and safety. Current rules do not provide any framework to address the public health and safety concerns that arise when alcohol

service is combined with axe throwing. New rules are needed to provide such a framework, as well as consistency for licensees and applicants that seek agency approval to offer axe throwing.

Statutory Authority for Adoption: RCW 66.08.030.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Audrey Vasek, Policy and Rules Coordinator, 1025 Union Avenue, Olympia, WA 98501, 360-664-1758; Implementation: Becky Smith, Director of Licensing, 1025 Union Avenue, Olympia, WA 98501, 360-664-1753; and Enforcement: Chandra Brady, Director of Enforcement and Education, 1025 Union Avenue, Olympia, WA 98501, 360-664-1726.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules do not qualify as a type of rule requiring a cost-benefit analysis under RCW 34.05.328(5). WSLCB is not a listed agency under RCW 34.05.328 (5) (a) (i), so the cost-benefit analysis requirements in RCW 34.05.328 are not applicable to the proposed rules unless voluntarily applied or made applicable by the joint administrative rules review committee under RCW 34.05.328 (5) (a) (ii).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated.

Estimated Costs of Compliance: The proposed rules would allow businesses the new option to add axe throwing as an activity at liquor licensed premises with WSLCB approval of a safety operating plan. Because this rule proposal concerns an entirely optional new activity, this proposal does not impose new or additional regulatory burden or increased administrative costs. However, businesses seeking to combine liquor service and axe throwing will be required to submit a safety operating plan and receive approval from WSLCB prior to providing axe throwing activities at their liquor licensed premises.

The proposed rules state that the safety operating plan must address how the licensee will mitigate safety concerns associated with axe throwing, including the following: Protocols for monitoring consumption of alcoholic beverages and ensuring patrons are not intoxicated prior to axe throwing, and a floor plan for the premises. The floor plan is required to include designated areas where alcoholic beverages may be sold, served, or consumed on-premises that are separate from the axe throwing zone, as well as barriers to keep the axe throwing zone separate from the designated consumption areas and prevent axes from traveling out of the axe throwing zone. The proposed rules do not require that businesses use specific methods or materials to comply with these requirements.

Within the parameters established by the proposed rules, businesses have the flexibility to develop a unique safety operating plan. The agency anticipates that preparation of such a plan will not impose more-than-minor administrative costs associated with submission, including the following:

- One and one half hours of licensee time to complete forms and communicate with WSLCB regarding the safety operating plan;
- One half hour of licensee time to be present for final inspection; and

- *Estimated total cost of compliance:* \$50 for two hours of licensee time for administrative activities. According to the 2021 Occupational Employment and Wage Statistics (OEWS) Online Databook available in the ESD labor market report library (<https://esd.wa.gov/labormarketinfo/report-library>), the estimated average hourly wage in Washington State for Secretaries and Administrative Assistants, Except Legal, Medical, and Executive (using the SOC Code 43-6014) is \$22.68. Based on that data, the estimated cost for these administrative activities is \$45.36 (\$22.68 avg. hourly wage x 2 hour = \$45.36). For the purpose of the minor cost calculations, this estimated administrative cost is rounded up to \$50.

Note: These administrative costs are one-time costs that can be amortized over the period of business operation. Additional administrative costs might be incurred if a licensee decides to make changes to their safety operating plan after it has been approved. Under the proposal, the licensee would be required to resubmit the safety operating plan to the agency for approval.

Based on the anticipated administrative costs described above, WSLCB applied an estimated cost of compliance of \$50 when analyzing whether the proposed rules impose more than "minor costs" as defined in RCW 19.85.020(2) on businesses potentially impacted by the proposed rules.

Minor Cost Threshold Estimates: Businesses potentially impacted by the proposed rules include liquor licensees that might choose to add axe throwing activities (such as Spirits, Beer, and Wine (SBW) Restaurants and Beer/Wine (BW) restaurants, taverns, nightclubs, and snack bars; and distillery, winery, and brewery tasting rooms/additional locations) and axe throwing businesses that might choose to add liquor service. The agency applied the following North American Industry Classification System (NAICS) codes to estimate minor cost thresholds for licensees:

Business Type	NAICS Code	Description from the 2017 NAICS Manual (https://www.census.gov/library/publications/2017/econ/2017-naics-manual.html)
Distilleries and Craft Distilleries	312140 Distilleries	"This industry comprises establishments primarily engaged in one or more of the following: (1) distilling potable liquors (except brandies); (2) distilling and blending liquors; and (3) blending and mixing liquors and other ingredients." There are no separate NAICS codes available for craft distilleries.
Wineries	312130 Wineries	"This industry comprises establishments primarily engaged in one or more of the following: (1) growing grapes and manufacturing wines and brandies; (2) manufacturing wines and brandies from grapes and other fruits grown elsewhere; and (3) blending wines and brandies."
Breweries and Microbreweries	312120 Breweries	"This industry comprises establishments primarily engaged in brewing beer, ale, lager, malt liquors, and nonalcoholic beer." There are no separate NAICS codes available for microbreweries.
Taverns and Nightclubs	722410 Drinking Places (Alcoholic Beverages)	"This industry comprises establishments known as bars, taverns, nightclubs, or drinking places primarily engaged in preparing and serving alcoholic beverages for immediate consumption. These establishments may also provide limited food services."
SBW Restaurants	722511 Full-Service Restaurants	"This U.S. industry comprises establishments primarily engaged in providing food services to patrons who order and are served while seated (i.e., waiter/waitress service) and pay after eating. These establishments may provide this type of food service to patrons in combination with selling alcoholic beverages, providing carryout services, or presenting live nontheatrical entertainment."

Business Type	NAICS Code	Description from the 2017 NAICS Manual (https://www.census.gov/library/publications/2017/econ/2017-naics-manual.html)
BW Restaurants	722513 Limited Service Restaurants	"This U.S. industry comprises establishments primarily engaged in providing food services (except snack and nonalcoholic beverage bars) where patrons generally order or select items and pay before eating. Food and drink may be consumed on premises, taken out, or delivered to the customer's location. Some establishments in this industry may provide these food services in combination with selling alcoholic beverages."
Snack Bars	722515 Snack and Nonalcoholic Beverage Bars	"This U.S. industry comprises establishments primarily engaged in (1) preparing and/or serving a specialty snack, such as ice cream, frozen yogurt, cookies, or popcorn, or (2) serving nonalcoholic beverages, such as coffee, juices, or sodas for consumption on or near the premises. These establishments may carry and sell a combination of snack, nonalcoholic beverage, and other related products (e.g., coffee beans, mugs, coffee makers) but generally promote and sell a unique snack or nonalcoholic beverage."
Axe Throwing Establishments	713990 All Other Amusement and Recreation Industries	"This industry comprises establishments (except amusement parks and arcades; gambling industries; golf courses and country clubs; skiing facilities; marinas; fitness and recreational sports centers; and bowling centers) primarily engaged in providing recreational and amusement services." Corresponding Index Entry: "Axe throwing clubs."

As shown in the table below, the estimated cost of compliance for businesses in each of these industries does not exceed the minor cost estimate for these industries, so a small business economic impact statement is not required under RCW 19.85.030.

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate = MAX (WT, RT, and \$100)	Wage Threshold (WT) <i>1% of Avg Annual Payroll (0.01*Avg Pay)</i>	Revenue Threshold (RT) <i>0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)</i>
312140	\$50	Distilleries and Craft Distilleries	Distilleries	\$2,806.14	\$2,806.14 2020 Dataset pulled from USBLS	\$1,707.60 2020 Dataset pulled from DOR
312130	\$50	Wineries	Wineries	\$3,905.58	\$3,905.58 2020 Dataset pulled from ESD	\$3,560.33 2020 Dataset pulled from DOR
312120	\$50	Breweries and Microbreweries	Breweries	\$3,085.32	\$2,803.58 2020 Dataset pulled from USBLS	\$3,085.32 2020 Dataset pulled from DOR
722410	\$50	Taverns and Nightclubs	Drinking Places (Alcoholic Beverages)	\$1,386.88	\$1,386.88 2020 Dataset pulled from USBLS	\$1,376.99 2020 Dataset pulled from DOR
722511	\$50	SBW Restaurants	Full-Service Restaurants	\$3,221.87	\$3,221.87 2020 Dataset pulled from ESD	\$2,464.57 2020 Dataset pulled from DOR
722513	\$50	BW Restaurants	Limited-Service Restaurants	\$5,011.98	\$5,011.98 2020 Dataset pulled from ESD	\$3,976.52 2020 Dataset pulled from DOR
722515	\$50	Snack Bars	Snack and Nonalcoholic Beverage Bars	\$2,722.49	\$2,722.49 2020 Dataset pulled from ESD	\$2,307.40 2020 Dataset pulled from DOR
713990	\$50	Axe Throwing Establishments	All Other Amusement and Recreation Industries	\$1,303.44	\$1,303.44 2020 Dataset pulled from ESD	\$546.88 2020 Dataset pulled from DOR

The revenue and wage thresholds used to determine the minor cost estimates for each of the business industries listed in the table above were calculated using the minor cost threshold calculator (*updated October 2021*) provided by the governor's office for regulatory innovation and assistance (ORIA). For more information, see the ORIA Regulatory Fairness Act Tools & Guidance web page at https://www.oria.wa.gov/site/alias__oria/934/Regulatory-Fairness-Act-Support.aspx.

March 16, 2022
David Postman
Chair

OTS-3661.1

NEW SECTION

WAC 314-03-060 Axe throwing at liquor licensed premises. (1)

Axe throwing combined with alcohol consumption is considered a high-risk activity. Licensees should follow industry best practices for safe axe throwing participation. A liquor licensee must receive approval from the board's licensing division prior to providing axe throwing activities at liquor licensed premises.

(2) The liquor licensee or liquor license applicant must submit a safety operating plan addressing how the licensee will mitigate safety concerns associated with axe throwing at the liquor licensed premises. The safety operating plan must include the following:

(a) Protocols for monitoring alcohol consumption and ensuring patrons are not intoxicated prior to axe throwing, including:

(i) Designated MAST-certified staff in the axe throwing area at all times to monitor alcohol consumption;

(ii) Prohibiting patrons who appear intoxicated from axe throwing;

(iii) Deescalating patrons who appear intoxicated and are uncooperative or hostile; and

(iv) Training employees on the protocols included in the safety operating plan; and

(b) A floor plan for the premises. The floor plan must include the following:

(i) The designated consumption areas where alcohol may be sold, served, or consumed on-premises; and

(ii) The axe throwing areas. The axe throwing areas must be separate from the designated consumption areas. Alcohol is not allowed in the axe throwing areas. The axe throwing areas must have barriers to separate the axe throwing activity from the designated consumption areas. Barriers must prevent axes from traveling out of the axe throwing areas, including behind the throwers. "Barriers" means walls, fences, cages, or similar physical obstructions.

(3) Changes to a licensee's safety operating plan must be submitted to the board's licensing division for approval. The safety operating plan must remain in effect until the licensee's change request is approved by the board's licensing division or the board determines changes are necessary due to safety concerns.

(4) Failure to adhere to the licensee's approved safety operating plan is subject to the penalty structure outlined in WAC 314-29-030, violations of a board approved operating plan.

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OTS-3662.1

AMENDATORY SECTION (Amending WSR 09-21-050, filed 10/14/09, effective 11/14/09)

WAC 314-29-030 Group 3 license violations. Group 3 violations are violations involving licensing requirements, license classification, and special restrictions.

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
True party of interest violation. RCW 66.24.010(1) WAC 314-12-030	Cancellation of license			
Failure to furnish required documents. WAC 314-12-035	Cancellation of license			
Misrepresentation of fact. WAC 314-12-010	Cancellation of license			
Misuse or unauthorized use of liquor license (operating outside of license class, lending or contracting license to another person/entity). Chapter 66.24 RCW WAC 314-02-015 WAC 314-02-041 WAC 314-02-045 WAC 314-02-065 WAC 314-02-070 WAC 314-02-075 WAC 314-02-090 WAC 314-02-095 WAC 314-02-100 WAC 314-02-105 WAC 314-02-110 WAC 314-12-030	5 day suspension or \$1,500 monetary option	Cancellation of license		
Operating plan: Violations of a board-approved operating plan. WAC 314-03-060 WAC 314-16-270 WAC 314-16-275	5 day suspension or \$500 monetary option	7 day suspension or \$1,500 monetary option	10 day suspension with no monetary option	Cancellation of license
Sale of alcohol in violation of a board-approved local authority restriction. Chapter 66.24 RCW	5 day suspension or \$500 monetary option	7 day suspension or \$1,500 monetary option	10 day suspension with no monetary option	Cancellation of license
Sale of alcohol in violation of a board-approved alcohol impact area restriction. WAC 314-12-215	5 day suspension or \$500 monetary option	7 day suspension or \$1,500 monetary option	10 day suspension with no monetary option	Cancellation of license

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Catering endorsement violation. WAC 314-02-060 WAC 314-02-061	5 day suspension or \$250 monetary option	5 day suspension or \$1,500 monetary option	10 day suspension or \$3,000 monetary option	Cancellation of license

[Statutory Authority: RCW 66.08.030. WSR 09-21-050, § 314-29-030, filed 10/14/09, effective 11/14/09. Statutory Authority: RCW 66.08.030, 66.24.010, 66.24.120. WSR 03-09-015, § 314-29-030, filed 4/4/03, effective 5/5/03.]