

Duff on Hospitality Law

## Washington State Liquor Control Board Proposed Rule Making

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The [Washington State Liquor Control Board](#) has issued a Notice of Rule Making for a proposed amendment to the Washington Administrative Code (WAC) prohibiting the manufacture, importing and sale of “alcohol energy drinks.” The Board defines alcohol energy drinks as any beverages containing beer, strong beer or malt liquor and “caffeine, guarana, taurine, or other similar substances.” The public may comment on the proposed rule until February 23, 2011.

This new rule is virtually identical to the emergency rule adopted by the Board on November 10, 2010, which is currently in effect and will continue until March of this year. Unlike the emergency measure, the proposed rule contains language making clear that the prohibition is not intended to extend to substances in which coffee and chocolate are added to alcohol. Irish coffees and liquored chocolates are still safe!

The proposed rule is the Board’s most recent effort to restrict the sale and marketing of these kinds of beverages. In 2009, the Board implemented a policy prohibiting advertising and marketing in liquor stores that referenced both energy drinks and alcohol, and in 2010 the Board proposed [House Bill 2804](#), which prohibited the sale of caffeinated or stimulant-enhanced malt beverages. H.B. 2804 did not pass, but a substitute bill with labeling requirements did.

The Board is directly in step with a number of other states and the federal government in expressing concern about these alcoholic energy drinks. Utah and Oklahoma have banned all of them, Michigan has banned the popular brand Four Loko™ and Connecticut, Oregon, Massachusetts and New York are all investigating or issuing their own rules.

In 2009, several state attorneys general (including Washington’s Rob McKenna) wrote a letter to the Federal Drug Administration (FDA) requesting the FDA immediately remove all alcoholic energy drinks from the marketplace. In response, the FDA investigated and, on November 17, 2010, contacted the four main manufacturers of alcoholic energy drinks notifying them that the FDA had decided that caffeine was not a safe food additive when added to alcohol, and that their drinks must come off the shelves. The Federal Trade Commission (FTC) simultaneously [contacted](#) these manufacturers with letters suggesting the advertising and marketing of these drinks might constitute unfair and deceptive trade practices if the companies did not take steps to disclose the FDA’s finding that they were “unsafe” or “adulterated.” All four companies

contacted by the FDA and FTC have either ceased shipping or ceased producing alcoholic energy drinks, or both.

As no alcoholic energy drinks have been available for purchase in Washington since November 17 of last year, you might not know the brands offhand. Here are the big ones: Phusion Projects' Four Loko™, New Century Brewing Company's Moonshot '69®, and United Brands Company Inc.'s Joose® and Max Malt Beverage®.

**Tags:** alcohol, alcoholic energy drinks, ban, liquor, rules, WAC, Washington Administrative Code, Washington State Liquor Control Board