



Notice of Rule Change – Explanatory Statement Cigarette and Tobacco Licensing

This explanatory statement concerns the **Washington State Liquor Control Board's adoption of rules regarding Cigarette and Tobacco Licensing.**

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 January 16, 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?

SHB 1435 passed in the 2009 legislative session, gives the Liquor Control Board the administrative authority to approve, deny, suspend, or revoke retail, wholesale, or distributor cigarette and tobacco products licenses. Rules are needed to further clarify the application process and requirements.

What changes are being made?

New Chapter 314-33 Cigarette and Tobacco Products License Process

New Section 314-33-001 Cigarette and tobacco products license qualifications and application process. Explains the requirement of a criminal history background check and explains the application process to obtain a cigarette or tobacco products license.

New Section 314-33-005 Reasons the board may deny a cigarette or tobacco products license application. Lists the reasons the board may deny the license.

New Section 314-33-020 What criminal history might prevent an applicant from receiving or keeping a cigarette or tobacco products license? Includes a matrix that includes a point value for different types of criminal convictions. Explains the board's scoring of criminal convictions and how a decision is made when criminal history is involved.

New Section 314-33-025 What liquor and cigarette and tobacco products law or rule violation history might prevent an applicant from receiving a cigarette or tobacco products license? Explains how the board uses violation history in determining licensure.

New Section 314-33-030 What is the process if the board denies a cigarette or tobacco products license application? Explains the options for the applicant if their application is denied.

New Chapter 314-34 Cigarette and Tobacco Products Violations

New Section 314-34-001 Purpose of chapter. Explains what is covered in this chapter.

New Section 314-34-003 Authority—Suspension or revocation of wholesale and retail cigarette and tobacco products licenses. Explains the board's authority to suspend or revoke a wholesale or retail cigarette and tobacco products license.

New Section 314-34-005 What are the procedure for notifying a licensee of an alleged violation of a cigarette or tobacco products statute or regulation? Explains the process the enforcement officer follows in the case of an alleged violation.

New Section 314-34-010 What options does a licensee have once they receive a notice of administrative violation? Explains the process the licensee follows if they want to request a settlement conference or an administrative hearing.

New Section 314-34-015 What are the penalties if a cigarette and/or tobacco products license holder violates a cigarette or tobacco products law or rule? Lists the penalties for the first, second, third and consecutive offenses.

New Section 314-34-020 Information about cigarette and/or tobacco products license suspensions. Explains the process followed for license suspensions.

New Section 314-23-030 Cigarette and other tobacco products violations. Lists the violation types for cigarette and other tobacco products.

Summary of all public comments received on this rule proposal.

No public comment was received in writing or at the public hearing held December 9, 2009.

WAC Changes

Chapter 314-33 WAC

CIGARETTE AND TOBACCO PRODUCTS LICENSE PROCESS

NEW SECTION

WAC 314-33-001 Cigarette and tobacco products license qualifications and application process. (1) Each cigarette and tobacco products license application is unique and investigated individually. The board may inquire and request documents regarding matters in connection with the cigarette and tobacco products license application. Following is a general outline of the cigarette and tobacco products license application process:

(a) The board may require proof concerning the applicant's identity.

(b) The board may conduct an investigation of the applicants' criminal history and administrative violation history, per RCW 82.24.510 and 82.26.150.

(2) Failure to respond to the board's requests for information within the timeline provided may cause the application to be denied.

NEW SECTION

WAC 314-33-005 Reasons the board may deny a cigarette or tobacco products license application. The following is a list of reasons the board may deny a cigarette or tobacco products license application:

(1) Failure to meet qualifications or requirements for the specific cigarette or tobacco products license, as outlined in this chapter and chapters 82.24 and 82.26 RCW.

(2) Failure to submit information or documentation requested by the board.

(3) Misrepresentation of fact by any applicant.

(4) Willfully withholding information.

(5) Submitting false or misleading information.

(6) The applicant has failed to submit payments of the taxes imposed under chapter 82.24 or 82.26 RCW along with reports and returns to the department of revenue as required.

(7) If the applicant is a corporation and the corporation is not currently registered with the secretary of state.

(8) The applicant is currently the subject of an outstanding felony arrest warrant.

(9) The existence of disqualifying criminal history standards outlined in WAC 314-33-020.

(10) The existence of disqualifying liquor and cigarette and tobacco products law or rule violation history standards outlined in WAC 314-33-025.

NEW SECTION

WAC 314-33-020 What criminal history might prevent an applicant from receiving or keeping a cigarette or tobacco products license? (1) For the purpose of reviewing an

application for a license and for considering the denial, suspension, or revocation of any such license, the board may consider any prior criminal conduct of the applicant and criminal history record within the previous five years.

(2) When the board processes a criminal history check on an applicant, it uses a point system to determine a person's qualification for a license. The board will not normally issue a cigarette and tobacco products license to an applicant who has accumulated eight or more points as indicated below:

Description	Time period during which points will be assigned from date of conviction	Points assigned
Felony conviction	Five years	12 points
Gross misdemeanor conviction for violation of chapters 82.24 and 82.26 RCW	Five years	12 points

Other gross misdemeanor conviction	Three years	5 points
Misdemeanor conviction	Three years	4 points
Nondisclosure of any of the above	n/a	4 points each

(3) If a case is pending for an alleged offense that would earn eight or more points, the board will hold the application for the disposition of the case. If the disposition is not settled within ninety days, the board may administratively close the application.

Chapter 314-34 WAC

CIGARETTE AND TOBACCO PRODUCTS VIOLATIONS

NEW SECTION

WAC 314-34-001 Purpose of chapter. The purpose of this chapter is to outline what a cigarette and/or tobacco products licensee can expect if a licensee receives an administrative violation notice alleging a violation of a statute under chapters 82.24 and 82.26 RCW, or under chapter 314-33 WAC.



NEW SECTION

WAC 314-34-003 Authority--Suspension or revocation of wholesale and retail cigarette and tobacco products licenses.

(1) The board has full power and authority to suspend or revoke the license of any cigarette wholesale or retail licensee and tobacco products distributor or retail licensee upon sufficient showing that the license holder has violated the provisions of chapters 82.24 and 82.26 RCW or chapter 314-33 WAC.

(2) Any person possessing both a cigarette license and a tobacco products license is subject to suspension and revocation of both licenses for violation of either chapter 82.24 or 82.26 RCW or this chapter. For example, if a person has both a cigarette license and a tobacco products license, revocation of the tobacco products license will also result in revocation of the cigarette license.

(3) A person whose license has been suspended or revoked must not sell or permit the sale of tobacco products or cigarettes during the period of the suspension or revocation.

(4) For the purposes of this rule, "cigarettes" has the same meaning as in RCW 82.24.010 and "tobacco products" has the same meaning as in RCW 82.26.010.

(5) Any person whose license has been revoked must wait one year following the date of revocation before requesting a

hearing for reinstatement. Reinstatement hearings are held pursuant to chapter 34.05 RCW.

NEW SECTION

WAC 314-34-005 What are the procedures for notifying a licensee of an alleged violation of a cigarette or tobacco products statute or regulation? When an enforcement officer believes that a cigarette and/or tobacco products licensee has violated a board statute or regulation, the officer may prepare an administrative violation notice (AVN) and mail or deliver the notice to the licensee or the licensee's agent. The AVN will include:

- (1) A brief narrative description of the violation(s) the officer is charging;
- (2) The date(s) of the violation(s);
- (3) A copy of the law(s) and/or regulation(s) allegedly violated;
- (4) An outline of the licensee's options as outlined in WAC 314-34-010; and
- (5) The penalty.

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NEW SECTION

WAC 314-34-010 What options does a licensee have once they receive a notice of administrative violation? (1) A licensee has twenty days from receipt of the notice to:

(a) Accept the recommended penalty; or

(b) Request a settlement conference in writing; or

(c) Request an administrative hearing in writing. A response must be submitted on a form provided by the board.

(2) **What happens if a licensee does not respond to the administrative violation notice within twenty days?** If a licensee does not respond to the administrative violation notice within twenty days, the recommended penalty will go into effect.

(3) **What are the procedures when a licensee requests a settlement conference?**

(a) If the licensee requests a settlement conference, the hearing examiner or captain will contact the licensee or permit holder to discuss the violation.

(b) Both the licensee and the hearing examiner or captain will discuss the circumstances surrounding the charge, the recommended penalty, and any aggravating or mitigating factors.

(c) If a compromise is reached, the hearing examiner or captain will prepare a compromise settlement agreement. The

hearing examiner or captain will forward the compromise settlement agreement, authorized by both parties, to the board for approval.

(i) If the board approves the compromise, a copy of the signed settlement agreement will be sent to the licensee and will become part of the licensing history.

(ii) If the board does not approve the compromise, the licensee will be notified of the decision. The licensee will be given the option to renegotiate with the hearings examiner or captain, of accepting the originally recommended penalty, or of requesting an administrative hearing on the charges.

(d) If the licensee and the hearing examiner or captain cannot reach agreement on a settlement proposal, the licensee may accept the originally recommended penalty, or the hearing examiner or captain will forward a request for an administrative hearing to the board's hearings coordinator.

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NEW SECTION

WAC 314-34-015 What are the penalties if a cigarette and/or tobacco products license holder violates a cigarette or tobacco products law or rule? For the purposes of chapter 314-33 WAC, a two-year window for violations is measured from the date one violation occurred to the date a subsequent violation occurred.

(1) 1st offense - License suspension for not less than thirty consecutive business days.

(2) 2nd offense - License suspension for not less than ninety days - or more than twelve months.

(3) 3rd and consecutive offenses - Subject to revocation.

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NEW SECTION

WAC 314-34-020 Information about cigarette and/or tobacco products license suspensions. (1) On the date a cigarette and/or tobacco products license suspension goes into effect, a liquor enforcement officer will post a suspension notice in a conspicuous place on or about the licensed premises. This notice will state that the license has been suspended by order of the liquor control board due to a violation of a cigarette or tobacco products law or rule.

(2) During the period of cigarette and/or tobacco products license suspension, the licensee and employees:

(a) Are required to maintain compliance with all applicable cigarette and tobacco products laws and rules;

(b) May not remove, alter, or cover the posted suspension notice, and may not permit another person to do so;

(c) May not place or permit the placement of any statement on the licensed premises indicating that the premises have been closed for any reason other than as stated in the suspension notice;

(d) May not advertise by any means that the licensed premises is closed for any reason other than as stated in the liquor control board's suspension notice.

(3) During the period of cigarette and tobacco products license suspension:

(a) A retail cigarette and/or tobacco products licensee may operate his/her business provided there is no sale, delivery, removal, or receipt of cigarette and tobacco products.

(b) A cigarette wholesaler and tobacco products distributor licensee may operate his/her business provided there is no sale, delivery, removal, or receipt of cigarette and tobacco products.

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NEW SECTION

WAC 314-34-030 Cigarette and other tobacco products violations. (1) The following is a list of cigarette violations:

(a) Taxes - failure to pay taxes as required;

(b) Stamps - tax stamp violations to include:

(i) Failure to affix stamps;

(ii) Forgery/counterfeit; or

(iii) Possession of unstamped cigarettes.

(c) Retailer obtaining cigarettes from an unauthorized source;

(d) Records - improper recordkeeping or failure to submit reports as required;

(e) Failure to allow inspections of any of the following:

(i) Premises;

(ii) Stamps;

(iii) Vehicles;

(iv) Cigarettes;

(v) Books; or

(vi) Records.

(f) Transporting violations to include failure to notify and improper records;

(g) Operating outside the capacity of the license and failure to secure the proper license; and

(h) License suspension violations.

(2) The following is a list of other tobacco product violations:

(a) Taxes - failure to pay taxes as required;

(b) Records - improper recordkeeping or failure to submit reports as required;

(c) Failure to allow inspections of any of the following:

(i) Premises;

(ii) Vehicles;

(iii) Tobacco products;

(iv) Books; or

(v) Records.

(d) Transporting violations to include failure to notify and improper records;

(e) Operating outside of the capacity of the license or failure to secure the proper license;

(f) Retailer not licensed as a distributor and obtaining tobacco products from an unlicensed distributor;

(g) Manufacturer representative's violation; and

(h) License suspension violations.

NEW SECTION

WAC 314-33-025 What liquor and cigarette and tobacco products law or rule violation history might prevent an applicant from receiving a cigarette or tobacco products license? The board will conduct an investigation of all applicants' liquor and cigarette and tobacco products law and/or rule administrative violation history. The board will not normally issue a cigarette and tobacco products license to a person, or to an entity that has the following violation history or to any person that has demonstrated a pattern of disregard for laws or rules: Four or more violations within the last two years of the date the application is received by the board.

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NEW SECTION

WAC 314-33-030 What is the process if the board denies a cigarette or tobacco products license application? If the board denies a cigarette or tobacco products license application, the applicant may:

(1) Request an administrative hearing per chapter 34.05 RCW; or

(2) Reapply for the license no sooner than one year from the original denial date.