Chapter 314-42 WAC

LIQUOR CONTROL BOARD OPERATIONS

WAC

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314-42-090  Definition of issues before hearing. [Statutory Authority: RCW 66.08.030, 66.44.010, 66.24.010(3), chapter 3405 RCW. 01-11-058, § 314-42-090, filed 5/11/01, effective 6/1/01.] Repealed by 08-17-056, filed 8/15/08, effective 9/15/08.
314-42-100  How can a person petition the board for the adoption, amendment, or repeal of a rule? [Statutory Authority: RCW 66.08.030, 66.44.010, 66.24.010(3), chapter 3405 RCW. 01-11-058, § 314-42-100, filed 5/11/01, effective 6/1/01.] Repealed by 08-17-056, filed 8/15/08, effective 9/15/08.

WAC 314-42-010  Liquor control board administrative director, (1) The purpose of this rule is to ensure efficient and consistent administration of the liquor control board through the delegation of certain administrative functions to an administrative director. The delegation of administrative functions by the board, as provided for in this section, does not alter the board's statutory responsibility to administer Title 66 RCW.

(2) The administrative director will be appointed by, and serve at the pleasure of, the board, and will perform his/her duties under the general control, management, and supervision of the board.

(3) The following duties are delegated by the board to the administrative director:
(a) Appointing authority as defined by WAC 356-05-040, 356-30-007, and 356-34-011 for all liquor control board employees, with the exception of the director and staff of the policy, legislative, and media relations division as described in subsection (4)(e) and staff that report directly to the board members;
(b) Authorize expenditures of funds from the board approved internal budget;
(c) Purchase, lease, contract, or otherwise acquire any goods, services, and products within the board approved internal budget;
(d) Approve uncontested licenses and permits (this authority may be further delegated);
(e) Assign duties, coordinate agency operations, and establish performance standards and timelines;
(f) Approve disbursements of excess funds from the liquor revolving fund; and
(g) Perform other duties of a routine administrative nature identified by the board.

(4) The following duties will not be delegated and will remain functions of the board:
(a) Final approval of agency-wide and division budgets as prepared by the administrative director;
(b) Revocation or suspension of a license or permit;
(c) Appeals of administrative actions taken against liquor and tobacco licensees;
(d) Approval of contested liquor license and permit applications; and
(e) Direct oversight of the policy, legislative, and media relations division and staff that report directly to the board members, including:
(i) Rule making actions,
(ii) Approval of agency-request legislative proposals, and

(iii) The employment, termination, and discipline of the director and staff of the policy, legislative, and media relations division and staff that report directly to the board members.

[Statutory Authority: RCW 66.08.030 and 66.08.050. 12-17-006, § 314-42-010, filed 8/1/12, effective 9/1/12. Statutory Authority: RCW 66.08.030, 66.08.070(1), 66.08.130, 66.08.140, 66.08.170, 66.20.010, 66.24.010(2), 01-15-049, § 314-42-010, filed 7/15/01, effective 8/13/01; 00-06-016, § 314-42-010, filed 2/22/00, effective 5/24/00.]

WAC 314-42-020 Appearance and practice before the board—Who may appear. During an adjudicative proceeding, no person may appear in a representative capacity before the Washington state liquor control board or its designated hearing officer other than the following:

(1) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington;

(2) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our state law; and/or

(3) A bona fide officer, authorized manager, partner, or full-time employee of an individual firm, association, partnership, or corporation who appears for such individual firm, association, partnership, or corporation.

[Statutory Authority: RCW 66.08.030, 66.44.010, 66.24.010(3), chapter 34.05 RCW. 01-11-058, § 314-42-020, filed 5/11/01, effective 6/11/01.]

WAC 314-42-030 May a former employee of board or former member of attorney general's staff appear before the board and under what circumstances? No former employee of the board or member of the attorney general's staff may appear in a representative capacity on behalf of other parties in a formal proceeding wherein he/she previously took an active part as a representative of the board unless the board grants permission in writing.

[Statutory Authority: RCW 66.08.030, 08-17-056, § 314-42-030, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030, 66.44.010, 66.24.010(3), chapter 34.05 RCW. 01-11-058, § 314-42-030, filed 5/11/01, effective 6/11/01.]

WAC 314-42-040 What rules apply to the procedures used in practice before the board? The board adopts the model rules of procedure, found in chapter 10-08 WAC, promulgated by the office of administrative hearings unless the board implements a different procedure by rule.

[Statutory Authority: RCW 66.08.030, 08-17-056, § 314-42-040, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030, 66.44.010, 66.24.010(3), chapter 34.05 RCW. 01-11-058, § 314-42-040, filed 5/11/01, effective 6/11/01.]

WAC 314-42-045 How do you file papers with the board? Papers required to be filed with the board are deemed filed upon actual receipt by the board during office hours at its headquarters office in Olympia.

[Statutory Authority: RCW 66.08.030, 08-17-056, § 314-42-045, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030, 66.44.010, 66.24.010(3), chapter 34.05 RCW. 01-11-058, § 314-42-045, filed 5/11/01, effective 6/11/01.]
licensee's argument to the assistant attorney general, and one copy of the board's argument shall be forwarded to the licensee or his/her attorney.

(3) Unless a different time is fixed at the hearing, written arguments must be filed within ten days after the conclusion of the taking of the testimony at the hearing.

(4) After the receipt of both written arguments, the administrative law judge shall issue an initial order which will be served on the licensee or his/her attorney and the assistant attorney general.

WAC 314-42-095 What happens after an administrative hearing? (1) Following an administrative hearing, the administrative law judge will prepare an initial order and send it to the licensee or permit holder, the assistant attorney general, the board's offices, and any other party to the administrative hearing.

(2)(a) Either the licensee, permit holder, or the assistant attorney general may file a petition for review of the initial order with the liquor control board within twenty days of the date of service of the initial order. With notice to all parties the board may change the time for filing a petition for review of the initial order. The board may extend or shorten the filing time based on a voluntary stipulation of the parties or upon motion of a party that demonstrates a clear and convincing showing of exigent circumstances. The petition for review must:

(i) Specify the portions of the initial order to which exception is taken; and
(ii) Refer to the evidence of record which is relied upon to support the petition.

(b) Within ten days after service of the petition for review, any party may file a reply with the liquor control board and copies of the reply must be mailed to all other parties or their representatives at the time the reply is filed.

(3) The administrative record, the initial order, and any petitions for review and replies filed by the parties will be circulated to the board members for review.

(4) Following this review, the board will enter a final order which is appealable under the provisions of RCW 34.05.510 through 34.05.598 (Washington Administrative Procedure Act). The board may issue a final order that differs from the initial order even though no party has filed a petition for review or reply.

WAC 314-42-110 Brief adjudicative proceedings. The Administrative Procedure Act provides for brief adjudicative proceedings in RCW 34.05.482 through 34.05.494. The board will conduct brief adjudicative proceedings where it does not violate any provision of law and where protection of the public interest does not require the board to give notice and an opportunity to participate to persons other than the parties. If an adjudicative proceeding is requested, a brief adjudicative proceeding will be conducted where the matter involves one or more of the following:

(1) Liquor license suspensions due to nonpayment of spirits taxes per RCW 66.24.010;
(2) Liquor license denials per WAC 314-07-065(2);
(3) Liquor license denials per WAC 314-07-040;
(4) Special occasion license application denials per WAC 314-07-040;
(5) Special occasion license application denials per WAC 314-07-065(7);
(6) MAST provider or trainer denials for noncompliance with a support order in accordance with RCW 66.20.085;
(7) MAST provider denials or revocations per WAC 314-17-070;
(8) Liquor license suspensions due to nonpayment of beer or wine taxes per WAC 314-19-015;
(9) One-time event denials for private clubs per WAC 314-40-080;
(10) Banquet permit denials per WAC 314-18-030;
(11) The restrictions recommended by the local authority on a nightclub license are denied per WAC 314-02-039 (a local authority may request a BAP);
(12) The restrictions recommended by a local authority are approved per WAC 314-02-039 (an applicant for a nightclub license may request a BAP);
(13) Liquor license suspensions due to noncompliance with a support order per RCW 66.24.010;
(14) Liquor license suspensions due to noncompliance with RCW 74.08.580(2), electronic benefits cards, per RCW 66.24.013;
(15) License suspension due to nonpayment of spirits liquor license fees per RCW 66.24.630;
(16) License suspension due to nonpayment of spirits distributor license fees per RCW 66.24.055; and
(17) Tobacco license denials per WAC 314-33-005.

WAC 314-42-115 Preliminary record in brief adjudicative proceedings. (1) The preliminary record with respect to a liquor license suspension due to nonpayment of spirits taxes in RCW 66.24.010 shall consist of:

(a) All correspondence from department of revenue requesting missing taxes or reports; and
(b) Request from department of revenue to the liquor control board requesting suspension of the liquor license.

(2) The preliminary record with respect to a liquor license intent to deny under WAC 314-07-065(2) where the applicant has failed to submit information or documentation shall consist of:

(a) All correspondence between the applicant and the board pertaining to requests for information or documentation; and
(b) A copy of the application report prepared by licensing division staff.

(3) The preliminary record with respect to a liquor license application intent to deny where the applicant failed to meet the criminal history standards outlined in WAC 314-07-040 shall consist of:

(a) A copy of the application report prepared by licensing division staff;
(b) The personal/criminal history statement(s) submitted by the applicant;

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(c) Any interoffice correspondence reporting criminal history of applicant(s); and
(d) Copies of any correspondence submitted by the applicant explaining or rebutting the criminal history findings.

(4) The preliminary record with respect to a special occasion liquor license application (chapter 314-05 WAC) intent to deny where the applicant failed to meet the criminal history standards outlined in WAC 314-07-040 shall consist of:
(a) A copy of the application report prepared by licensing division staff;
(b) The personal/criminal history statement(s) submitted by the applicant(s);
(c) Any interoffice correspondence reporting criminal history of applicant(s); and
(d) Copies of any correspondence submitted by the applicant explaining or rebutting the criminal history findings.

(5) The preliminary record with respect to a special occasion liquor license application (chapter 314-05 WAC) intent to deny where the application was objected to by the local authority wherein the event is scheduled (WAC 314-07-065(7)) shall consist of:
(a) A copy of the special occasion license application and supporting materials;
(b) A copy of the notice sent to the local authority by licensing division staff;
(c) A copy of the objection received from the local authority; and
(d) A copy of any correspondence from the applicant rebutting the objection from the local authority.

(6) The preliminary record with respect to suspension of mandatory alcohol server, provider or trainer, for noncompliance with a support order in accordance with RCW 66.20.085 shall consist of:
(a) A copy of the license suspension certification from the department of social and health services; and
(b) A copy of all documents received from or on behalf of the permit holder rebutting the identification of the server, provider, or trainer.

(7) The preliminary record with respect to suspension of mandatory alcohol server, provider or trainer, for failing to meet the criminal history standards outlined in WAC 314-07-070(1) shall consist of:
(a) A copy of the personal/criminal history statement submitted by the applicant;
(b) Any interoffice correspondence reporting criminal history of applicant; and
(c) Copies of any correspondence submitted by the applicant, permit holder, provider or trainer explaining or rebutting the criminal history findings.

(8) The preliminary record with respect to liquor license suspensions due to nonpayment of beer or wine taxes per WAC 314-19-015 shall consist of:
(a) Copies of any correspondence requesting missing taxes, fees, or penalties when identified after processing reporting form monthly; and
(b) Copies of backup documentation including envelopes showing late filing, corrections on reporting form, and audit findings.

(9) The preliminary record with respect to one-time event denials for private clubs in WAC 314-40-080 shall consist of:
(a) A copy of the written request for a one-time event;
(b) A copy of the written denial including the reason(s) for the denial; and
(c) Copies of all correspondence.

(10) The preliminary record with respect to banquet permit denials in WAC 314-18-030 shall consist of:
(a) The application for a banquet permit;
(b) A copy of the written denial including the reason(s) for denial; and
(c) All correspondence.

(11) The preliminary record with respect to denial of restrictions requested on a nightclub license by a local authority under the provisions in WAC 314-02-039 shall consist of:
(a) A copy of the application report prepared by licensing division staff and the threshold decision by the licensing director or his/her designee;
(b) A copy of all correspondence from the local authority requesting restrictions on the nightclub premises; and
(c) Copies of any correspondence submitted by the nightclub applicant or license holder rebutting the request for restrictions.

(12) The preliminary record with respect to licensing's approval of a request for restrictions on a nightclub license under the provisions of WAC 314-02-039 shall consist of:
(a) A copy of the application report prepared by licensing division staff and the threshold decision by the licensing director or his/her designee;
(b) A copy of all correspondence from the local authority requesting restrictions on the nightclub premises; and
(c) Copies of any correspondence submitted by the nightclub applicant or license holder rebutting the request for restrictions.

(13) The preliminary record with respect to a liquor license suspension due to noncompliance with a support order from the department of social and health services under RCW 66.24.010 shall consist of:
(a) The written request from department of social and health services to suspend the liquor license;
(b) A copy of the written liquor control board suspension order; and
(c) Copies of all correspondence.

(14) The preliminary record with respect to a liquor license suspension due to noncompliance with RCW 74.08.580, electronic benefits cards, per RCW 66.24.013 shall consist of:
(a) The written request from department of social and health services to suspend the liquor license;
(b) The complete investigation from department of social and health services to support the suspension;
(c) A copy of the written liquor control board suspension order; and
(d) Copies of all correspondence.

(15) The preliminary records with respect to liquor license suspension due to nonpayment of spirits liquor license fees per RCW 66.24.630 shall consist of:

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(a) All correspondence relating to discrepancies in fees and/or penalties when identified after processing reporting forms; and
(b) All backup documentation including envelopes showing late filing, corrections on reporting forms, and audit findings.
(16) The preliminary records with respect to liquor license suspensions due to nonpayment of spirits distributor license fees per RCW 66.24.055 shall consist of:
(a) All correspondence requesting missing fees and/or penalties when identified after processing reporting forms; and
(b) All backup documentation including envelopes showing late filing, corrections on reporting forms, and audit findings.
(17) The preliminary record with respect to tobacco license denials shall consist of:
(a) The license application from business license services;
(b) The personal/criminal history statement submitted by the applicant;
(c) The judicial information system criminal history and division recommendation;
(d) The letter of denial from the liquor control board;
(e) The notice of intent to deny statement to the applicant; and
(f) All correspondence.
[Statutory Authority: RCW 66.08.030. 12-24-032, § 314-42-120, filed 11/28/12, effective 12/29/12.]

WAC 314-42-125 Brief adjudicative proceedings conversion to formal adjudicative proceedings. (1) At least five days before the scheduled issuance of either an initial or a final order, any party, including the agency, may file a written objection to resolution of a matter by a brief adjudicative proceeding and may request that it be converted to a formal adjudicative proceeding. Upon receiving a timely written objection, the presiding officer or reviewing officer shall determine whether the matter should be converted. Regardless of whether any party files a timely objection, the presiding officer or reviewing officer may convert any brief adjudicative proceeding to a formal adjudicative proceeding whenever it appears that a brief adjudicative proceeding is insufficient to determine the issues pending before the board.
(2) In determining whether to convert a proceeding, the presiding officer may consider the following factors:
(a) Whether witness testimony will aid the presiding or reviewing officer in resolving contested issues of fact;
(b) Whether the legal or factual issues are sufficiently complex to warrant a formal adjudicative proceeding, including whether there are multiple issues of fact or law;
(c) Whether a brief adjudicative proceeding will establish an adequate record for further agency or judicial review;
(d) Whether the legal issues involved in the proceeding present questions of legal significance or are being raised for the first time before the agency;
(e) Whether conversion of the proceeding will cause unnecessary delay in resolving the issues; and
(f) Any other factors that the presiding or reviewing officer deems relevant in reaching a determination.
[Statutory Authority: RCW 66.08.030. 12-24-032, § 314-42-125, filed 11/28/12, effective 12/29/12.]