



## Notice of Rule Change – Explanatory Statement Delegation of Authority

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This explanatory statement concerns the **Washington State Liquor Control Board's adoption of changes to rules regarding Delegation of Authority.**

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 November 15, 2009).

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](mailto:rules@liq.wa.gov).

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### **What are the agency's reasons for revising these rules?**

These rules are being revised as part of the Rules review process.

### **What changes are being made?**

The Board adopted these rule changes October 14, 2009. The rules will be filed on October 14, 2009 and will be effective on November 15, 2009.

**New Section 314-07-121 Board delegation of authority to make initial threshold determinations.** Explains the process the director of licensing and regulation will follow when making threshold decisions on applications or renewals objections have been received, or the applicant/licensee appears to be ineligible for a license due to failure to meet requirements under statute or rule.

**Amended Section WAC 314-09-010 Objection to liquor license applications.** Made corrections to current rule. Changed language from "receipt of the denial letter" to "receipt of the intent to deny notification".

**Amended Section WAC 314-09-015 Objections to liquor license renewals.**

Revised language in section (1)(d) regarding objections to renewals received within 30 days of the expiration date when the license has already been renewed. In section (2), clarified the process the licensee or local government must follow to request an adjudicative hearing.

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**Summary of all public comments received on this rule proposal.**

No public comment was received.

**Testimony at Public Hearing – August 12, 2009 Olympia, WA**

None

**WAC Changes**

NEW SECTION

**WAC 314-07-121 Board delegation of authority to make initial threshold determinations.** (1) The board may delegate to the licensing and regulation division director the authority to make initial threshold determinations on liquor license applications and renewals where:

(a) Objections have been submitted; or

(b) The applicant/licensee appears to be ineligible for a license due to failure to meet requirements under statute or rule. Failure to meet eligibility requirements includes data obtained through a criminal background check or criminal history record information (CHRI) report.

(2) Threshold determinations will be made in accordance with the provisions of RCW 66.24.010 as well as all other relevant sections of state law and Title 314 WAC. The licensing and regulation division director shall:

(a) Give substantial weight to objections from a local authority where objections are based on chronic illegal activity;

(b) Give due consideration to the location of a new liquor license application as it relates to the proximity to churches, schools, and public institutions as well as other considerations raised by the local authority.

(3) If the licensing and regulation director determines that the board will seek denial of a license application or nonrenewal of an existing license, an aggrieved applicant/licensee may request an adjudicative hearing before an administrative law judge (see chapter 314-09 WAC).

(4) If the licensing and regulation director determines that the board will seek to approve a license or renewal over the objection of the local authority, the local authority may request an adjudicative hearing before an administrative law judge (see chapter 314-09 WAC). The licensing and regulation director will determine whether an adjudicative hearing will be granted to the local authority.

An adjudicative hearing will be granted where the objection is based on alleged conduct related to public safety within the jurisdiction of the board under Title 66 RCW.

AMENDATORY SECTION (Amending WSR 05-07-011, filed 3/4/05, effective 4/4/05)

**WAC 314-09-010 Objections to liquor license applications.**  
 (1) How can persons, entities, and governmental jurisdictions object to the issuance of a liquor license or permit? Per RCW 66.24.010 (8) and (9), the board will notify certain entities of the following types of annual or special occasion liquor license or permit applications. In addition to the following entities any person or group may comment in writing to the board regarding ~~((~~fall~~))~~ an application.

Type of Application	Entities the board will notify
<p><del>(/)</del> Applications for an annual license or permit at a new location that would allow the sale and/or service of alcohol beverage to the public for on-premises consumption or to-go; and</p> <p><del>(/)</del> Applications to change the class of an existing annual liquor license or permit that allows the sale and/or service of alcohol beverage to the public for on-premises consumption or to-go.</p>	<p><del>(/)</del> Governmental jurisdictions in which the premises is located, and</p> <p><del>(/)</del> Schools, churches, and public institutions within 500 feet of the premises to be licensed (as measured according to RCW 66.24.010(9)).</p>
<p><del>(/)</del> Applications for any <del>((<del>annual or</del>))</del> special occasion liquor license <del>((<del>or permit</del>))</del> that allows the sale and/or service of alcohol beverage; and</p> <p><del>(/)</del> Changes of ownership at existing licensed premises.</p>	<p><del>((<del>fall</del>))</del> <del>(/)</del> Governmental jurisdictions only.</p>

(2) **What will happen if a person or entity objects to a liquor license application?** When deciding whether to issue or deny a liquor license application ~~((~~for permit~~))~~ or permit, the board will give due consideration to input from governmental jurisdictions in which the premises is located; private schools, churches, and public institutions within 500 feet of the premises (as measured according to RCW 66.24.010(9)); and other persons or groups. Note~~((~~fall~~))~~: Per RCW 66.24.010(9), the board shall not issue a new ~~((~~retail~~))~~ retail liquor license if a tax-supported public elementary or secondary school within 500 feet of the premises to be licensed objects to the

application (500 feet as measured according to RCW 66.24.010(9)).

(a) If the board contemplates issuing a license over the objection of a governmental jurisdiction in which the premises is located, the government subdivision may request an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW). If the board, in its discretion, grants the governmental jurisdiction(s) an adjudicative hearing, the licensee will be notified and given the opportunity to present evidence at the hearing.

(b) If the board denies a liquor license application based on the objection from a governmental jurisdiction; a private school, church, or public institution within 500 feet of the premises (as measured according to RCW 66.24.010(9)); and/or other persons or groups, the applicant(s) may either:

(i) Reapply for the license or permit no sooner than one year from the original denial date; or

(ii) Submit a written request((~~τ~~)) on a form provided by the board for an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW). The request must be received within twenty days of the date ((~~of licensee's receipt [of]~~)) the ((~~denial letter, for an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW)~~)) intent to deny notification was mailed.

[Statutory Authority: RCW 66.08.030 and 66.24.010. 05-07-011, § 314-09-010, filed 3/4/05, effective 4/4/05. Statutory Authority: RCW 66.08.030, 66.24.010, 66.08.150. 01-03-087, § 314-09-010, filed 1/17/01, effective 2/17/01.]

**NOTES:**

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

AMENDATORY SECTION (Amending WSR 05-07-011, filed 3/4/05, effective 4/4/05)

**WAC 314-09-015 Objections to liquor license renewals. (1)**  
**How can local governmental jurisdictions object to the renewal of a liquor license?**

(a) The board will give governmental jurisdictions approximately ninety days written notice of premises that hold annual liquor licenses in that jurisdiction that are up for renewal.

(b) Per RCW 66.24.010(8), if a governmental jurisdiction wants to object to the renewal of a liquor license in its jurisdiction, it must submit a letter to the board detailing the

reason(s) for the objection and a statement of all facts on which the objections are based.

~~((~~(c)~~))~~ (c) This letter must be received by the board at least thirty days before the liquor license expires. The objection must state specific reasons and facts that show issuance of the liquor license at the proposed location or to the applicant business will detrimentally impact the safety, health, or welfare of the community.

~~((~~(d) If the objection is received within 30 days of the expiration date or the licensee has already renewed the license, the objection will be considered as a complaint and possible license revocation by the Enforcement Division.~~))~~ (d) If the objection is received within thirty days of the expiration date or the licensee has already renewed the license, the objection will be considered as a complaint and possible license revocation may be pursued by the enforcement division.

(e) Objections from the public will be referred to the appropriate governmental jurisdiction for action under subsection (2) (~~(below)~~) of this section. Upon receipt of the objection, the board licensing and regulation division will acknowledge receipt of the objection(s) and forward to the appropriate governmental jurisdiction. Such jurisdiction may or may not, based on the public objection, request nonrenewal.

**(2) What will happen if a governmental jurisdiction objects to the renewal of a liquor license?** The board will give due consideration to a governmental jurisdiction's objection to a liquor license renewal of a premises in its jurisdiction. Based

on the governmental jurisdiction's input and any information in the licensing file, the board will decide to either renew the liquor license, or to (~~proceed with~~) pursue nonrenewal.

<p><del>((b))</del> <b>(a) Board decides to renew the liquor license:</b></p>	<p><del>((e))</del> <b>(b) Board decides to <del>((pursue nonrenewal of) [not renew])</del> <u>pursue nonrenewal of the liquor license:</u></b></p>
<p>(i) The board will notify the governmental jurisdiction(s) in writing of its intent to renew the license, stating the reason for this decision.</p> <p>(ii) The governmental jurisdiction(s) may contest the renewal and request an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW) <u>by submitting a written request on a form provided by the board. The request must be received within twenty days of the date the intent to renew notification was mailed.</u></p>	<p>(i) The board will notify the licensee in writing of its intent to not renew the license, stating the reason for this decision.</p> <p>(ii) The licensee may contest the nonrenewal <u>action</u> and request an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW) <u>by submitting a written request on a form provided by the board. The request must be received within twenty days of the date the intent to deny notification was mailed.</u></p> <p>(iii) If the licensee requests a hearing, the governmental jurisdiction(<del>((e))</del>) will be (<del>((notified-))</del>) notified.</p> <p><del>((vi))</del> (iv) During the hearing and any subsequent appeal process, the licensee is issued a temporary operating permit for the liquor license until a final decision is made.</p>



[Statutory Authority: RCW 66.08.030 and 66.24.010. 05-07-011,  
§ 314-09-015, filed 3/4/05, effective 4/4/05. Statutory  
Authority: RCW 66.08.030, 66.24.010, 66.08.150. 01-03-087, §  
314-09-015, filed 1/17/01, effective 2/17/01.]