

**AGENDA
BOARD MEETING
WA STATE LIQUOR CONTROL BOARD
Wednesday, October 14, 2009
Headquarter Building
3000 Pacific Ave, Olympia WA 98504**

10:00 a.m.

Roll Call

- 1. Introduction of Issue Paper and Interim Policy – Dinner Theater**
.....**Sharon Hendricks**
- 2. Introduction of Board Policy - Energy Drink POS Materials**
.....**Debi Besser**
- 3. Approval of Final Rulemaking (CR 103) on Rules Review of WAC 314-29-015 through WAC 314-29-035 – Penalty Guidelines**
.....**Karen McCall**
- 4. Approval of Final Rulemaking (CR 103) - Delegation of Authority**
.....**Karen McCall**
- 5. New Business.....Board Members**
- 6. Old Business.....Board Members**

Recess/Adjourn



Alcohol Service in Cinema Venues with Minors Present

Date: August 26, 2009

Presented by: Sharon A. Hendricks, Manager Licensing Division

Problem or Opportunity

Briefly describe the business problem to be solved or opportunity to be gained. Please include a description of what will happen if we take no action to address this problem or opportunity.

Currently cinema venues are required to restrict minors in a theater area where alcohol is served. Cinema venues have asked that the Board consider removing this restriction

If no action is taken regarding this issue the possibility exists that at least one cinema venue business owner will move towards legal action. Licensing's experience with other cinema venues is that they all dislike the minor restriction and not taking action at this time only delays a decision on this issue.

Background

Briefly describe what led to this problem or opportunity. What has been LCB's action to date? Are there relevant RCWs, WACs, or policies that apply?

We currently have several cinema restaurant venues licensed. These licensees commonly refer to themselves as "dinner theaters." They liken themselves to a restaurant based on the fact that they offer food service during the showing of a movie. However, Licensing views these business models as primarily theaters, with customers going to the business because they want to see a movie and having a meal is secondary. Licensing does not equate a "dinner theater" as being a restaurant, where the primary focus is the sale of food. Although subtle, the difference between a dinner theater and a restaurant is comparable to the difference between a nightclub and a restaurant.

Note that all of these venues have been informed of the option to make one or more of their theater rooms alcohol free, thus the restriction of no minors would not apply to those theater rooms. All or most of these venues have three or more individual theater rooms.

Licensing has always imposed two requirements on these licensees:

- 1) The lighting must meet WAC 314-11-055: on all portions of the premises where alcohol is served or consumed, licensees must maintain sufficient lighting so that identification may be checked and patrons may be observed for the enforcement of liquor laws and rules.
- 2) No minors are to be allowed in the individual theater rooms that allow alcohol service.

The reasons for these two requirements are related to public safety, i.e. preventing minor access and over service.

The following rules support Licensing's approach to these types of venues.

- 1) WAC 314-02-030 (2) states that spirits/beer/wine restaurants that have less than fifteen percent of their total customer service area dedicated to dining must exclude minors from the entire premises.
- 2) WAC 314-02-010 (4) defines dedicated dining area – In order for an area to qualify as a dedicated dining area, it must be a distinct portion of a restaurant that is used primarily for the sale, service and consumption of food, and have accommodations for eating, e.g. tables, chairs, booths, etc.

Licensing does not view the theaters as "dedicated dining areas" within the meaning of WAC 314-02-010 (4) because the theater area is not used primarily for food service. It is used primarily for the viewing of a movie and food service is secondary to that.

Recommendations

State your recommendation and explain why. What alternatives did we review? What are the benefits and drawbacks? What are the potential risks associated with addressing the problem or opportunity.

Licensing recommends that the Board support current practice and that the Board's decision to apply the dedicated dining area rules to require age restriction to these venues be placed in a written Board policy until a rule can be adopted. The reason for this recommendation goes to public safety, it guarantees that minors will not be served alcohol and enables the agency to be consistent in it's treatment of all theater type venues.

Benefits	Drawbacks
<ul style="list-style-type: none"> ▪ Minor access is a non-issue. 	<ul style="list-style-type: none"> ▪ Negative financial business impact to licensee.
<ul style="list-style-type: none"> ▪ Overservice is more preventable with adequate lighting. 	<ul style="list-style-type: none"> ▪ Risk of legal action by venues to challenge application of dedicated dining area rules to these types of venues.
<ul style="list-style-type: none"> ▪ Consistency in how the agency treats all movie theaters remains in place. 	<ul style="list-style-type: none"> ▪ Applicants may believe this policy is inconsistent with other family restaurant types of licensing where minors are allowed but not served.
<ul style="list-style-type: none"> ▪ Problems with minimalist type (those premises which just barely meet requirements) operations is not present. 	<ul style="list-style-type: none"> ▪
<ul style="list-style-type: none"> ▪ Public Safety is assured. 	<ul style="list-style-type: none"> ▪
<ul style="list-style-type: none"> ▪ 	<ul style="list-style-type: none"> ▪

Expected Results

Describe the business objectives or outcomes expected. Make your objectives specific, measurable, attainable, realistic, and time-bound.

Does not apply.

Estimated Cost and Timeframe

Describe the estimated cost to address this problem or opportunity. Will there be any costs for equipment, travel, staff hours, training, systems, etc. Please include fiscal impacts to other divisions and stakeholders as well. Indicate the estimated timeframe you are thinking about having this start and finish.

Does not apply.

Funding Source

Describe where and how you anticipate funding this project. Also state if taking action is within your current budget allocation. If this produces revenue, where would revenue accrue?

Does not apply.

Stakeholder Impacts

Describe the political, fiscal, and resource impacts this idea will have on internal and external stakeholders.

Identify *internal* stakeholders and get their feedback about how they might be affected.

Stakeholder	Impacts (Political, Resource, Other)

Identify *external* stakeholders get their feedback about how they might be affected.

Stakeholder	Fiscal and Resource Impacts

Acceptance

Approval by Key Stakeholders for the final Issue Paper.

We have reviewed this document and approve resources for project definition:

Approved by	Signature	Date
Name Title		
Name Title		

Note: Approval of this Issue Paper is not authorization to start a project; it is authorization to define the project in more detail.



**Washington State
Liquor Control Board**

Liquor Control Board Interim Policy #10 - 2009

Subject: Restrictions on Spirits/Beer/Wine and Beer/Wine Restaurant Licenses for Dinner Theater (Cinema) venues.

Effective date:

Ending Date: Until superseded by rule or rescinded by the Board

Approved:

Sharon Foster, Chair

Ruthann Kurose, Board Member

Purpose:

Interim Policy #10 – 2009 is intended to clearly state the Board’s policy concerning licensure of dinner theater venues. Rule making will be commenced immediately to place this policy into administrative rule.

Background:

The Licensing Division continues to experience applications for licensure from this type of venue. Applicants have stated that the restriction to preventing minor access in the rooms where alcohol is served is unnecessary and economically harmful to their business model.

Currently licensed with the Board are numerous venues commonly referred to as “dinner theaters”. These venues provide entertainment to their customers in the presentation of large screen cinema. Because there is no current license for dinner theater venues, rather than deny them a liquor license these venues have been accommodated to fit into the restaurant or tavern license categories. This accommodation has been accomplished through imposing two conditions upon the license:

- 1) The lighting must meet WAC 314-11-055: on all portions of the premises where alcohol is served or consumed, licensees must maintain sufficient lighting so that identification may be checked and patrons may be observed for the enforcement of liquor laws and rules.
- 2) No minors are to be allowed in the individual theater rooms that allow alcohol service.

Licensing staff views these business models as primarily theaters, with customers going to the business because they want to see a movie and having a meal is secondary.

The rationale behind these two restrictions is directly related to public safety, i.e. preventing minor access and over service.

The following rules support Licensing's approach to these types of venues.

- 1) WAC 314-02-030 (2) states that spirits/beer/wine restaurants that have less than fifteen percent of their total customer service area dedicated to dining must exclude minors from the entire premises.
- 2) WAC 341-02-010 (4) defines dedicated dining area – In order for an area to qualify as a dedicated dining area, it must be a distinct portion of a restaurant that is used primarily for the sale, service and consumption of food, and have accommodations for eating, e.g. tables, chairs, booths, etc.

Policy Statement:

The Board permits the service of alcohol in theater (cinema) venues provided compliance with WAC 314-02-010(4) and 030(2) is assured. The Board does not find that seating within the room where cinema is shown constitutes dedicated dining, thus does not comply with WAC 314-02-010(4). Therefore, for venues that want the service of alcohol within such rooms and do not provide dedicated dining, the Board will require that minors be excluded from the entire premises.

Policy Implementation:

This interim policy will be posted to the LCB website. Further, rule-making to address this topic is to commence as quickly as possible.



Memorandum

To: Washington State Liquor Control Board (the “Board”)
From: Schwabe, Williamson & Wyatt, P.C.
Date: October 12, 2009
Subject: Proposed Interim Policy – Regarding Alcohol Service in Cinema Venues with Minors

We thank the Board for the opportunity to attend the meeting scheduled for October 14, 2009. We understand that the Board is considering adopting an interim policy reflecting the Licensing Division’s current practice regarding alcohol service in cinema restaurants with minors present (“**Proposed Interim Policy**”).

On behalf of Village Roadshow Gold Class Cinemas LLC (“**Village Roadshow**”), we are providing this memorandum for the Board’s consideration in its review of the Proposed Interim Policy. The purpose of this memorandum is to: (a) outline some concerns of the cinema restaurant industry relating to certain practices, policies, and rules governing the licensing of cinema restaurants; and (b) suggest standards and requirements that allow cinema restaurants to operate, while also addressing public safety concerns.

ISSUE PRESENTED

In Washington, a Spirits, Beer and Wine – Restaurant License (“**Restaurant License**”) is the only liquor license currently available to cinema restaurants that wish to serve spirits, beer and wine (also described as “dinner theaters”). It has been the practice of the Licensing Division to place certain restrictions on Restaurant Licenses issued to cinema restaurants, including prohibiting minors from rooms where movies are shown and alcohol is served and/or consumed (the “**Minor Restriction**”).

The Minor Restriction, as currently applied by the Licensing Division, appears arbitrary and capricious for several reasons:

- Prior applicants were not properly notified of the Licensing Division’s practice because such practice was not documented in any written policy.
- Not all dinner theaters are alike, but the Licensing Division’s current practices and rules treats all dinner theaters in the same way, without applying any objective standards or factors to evaluate whether a particular dinner theater should be viewed as primarily a restaurant or primarily a theater.
- Current rules and regulations do not appear to be properly applied as a basis for imposing the Minor Restriction.



DISCUSSION

1. Introduction

First, we recognize the legislature's valid concern for public safety – specifically the prevention of service to minors and over service of alcohol. We also understand that traditional movie theaters – dark auditoriums with stadium seating, limited food options, concession stands, and partial or no table service – is what typically comes to mind when the term “cinema” or “movie theater” is used.

However, we hope to show the Board that certain factors distinguish dinner theaters from traditional cinemas. Even more importantly, not all dinner theaters are alike, and dinner theaters that are more like traditional restaurants should be further distinguished from “brew and view” type venues.

2. Background

Village Roadshow operates a cinema restaurant in Redmond, Washington (the “**Redmond Cinema Restaurant**”). The Redmond Cinema Restaurant is a business concept that combines cinema entertainment with fine dining. Unlike “brew and view” type venues, the Redmond Cinema Restaurant offers a gourmet menu and full-table service throughout the well-lit establishment. The Redmond Cinema Restaurant is more like a restaurant than a traditional movie theater, with each cinema dining room set up with individual dining tables and chairs. The Redmond Cinema Restaurant has every characteristic of a typical restaurant, differing only in that movies show while the patron dines and/or drinks.

Since opening approximately one year ago, the Redmond Cinema has encountered operational and customer service issues as a result of the Minor Restriction. The Redmond Cinema is located in a suburb and a significant number of adult customers attempt to bring their children. Village Roadshow staff have had to turn away numerous customers accompanied by their children and have had a hard time explaining the public policy rationale behind the Minor Restriction. Most customers argue that their children are allowed to sit with them at sporting events and restaurants while alcohol is served and consumed. Such incidents have caused a significant customer service problem.

3. Proposed Interim Policy

Village Roadshow would like to express some concerns about the practices, policies, and rules governing the licensing of cinema restaurants. Specifically, it is unclear how the current rules and regulations are being applied as a basis for imposing the Minor Restriction. The Proposed Interim Policy provides that auditoriums do not constitute “dedicated dining areas” and therefore do not comply with WAC 314-01-010(4). However, the Proposed Interim Policy then seems to jump to the conclusion that minors will be excluded from the “entire premises” based on the characterization that auditoriums are not dedicated dining areas.

The Proposed Interim Policy states that the following rules support the Minor Restriction:

- WAC 314-02-030(2) – Restaurants that have less than fifteen percent of their *total customer service area* dedicated to dining must exclude minors from the *entire premises*. [emphasis added] (“**15% Rule**”)
- WAC 341-02-010(4) – In order for an area to qualify as a dedicated dining area, it must be a distinct portion of a restaurant that is used primarily for the sale, service, and consumption of food, and have accommodations for eating, e.g., tables, chairs, booths, etc. (“**Dedicated Dining Area**”)

The stated rationale for the Minor Restriction causes several concerns:

- (a) The determination that all cinema restaurants do not fall within the definition of Dedicated Dining Areas appears arbitrary and capricious because it is made without applying any objective factors.
- (b) The application of the 15% Rule seems vague and ambiguous because: (i) the Interim Policy fails to analyze the "total customer service area" element of the 15% Rule; and (ii) it is unclear whether the term "entire premises" means the entire licensed premises or portions of the licensed premises (e.g. individual auditoriums).

(a) Definition of Dedicated Dining Area

It has been the practice of the Licensing Division to place the Minor Restriction on Restaurant Licenses issued to cinema restaurants solely because the establishment shows movies. The standards a court will use in reviewing the validity of an agency rule are set forth in RCW 34.05.570(2). That statute provides that an agency rule may be invalidated if the rule is arbitrary and capricious. The determination that areas that happen to show movies cannot be Dedicated Dining Areas appears arbitrary and capricious because it is made without applying any objective factors.

The Minor Restriction is imposed without considering any other attending facts or circumstances. Not all venues are the same and a one-size-fits-all approach seems unsuitable. Dinner theaters that are operated more like traditional restaurants should be distinguished from "brew and view" type venues that are constructed more like traditional movie theaters.

We believe it would be fair for the Board to consider factors such as:

- seating accommodations;
- eating facilities (including tables, china, and silverware);
- circulation patterns;
- table service;
- lighting; and
- other amenities.

Such factors are the same factors looked at when imposing conditions on a Sports Entertainment Facility License. In addition, we propose that the Board also consider factors such as:

- occupancy capacity;
- server-to-guest ratio;
- extent of service;
- food and beverage menu;
- price point; and
- target audience and demographics.

In addition, it seems the original intent of the 15% Rule was to distinguish areas from bar areas where the service of alcohol was the primary function. Another suggestion is to apply a sales test comparing the percentage food sales versus alcohol sales to verify whether the primary function is liquor service.

(b) The 15% Rule

Another concern is that the Proposed Interim Policy appears to imprecisely apply the 15% Rule. The rule states that restaurants that have less than 15% of their *total customer service area* dedicated to dining must exclude minors from the *entire premises*.

- WAC 314-02-010(3) – Customer service area means areas where food and/or liquor are normally sold and served to the public, i.e., lounges and dining areas. A banquet room is not considered a customer service area. (“**Customer Service Area**”)
- WAC 314-01-005(1) – Premises means all areas of a premises under the legal control of the licensee and available to or used by customers and/or employees in the conduct of business operations. (“**Premises**” or “**Licensed Premises**”)

It appears that the 15% Rule should only be used to determine whether minors are allowed on the Licensed Premises at all (as opposed to individual theaters). Restaurants that do not meet the 15% test must exclude minors from the entire Premises.

The application of the 15% Rule as a basis for the Minor Restriction seems imprecise because: (i) the Proposed Interim Policy fails to analyze the Customer Service Area; and (ii) the Proposed Interim Policy appears to use the term Premises interchangeably with the term Dedicated Dining Area.

(i) Total Customer Service Area

The first step of the 15% test is to determine the total Customer Service Area. If a dinner theater normally sells and serves food to its customers within individual auditoriums, such auditoriums should be included in calculating the total Customer Service Area of the Premises. The second step of the 15% test is to determine the Dedicated Dining Area. If the Dedicated Dining Area is less than 15% of the Total Customer Service Area, minors should be excluded. The Proposed Interim Policy fails to analyze the total Customer Service Area.

(ii) Entire Premises

Furthermore, the Proposed Interim Policy appears to use the term Premises interchangeably with the term Dedicated Dining Area. The Proposed Interim Policy provides that an applicant that does not meet the 15% test must prohibit minors from the entire Premises (as opposed to just individual auditoriums). This appears to contradict current practice, because minors are allowed in certain areas of dinner theaters (e.g. dry auditoriums).

Because minors are currently permitted at the licensed cinemas (even if limited to certain areas), it suggests that the Licensing Division should have already determined that the licensee either met the 15% test or waived such requirement. We understand that floor plans are submitted as part of the application process, seemingly to determine whether an applicant meets the 15% Rule, among other things. Even if we assume the application of the 15% Rule was waived for current licensees, if a current licensee or applicant meets the 15% Rule, then minors should be permitted on the Premises.

4. Other Considerations

It appears that the Board intends to immediately start the rulemaking process to clarify the existing policies and rules discussed above. We understand that public safety is a priority and respectfully ask the Board to allow for individualized determinations as to whether public safety concerns are addressed and satisfied.

Simply because an establishment happens to show movies does not mean that it poses a risk to public safety. As previously mentioned, we believe it would be fair for the Board to consider factors such as seating accommodations, eating facilities, circulation patterns, and other amenities. These factors, among others, would provide a reasonable analysis as to whether licensees and enforcement officers could adequately monitor minor access to alcohol and the amount of alcohol service to adults.

We also kindly ask the Board to consider the following precedent:

- Divisional Recommendation – Sports Entertainment – Darkened House (August 2, 2006)

Generally, minors are permitted in some sports and entertainment facilities while alcohol is served and consumed. Like dinner theaters, entertainment is occurring while the patron dines and/or drinks. The current rules and regulations appear to adequately address public safety concerns at sports entertainment facilities. Consequently, because dinner theaters are somewhat similar to sports entertainment facilities, dinner theaters should be treated similarly to sports and entertainment facilities and permit the presence of minors while alcohol is served and consumed.

Moreover, the Divisional Recommendation appears to waive the general lighting requirement imposed on all licensees for sporting and entertainment facilities where minors may be present. Village Roadshow is not proposing to waive the general lighting requirement for dinner theaters. (In fact, enforcement has confirmed that lighting in the Redmond Cinema meets the lighting requirement.) However, it seems inconsistent to waive a rule intended to protect public safety for venues that allow minors and that generally have a higher occupancy rate and less food options than dinner theaters while imposing the Minor Restriction on dinner theaters.

- Liquor Control Board Policy Number 01-2 (May 31, 2000)

Although the policy has been superseded by rulemaking, the policy provides examples of how licensees have previously worked with the Licensing Division to look at alternative arrangements for unique and evolving business models.

Game Rooms – It appears that the Licensing Division had a previous practice requiring restaurants with game rooms (areas that are not considered Dedicated Dining Areas) to discontinue liquor service in the game room minors are present after 10:00 p.m. or restrict minors from the game room and continue liquor service. The practice was intended to allow licensees and enforcement officers to monitor minor access to alcohol. However, the practice was discontinued because the Board concluded that WAC 314-11 governing public safety would apply in such circumstances. The policy to allow minors in game rooms is inconsistent with the practice of imposing the Minor Restriction on dinner theaters solely because the Licensing Division does not consider dinner theaters Dedicated Dining Areas.

Live Entertainment – The policy also provides that live entertainment is permitted in Dedicated Dining Areas where minors are present until 11:00 p.m. Consequently, precedent shows that the presence of entertainment should not automatically disqualify an area from being a Dedicated Dining Area. Treating dinner theaters differently than restaurants with live entertainment also seems contradictory.

Memo to: Washington State Liquor Control Board
October 12, 2009
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CONCLUSION

Again, Village Roadshow understands the public safety concerns involved. However, agency policies and rules must also follow due process and cannot be arbitrary or capricious. Village Roadshow hopes to work closely with the Board during any rulemaking process intended to clarify existing policies and rules with respect to cinema restaurants. We hope to develop a framework for individualized determinations based on reasonably objective factors.

Finally, Village Roadshow would like to express some concern with respect to the timing of such rulemaking process, as Village Roadshow has consistently experienced lack of responsiveness from the Licensing Division. We are hopeful for open and prompt communications with the Board throughout the rulemaking process.



**Washington State
Liquor Control Board**

Liquor Control Board Policy #09 - 2009

Subject: Prohibition of References to Energy Drinks in Point-of-Sale Materials

Effective Date: October 28, 2009

Approved:

Sharon Foster, Board Chairman

Ruthann Kurose, Board Member

Background

The practice of consuming alcohol with energy drinks has become popular in recent years. However, there are an increasing number of scientific studies that have shown the dangerous effects of mixing alcohol with energy drinks. While alcohol is a depressant, energy drinks are stimulants. The net effect is that the consumer doesn't feel the effects of the alcohol, yet is just as impaired as they would be had they just consumed the alcohol without the energy drink.

There is an emerging consensus among scientists and medical professionals that this combination of energy drinks and alcohol is not safe, and poses a potentially serious public health risk. One of the leading studies, from the Wake Forest University School of Medicine, found that "students who consumed alcohol mixed with energy drinks were twice as likely to be hurt or injured, twice as likely to require medical attention, and twice as likely to ride with an intoxicated driver, as were students who did not consume alcohol mixed with energy drinks. Students who drank alcohol mixed with energy drinks were more than twice as likely to take advantage of someone else sexually, and almost twice as likely to be taken advantage of sexually."

Purpose Statement

Like the medical and prevention community, the Board is very concerned about the potential public safety effects of this growing trend of combining energy drinks with alcohol. The purpose of Liquor Control Board Policy #xx – 2009 is ensure that the Washington State Liquor Control Board (WSLCB) retail stores do not contain any marketing or point-of-sale material that suggests or recommends the use of energy drinks with alcoholic beverages.

10/1/09 (djb)

Policy Statement

Marketing/Point-of Sale (POS) materials - including, but not limited to bottle labels, back-cards, neckers, shelf talkers, posters, displays, unique displays, price signs, recipe cards, and rebates – referencing the use of energy drinks with alcohol are not allowed to be displayed in WSLCB state stores or contract stores.

Supplier and broker representatives will be responsible to ensure that their POS materials are in compliance with this policy.

Any POS materials with references to energy drinks found in the stores will be removed immediately, and the supplier and broker (if applicable) will be notified. Any supplier with more than one violation of this policy within one year may have their ability to qualify for product displays revoked for up to 6 months.

Policy Implementation

Effective 35 days from the implementation of this policy, all suppliers and brokers need to ensure that all POS materials with references to energy drinks have been removed from WSLCB stores, and that no new POS materials with references to energy drinks are placed in WSLCB stores.

The prohibition of energy drink references will be added to the criteria for approval of POS material.

Any products with references to energy drinks on the product label will not be given listing consideration.



Washington State
Liquor Control Board

Date: October 14, 2009
To: Sharon Foster, Board Chair
Ruthann Kurose, Board Member
From: Karen McCall, Agency Rules Coordinator
Copy: Pat Kohler, Administrative Director
Rick Garza, Deputy Administrator
Pat Parmer, Chief, Enforcement and Education
Subject: Approval of final rulemaking on rules review of WAC 314-29-015 through WAC 314-29-035.

At the Board meeting on October 14, 2009, the rules coordinator requests that the Liquor Control Board approve final rulemaking on rules review of WAC 314-29-015 through WAC 314-29-035

The Board was briefed on the rule making background, public comment, and agency response for this rule making. An issue paper and text of rule changes are attached.

If approved, the Rules Coordinator will send an explanation of the rule making to all persons who submitted comments. Two stakeholders gave comment at the public hearing held on September 2, 2009, held in the Board's meeting room in Olympia, Washington. After sending this explanation, the Rules Coordinator will file the rules with the Office of the Code Reviser. The effective date of the rules will be 31 days after filing.

Approve Disapprove Sharon Foster 10/14/09
Sharon Foster, Board Chair Date

Approve Disapprove Ruthann Kurose 10/14/09
Ruthann Kurose, Board Member Date

Attachment: Issue Paper

Washington State Liquor Control Board

Issue Paper

Rule Making on Penalty Guidelines (WAC 314-29-015 through 035)

Date: October 14, 2009

Presented by: Captain Justin Nordhorn, Enforcement & Education

Description of the Issue

The purpose of this issue paper is to recommend the Washington State Liquor Control Board (WSLCB) proceed with final rulemaking and adopt the rules standardizing and clarifying penalty guidelines covered in WAC 314-29-015 through 035.

Why is rule making necessary?

The intent of this rule revision is to include standard penalties for commonly violated laws that are not represented in the current penalty matrix, and provide clarity for the progression of penalties for subsequent violations in various categories.

Public Comment

Michael Transue – Washington Restaurant Association - WRA

WAC 314-29-015 (4) (a) and (b): WRA would like to see examples of mitigating and aggravating circumstances in this rule. The members prefer a list.

Response: A partial list of mitigating and aggravating circumstances was retained in this rule.

WAC 314-29-020: WRA is concerned there will be no monetary penalty for a second or third violation for public safety violations.

Response: Language was added to 314-29-015(4) indicating a monetary option in lieu of suspension may be offered during a settlement conference based on mitigating circumstances.

Comment: WRA would like the board to consider suspended sentences for first time violaters.

Response: This is a subject for discussion at a later date. It will not be part of this rulemaking.

Carolyn Logue – Washington Food Industry (WFI)

WAC 314-29-015(4)(a) and (b): WFI would like to see examples of mitigating and aggravating circumstances in this rule. Keeping some examples in rule is a help for their members. It is understood that it couldn't be a complete list, but a complete list could be kept on the LCB website.

Response: A partial list of mitigating and aggravating circumstances was retained in this rule.

What changes are being proposed?

Amendatory Section WAC 314-29-015 – What are the penalties if a liquor license holder violates a liquor law or rule? Renamed group two and group three violation types. Revised examples of mitigating and aggravating circumstances.

Amendatory Section WAC 314-29-020 – Group 1 violations against public safety. Added applicable RCW or WAC to violations. Grouped violations by type.

Amendatory Section WAC 314-29-025 – Group 2 regulatory violations. Changed the group name from "conduct" to "regulatory" violations. Moved many of the violation types from current Group 3 to this new Group 2. Added applicable RCW or WAC to violations.

Amendatory Section WAC 314-29-030 – Group 3 license violations. Changed group name from "regulatory" to "license" violations. Moved many violation types from other groups into this new Group 3. Added applicable RCW or WAC to violations.

Amendatory Section WAC 314-29-035 – Group 4 nonretail violations. Added "nonretail" to the group name. Added applicable RCW or WAC to violations.

AMENDATORY SECTION (Amending WSR 03-09-015, filed 4/4/03, effective 5/5/03)

WAC 314-29-015 What are the penalties if a liquor license holder violates a liquor law or rule? (1) The purpose of WAC 314-29-015 through 314-29-040 is to outline what penalty a liquor licensee can expect if a licensee or employee violates a liquor control board law or rule (the penalty guidelines for mandatory alcohol server training permit holders are in WAC 314-17-100 through 314-17-110). WAC rules listed in the categories provide reference areas, and may not be all inclusive.

(2) Penalties for violations by liquor licensees or employees are broken down into four categories:

(a) Group One--Public safety violations, WAC 314-29-020.

(b) Group Two--(~~Conduct~~) Regulatory violations, WAC 314-29-025.

(c) Group Three--(~~Regulatory~~) License violations, WAC 314-29-030.

(d) Group Four--Nonretail violations involving the manufacture, supply, and/or distribution of liquor by nonretail licensees and prohibited practices between nonretail licensees and retail licensees, WAC 314-29-035.

(3) For the purposes of chapter 314-29 WAC, a two year window for violations is measured from the date one violation occurred to the date a subsequent violation occurred.

(4) The following schedules are meant to serve as guidelines. Based on mitigating or aggravating circumstances,

the liquor control board may impose a different penalty than the standard penalties outlined in these schedules. Based on mitigating circumstances, the board may offer a monetary option in lieu of suspension during a settlement conference as outlined in WAC 314-29-010(3).

(a) Mitigating circumstances	(b) Aggravating circumstances
<p>((Examples of)) <u>Mitigating circumstances that may result in ((a) fewer ((number of)) days of suspension and/or a lower monetary option may include((, but are not limited to, having in place)) demonstrated business policies and/or practices ((such as:</u></p> <ul style="list-style-type: none"> / Using licensee certification cards that are correctly filled out and filed; / Having direct on-site supervision of employees; / Having a signed acknowledgment of the business' alcohol policy on file for each employee; / Having an employee training plan that includes annual training on liquor laws; / Showing cooperation with local law enforcement; etc.)) <u>that reduce the risk of future violations.</u> <p><u>Examples include:</u></p> <ul style="list-style-type: none"> / <u>Having a signed acknowledgment of the business' alcohol policy on file for each employee;</u> / <u>Having an employee training plan that includes annual training on liquor laws.</u> 	<p>((Examples of)) <u>Aggravating circumstances that may result in ((a higher number of)) increased days of suspension, ((a higher)) and/or increased monetary option, and/or cancellation of a liquor license may include((, but are not limited to:</u></p> <ul style="list-style-type: none"> / Failing to cooperate with local law enforcement or liquor control board employees; / Not calling for local law enforcement when requested by a customer or liquor control board agent; / Not checking to ensure employees are of legal age or have appropriate work permits; / <u>Committing the violation willfully; etc.)) business operations or behaviors that create an increased risk for a violation and/or intentional commission of a violation.</u> <p><u>Examples include:</u></p> <ul style="list-style-type: none"> / <u>Failing to call 911 for local law enforcement or medical assistance when requested by a customer, a liquor control board officer, or when people have sustained injuries;</u> / <u>Not checking to ensure employees are of legal age or have appropriate work permits.</u>
<p><u>(c) In addition to the examples in (a) and (b) of this subsection, the liquor control board will provide and maintain a list of business practices for reference as examples where business policies and/or practices may influence mitigating and/or aggravating circumstances. The established list will not be all inclusive for determining mitigating and/or aggravating circumstances, and may be modified by the liquor control board. The list shall be accessible to all stakeholders and the general public via the internet.</u></p>	

[Statutory Authority: RCW 66.08.030, 66.24.010, 66.24.120. 03-09-015, § 314-29-015, filed 4/4/03, effective 5/5/03.]

AMENDATORY SECTION (Amending WSR 03-09-015, filed 4/4/03, effective 5/5/03)

WAC 314-29-020 Group 1 violations against public safety.

Group 1 violations are considered the most serious because they present a direct threat to public safety. Violations beyond the first violation do not have a monetary option upon issuance of a violation notice. The liquor control board may offer a monetary option in lieu of suspension days based on mitigating circumstances as outlined in WAC 314-29-015(4).

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
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<p><u>Violations involving minors:</u></p> <p>Sale or service to minor: Sale or service of alcohol to a person under 21 years of age.</p> <p><u>Minor frequenting a tavern, lounge, or other restricted area.</u> <u>RCW 66.44.270</u> <u>RCW 66.44.310</u> <u>WAC 314-11-020</u> <u>WAC 314-16-150</u></p>	<p>5 day suspension or \$500 monetary option</p>	<p>7 day suspension ((with no monetary option))</p>	<p>30 day suspension ((with no monetary option))</p>	<p>Cancellation of license</p>
<p>((Minor frequenting a tavern, lounge, or other age restricted area.</p>	<p>5-day suspension or \$500 monetary option</p>	<p>7-day suspension with no monetary option</p>	<p>30-day suspension with no monetary option</p>	<p>Cancellation of license))</p>
<p>Sale or service to apparently intoxicated person: Sale or service of alcohol to, or permitting consumption or possession by, an apparently intoxicated person. <u>RCW 66.44.200</u> <u>WAC 314-16-150</u></p>	<p>5 day suspension or \$500 monetary option</p>	<p>((5)) 7 day suspension ((or \$2,500 monetary option))</p>	<p>((10)) 30 day suspension ((or \$5,000 monetary option))</p>	<p>Cancellation of license</p>

<p><u>Conduct violations:</u> <u>Disorderly conduct</u> by licensee or employee, or permitting on premises.</p> <p><u>Licensee and/or employee intoxicated on the licensed premises and/or drinking on duty.</u></p> <p><u>Criminal conduct:</u> <u>Permitting or engaging in criminal conduct.</u> WAC 314-11-015</p>	5 day suspension or \$500 monetary option	((5)) 7 day suspension ((or \$2,500 monetary option))	((10)) 30 day suspension ((or \$5,000 monetary option))	Cancellation of license
((<u>Criminal conduct:</u> <u>Permitting or engaging in criminal conduct.</u>	5 day suspension or \$500 monetary option	7 day suspension with no monetary option	30 day suspension with no monetary option	Cancellation of license))
<u>Lewd conduct:</u> <u>Engaging in or permitting conduct in violation of WAC 314-11-050.</u>	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	<u>Cancellation of license</u>
<u>Refusal to allow an inspection and/or obstructing a law enforcement officer from performing their official duties.</u> RCW 66.28.090 RCW 66.44.370 WAC 314-11-090	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	<u>Cancellation of license</u>
<u>Condition of suspension violation:</u> <u>Failure to follow any suspension restriction while liquor license is suspended.</u> WAC 314-29-040	Original penalty plus 10 day suspension with no monetary option	<u>Cancellation of license</u>		

[Statutory Authority: RCW 66.08.030, 66.24.010, 66.24.120. 03-09-015, § 314-29-020, filed 4/4/03, effective 5/5/03.]

AMENDATORY SECTION (Amending WSR 03-09-015, filed 4/4/03, effective 5/5/03)

~~WAC 314-29-025 Group 2 ((conduct)) regulatory violations, Group 2 violations are violations involving ((conduct)) general regulation and administration of retail or nonretail ((licensee, employees, or patrons)) licenses.~~

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
((Misuse or unauthorized use of liquor license.	5 day suspension or \$1,500 monetary option	Cancellation of license	Cancellation of license	Cancellation of license
Sale of alcohol in violation of a board-approved alcohol impact area restriction.	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))
<u>Club liquor to the public.</u> <u>WAC 314-40-010</u>	5 day suspension or \$500 monetary option	5 day suspension or \$1,500 monetary option	10 day suspension or \$3,000 monetary option	<u>Cancellation of license</u>

Employee under legal age or without required mandatory alcohol server training permit. <u>RCW 66.44.316</u> <u>RCW 66.44.318</u> <u>RCW 66.44.340</u> <u>RCW 66.44.350</u> <u>WAC 314-11-040</u> <u>WAC 314-11-045</u> <u>Chapter 314-17</u> <u>WAC</u>	5 day suspension or ((\$250) \$500) monetary option	5 day suspension or \$1,500 monetary option	10 day suspension or \$3,000 monetary option	Cancellation of license
<u>Failure to follow 11:00 p.m. entertainment rules.</u> <u>WAC 314-02-025(2)</u>	5 day suspension or \$500 monetary option	5 day suspension or \$1,500 monetary option	10 day suspension or \$3,000 monetary option	<u>Cancellation of license</u>
Hours of service: Sales, service, removal, or consumption of alcohol between 2:00 a.m. and 6:00 a.m. <u>WAC 314-11-070</u>	5 day suspension or ((\$250) \$500) monetary option	5 day suspension or \$1,500 monetary option	10 day suspension or \$3,000 monetary option	Cancellation of license
<u>Keg registration:</u> Failure to properly register kegs. <u>RCW 66.28.200</u> <u>RCW 66.28.210</u> <u>WAC 314-02-115</u>	5 day suspension or \$500 monetary option	5 day suspension or \$1,500 monetary option	10 day suspension or \$3,000 monetary option	<u>Cancellation of license</u>
<u>Spirituos liquor not sold by the individual drink.</u> <u>RCW 66.24.400</u> <u>WAC 314-02-015</u> (1)(a)	5 day suspension or \$500 monetary option	5 day suspension or \$1,500 monetary option	10 day suspension or \$3,000 monetary option	<u>Cancellation of license</u>

Food service: Required food service not available. <u>WAC 314-02-035</u> <u>WAC 314-02-0411</u> <u>WAC 314-02-065</u> <u>WAC 314-02-075</u>	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
Hours of operation: Failure to meet required hours of operation. <u>WAC 314-02-015(2)</u>	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
NSF check: Payment by a retail licensee for alcohol purchases. <u>WAC 314-13-020</u>	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
Premises not open to the general public while liquor is sold, served, or consumed. <u>WAC 314-11-072</u>	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
Sampling and/or cooking class violations. <u>WAC 314-02-105</u>	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
Substituting, tampering, improper labeling, unlawful removal, possession, or unauthorized sale of liquor. <u>WAC 314-11-065</u> <u>WAC 314-11-080</u> <u>WAC 314-16-020</u>	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
(Lewd conduct: Engaging in or permitting conduct in violation of <u>WAC 314-11-050.</u>	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

Inspections: Refusing to allow inspection(s) by law enforcement.	5 day suspension or \$100 monetary option	5 day suspension or \$500 monetary option	10 day suspension or \$1,000 monetary option	20 day suspension with no monetary option))
Advertising: Advertising violations other than those involving prohibited practices between a nonretail and a retail licensee. Chapter 314-52 WAC.	5 day suspension or \$100 monetary option	5 day suspension or \$500 monetary option	10 day suspension or \$1,000 monetary option	20 day suspension
Hotel/motel honor bar violation. WAC 314-02-080	5 day suspension or \$100 monetary option	5 day suspension or \$500 monetary option	10 day suspension or \$1,000 monetary option	20 day suspension
Inventory: Inventory below required amount. WAC 314-02-100. WAC 314-02-105	5 day suspension or \$100 monetary option	5 day suspension or \$500 monetary option	10 day suspension or \$1,000 monetary option	20 day suspension
Lighting: Inadequate lighting. WAC 314-11-055	5 day suspension or \$100 monetary option	5 day suspension or \$500 monetary option	10 day suspension or \$1,000 monetary option	20 day suspension
Liquor purchased from unauthorized source or sale below cost in violation of liquor law or rule. WAC 314-11-085 WAC 314-13-010 WAC 314-13-040	5 day suspension or \$100 monetary option	5 day suspension or \$500 monetary option	10 day suspension or \$1,000 monetary option	20 day suspension
Private club violations: Club regulations other than club liquor to the public. Chapter 314-40 WAC	5 day suspension or \$100 monetary option	5 day suspension or \$500 monetary option	10 day suspension or \$1,000 monetary option	20 day suspension

<u>Records: Improper recordkeeping.</u> <u>WAC 314-11-090</u> <u>WAC 314-11-095</u> <u>WAC 314-12-135</u>	<u>5 day suspension or \$100 monetary option</u>	<u>5 day suspension or \$500 monetary option</u>	<u>10 day suspension or \$1,000 monetary option</u>	<u>20 day suspension</u>
<u>Retailer/nonretailer violation:</u> Violation on the part of a retail licensee that involves a nonretail licensee, other than group four violations.	5 day suspension or \$100 monetary option	5 day suspension or \$500 monetary option	10 day suspension or \$1,000 monetary option	20 day suspension ((with no monetary option))
<u>Signs: Failure to post required signs.</u> <u>WAC 314-11-060</u>	<u>5 day suspension or \$100 monetary option</u>	<u>5 day suspension or \$500 monetary option</u>	<u>10 day suspension or \$1,000 monetary option</u>	<u>20 day suspension</u>
<u>Unauthorized alterations, change of trade name, or added activity.</u> <u>WAC 314-02-025</u> <u>WAC 314-02-125</u> <u>WAC 314-02-130</u>	<u>5 day suspension or \$100 monetary option</u>	<u>5 day suspension or \$500 monetary option</u>	<u>10 day suspension or \$1,000 monetary option</u>	<u>20 day suspension</u>

[Statutory Authority: RCW 66.08.030, 66.24.010, 66.24.120. 03-09-015, § 314-29-025, filed 4/4/03, effective 5/5/03.]

AMENDATORY SECTION (Amending WSR 03-09-015, filed 4/4/03, effective 5/5/03)

WAC 314-29-030 Group 3 (~~regulatory~~) license violations.
 Group 3 violations are violations involving (~~administrative~~)
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
((Keg registration: Failure to properly register kegs:	5-day suspension or \$500 monetary option	5-day suspension or \$1,000 monetary option	10-day suspension or \$1,500 monetary option	20-day suspension with no monetary option
Signs: Failure to post required signs:	5-day suspension or \$100 monetary option	5-day suspension or \$500 monetary option	10-day suspension or \$1,000 monetary option	20-day suspension with no monetary option
Records: Improper record keeping:	5-day suspension or \$100 monetary option	5-day suspension or \$500 monetary option	10-day suspension or \$1,000 monetary option	20-day suspension with no monetary option
Advertising: Advertising violations other than those involving prohibited practices between a nonretail and a retail licensee:	5-day suspension or \$100 monetary option	5-day suspension or \$500 monetary option	10-day suspension or \$1,000 monetary option	20-day suspension with no monetary option
Inventory: Inventory below required amount:	5-day suspension or \$100 monetary option	5-day suspension or \$500 monetary option	10-day suspension or \$1,000 monetary option	20-day suspension with no monetary option

Unauthorized alterations, change of trade name, or added activity.	5-day suspension or \$100 monetary option	5-day suspension or \$500 monetary option	10-day suspension or \$1,000 monetary option	20-day suspension with no monetary option
Lighting: Inadequate lighting.	5-day suspension or \$100 monetary option	5-day suspension or \$500 monetary option	10-day suspension or \$1,000 monetary option	20-day suspension with no monetary option
Liquor purchased from unauthorized source or sale below cost in violation of liquor law or rule.	5-day suspension or \$100 monetary option	5-day suspension or \$500 monetary option	10-day suspension or \$1,000 monetary option	20-day suspension with no monetary option))
True party of interest violation. <u>RCW 66.24.010(1)</u> <u>WAC 314-12-030</u>	<u>Cancellation of license</u>			
Failure to furnish required documents. <u>WAC 314-12-035</u>	<u>Cancellation of license</u>			
Misrepresentation of fact. <u>WAC 314-12-010</u>	<u>Cancellation of license</u>			
Misuse or unauthorized use of liquor license (operating outside of license class, lending or contracting license to another person/entity). <u>Chapter 66.24 RCW</u> <u>WAC 314-02-015</u> <u>WAC 314-02-041</u> <u>WAC 314-02-045</u> <u>WAC 314-02-065</u> <u>WAC 314-02-070</u> <u>WAC 314-02-075</u> <u>WAC 314-02-090</u> <u>WAC 314-02-095</u> <u>WAC 314-02-100</u> <u>WAC 314-02-105</u> <u>WAC 314-02-110</u> <u>WAC 314-12-030</u>	5 day suspension or \$1,500 monetary option	<u>Cancellation of license</u>		

<u>Operating plan:</u> Violations of a board-approved operating plan. WAC 314-16-270 WAC 314-16-275	<u>5 day suspension or \$500 monetary option</u>	<u>7 day suspension or \$1,500 monetary option</u>	<u>10 day suspension with no monetary option</u>	<u>Cancellation of license</u>
<u>Sale of alcohol in violation of a board-approved local authority restriction.</u> Chapter 66.24 RCW	<u>5 day suspension or \$500 monetary option</u>	<u>7 day suspension or \$1,500 monetary option</u>	<u>10 day suspension with no monetary option</u>	<u>Cancellation of license</u>
<u>Sale of alcohol in violation of a board-approved alcohol impact area restriction.</u> WAC 314-12-215	<u>5 day suspension or \$500 monetary option</u>	<u>7 day suspension or \$1,500 monetary option</u>	<u>10 day suspension with no monetary option</u>	<u>Cancellation of license</u>
<u>Catering endorsement violation.</u> WAC 314-02-060 WAC 314-02-061	<u>5 day suspension or \$250 monetary option</u>	<u>5 day suspension or \$1,500 monetary option</u>	<u>10 day suspension or \$3,000 monetary option</u>	<u>Cancellation of license</u>

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

AMENDATORY SECTION (Amending WSR 03-09-015, filed 4/4/03, effective 5/5/03)

WAC 314-29-035 Group 4 nonretail violations. Group 4 violations are violations involving the manufacture, supply, and/or distribution of liquor by nonretail licensees and prohibited practices between a nonretail licensee and a retail licensee.

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
Providing credit to a retail licensee. <u>RCW 66.28.010</u> <u>WAC 314-12-140</u> <u>WAC 314-12-145</u> <u>WAC 314-13-015</u> <u>WAC 314-13-020</u>	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Quantity discount. <u>RCW 66.28.170</u> <u>RCW 66.28.180</u>	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Giving away liquor in violation of liquor law or rule. <u>RCW 66.28.040</u> <u>WAC 314-64-080</u> <u>WAC 314-64-08001</u>	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option

<p>Consignment sales/return of product in violation of liquor law or rule. <u>RCW 66.28.010</u> <u>WAC 314-12-140</u> <u>WAC 314-13-015</u> <u>WAC 314-20-070</u> <u>WAC 314-20-090</u> <u>WAC 314-24-210</u></p>	<p>3 day suspension or \$500 monetary option</p>	<p>5 day suspension or \$2,500 monetary option</p>	<p>10 day suspension or \$5,000 monetary option</p>	<p>20 day suspension or \$10,000 monetary option</p>
<p>Advertising violations involving prohibited practices between a nonretail and a retail licensee. <u>RCW 66.28.010</u> <u>RCW 66.24.570</u> <u>WAC 314-05-030</u> <u>WAC 314-52-040</u> <u>WAC 314-52-070</u> <u>WAC 314-52-080</u> <u>WAC 314-52-090</u> <u>WAC 314-52-113</u></p>	<p>3 day suspension or \$500 monetary option</p>	<p>5 day suspension or \$2,500 monetary option</p>	<p>10 day suspension or \$5,000 monetary option</p>	<p>20 day suspension or \$10,000 monetary option</p>
<p>Price ((posting)) lists/labeling/ packaging violations. <u>RCW 66.24.145</u> <u>RCW 66.28.100</u> <u>RCW 66.28.110</u> <u>RCW 66.28.120</u> <u>RCW 66.28.180</u> <u>WAC 314-20-020</u> <u>WAC 314-20-030</u> <u>WAC 314-20-100</u> <u>WAC 314-20-130</u> <u>WAC 314-24-003</u> <u>WAC 314-24-006</u> <u>WAC 314-24-040</u> <u>WAC 314-24-080</u> <u>WAC 314-24-090</u> <u>WAC 314-24-190</u> <u>WAC 314-28-090</u></p>	<p>3 day suspension or \$500 monetary option</p>	<p>5 day suspension or \$2,500 monetary option</p>	<p>10 day suspension or \$5,000 monetary option</p>	<p>20 day suspension or \$10,000 monetary option</p>

Agents violations: Nonretail licensee employing an unlicensed agent. <u>RCW 66.24.310</u> <u>RCW 66.28.050</u> <u>WAC 314-44-005</u>	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Unauthorized product/unapprov ed storage or delivery. <u>RCW 66.24.140</u> <u>RCW 66.24.160</u> <u>RCW 66.24.170</u> <u>RCW 66.24.185</u> <u>RCW 66.24.200</u> <u>RCW 66.24.203</u> <u>RCW 66.24.206</u> <u>RCW 66.24.240</u> <u>RCW 66.24.244</u> <u>RCW 66.24.250</u> <u>RCW 66.24.261</u> <u>RCW 66.24.395</u> <u>RCW 66.28.010</u> <u>RCW 66.44.140</u> <u>RCW 66.44.150</u> <u>RCW 66.44.160</u> <u>RCW 66.44.170</u> <u>WAC 314-20-015</u> <u>WAC 314-20-017</u> <u>WAC 314-20-055</u> <u>WAC 314-20-095</u> <u>WAC 314-20-120</u> <u>WAC 314-20-160</u> <u>WAC 314-20-170</u> <u>WAC 314-24-070</u> <u>WAC 314-24-115</u> <u>WAC 314-24-120</u> <u>WAC 314-24-140</u> <u>WAC 314-24-160</u> <u>WAC 312-24-161</u> <u>WAC 314-24-220</u> <u>WAC 314-25-020</u> <u>WAC 314-25-030</u> <u>WAC 314-25-040</u> <u>WAC 314-28-050</u>	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option

Sampling/tasting violations. <u>RCW 66.20.010</u> <u>RCW 66.24.145</u> <u>RCW 66.24.170</u> <u>RCW 66.28.040</u> <u>RCW 66.28.150</u> <u>WAC 314-20-015</u> <u>WAC 314-24-160</u> <u>WAC 314-45-010</u> <u>Chapter 314-64</u> <u>WAC</u>	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Entertainment/instruction/meeting/trade show violations. <u>RCW 66.20.010</u> <u>RCW 66.28.010</u> <u>RCW 66.28.042</u> <u>RCW 66.28.043</u> <u>RCW 66.28.150</u> <u>RCW 66.28.155</u> <u>WAC 314-45-010</u>	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
((Providing money or money's worth less than \$100.	3-day suspension or \$250 monetary option	5-day suspension or \$500 monetary option	10-day suspension or \$1,000 monetary option	20-day suspension or \$2,000 monetary option))
Providing/accepting money or money's worth: Goods or services worth ((\$100 to \$1,000)) up to \$1,500. <u>RCW 66.28.010</u> <u>WAC 314-12-140</u> <u>WAC 314-44-005</u>	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Providing/accepting money or money's worth: Goods or services worth over ((\$1,000)) \$1,500. <u>RCW 66.28.010</u> <u>WAC 314-12-140</u> <u>WAC 314-44-005</u>	Cost of item or service provided plus: 3 day suspension or \$1,000 monetary option	Cost of item or service provided plus: 5 day suspension or \$2,500 monetary option	Cost of item or service provided plus: 10 day suspension or \$5,000 monetary option	Cost of item or service provided plus: 20 day suspension or \$10,000 monetary option

Providing/accepting exclusive or contingency agreements. <u>RCW 66.28.010</u> <u>RCW 66.24.570</u> <u>WAC 314-12-140</u> <u>WAC 314-05-030</u>	3 day suspension or \$1,000 monetary option	10 day suspension or \$6,000 monetary option	20 day suspension or \$12,000 monetary option	30 day suspension or \$20,000 monetary option
Unauthorized interest or ownership in retail license. <u>RCW 66.28.010</u> <u>WAC 314-12-030</u>	3 day suspension or \$1,000 monetary option	30 day suspension or \$20,000 monetary option	Cancellation of license	
Failure to obtain surety bond/savings account, if required by the board. <u>RCW 66.24.210</u> <u>RCW 66.24.290</u> <u>WAC 314-19-020</u>	Immediate suspension of license until surety bond has been obtained and all missing reports are filed and late taxes are paid.			
Failure to file tax/shipment report. <u>RCW 66.24.210</u> <u>RCW 66.24.290</u> <u>WAC 314-19-005</u> <u>WAC 314-19-010</u> <u>WAC 314-19-020</u>	3 day suspension or \$250 monetary option	5 day suspension or \$500 monetary option	10 day suspension or \$1,000 monetary option	20 day suspension or \$2,000 monetary option
<u>Certificate of approval (COA) and/or authorized representative violations.</u> <u>RCW 66.24.206</u> <u>WAC 314-19-005</u> <u>WAC 314-19-010</u> <u>WAC 314-19-020</u>	<u>15 day suspension or \$100 monetary option</u>	<u>30 day suspension or \$500 monetary option</u>	<u>180 day suspension or \$1,000 monetary option</u>	<u>Cancellation of license</u>

[Statutory Authority: RCW 66.08.030, 66.24.010, 66.24.120. 03-09-015, § 314-29-035, filed 4/4/03, effective 5/5/03.]



Washington State
Liquor Control Board

Date: October 14, 2009

To: Sharon Foster, Board Chair
Ruthann Kurose, Board Member

From: Karen McCall, Agency Rules Coordinator

Copy: Pat Kohler, Administrative Director
Rick Garza, Deputy Administrator
Alan Rathbun, Director, Licensing and Regulation

Subject: Approval of final rulemaking (CR 103) for Delegation of Authority

At the Board meeting on October 14, 2009, the rules coordinator requests that the Liquor Control Board approve final rulemaking on rules to implement Board Interim Policy #4-2009 – Delegation of Authority.

The Board was briefed on the rule making background, public comment, and agency response for this rule making. An issue paper and text of rule changes are attached.

If approved, the Rules Coordinator will send an explanation of the rule making to all persons who submitted comments. No one appeared and gave comment at the public hearing held on September 9, 2009, held in the Board's meeting room in Olympia, Washington. After sending this explanation, the Rules Coordinator will file the rules with the Office of the Code Reviser. The effective date of the rules will be 31 days after filing.

Approve Disapprove Sharon Foster 10/14/09
Sharon Foster, Board Chair Date

Approve Disapprove Ruthann Kurose 10/14/09
Ruthann Kurose, Board Member Date

Attachment: Issue Paper

Washington State Liquor Control Board

Issue Paper: Rulemaking on Delegation of Authority (Intent to Deny or Not Renew a Liquor License)

Date: October 14, 2009, 2009

Presented by: Karen McCall, Agency Rules Coordinator

Description of the Issue:

The purpose of this issue paper is to recommend that the Washington State Liquor Control Board (WSLCB) proceed with final rule making and adopt the rules regarding Delegation of Authority **WAC 314-07-120** as well as revisions to **WAC 314-09** Contested Liquor License Applications and Renewals.

Why is rulemaking necessary?

On April 22, 2009, the Board adopted Policy #4-2009 delegating authority to the Licensing and Regulation Division Director to make initial threshold determinations relative to liquor license applicants and renewals where objections have been submitted. Rules are necessary to implement this policy.

Public Comment

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

What changes are being proposed?

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.

Attachment: WAC 314-07-121
WAC 314-09

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