

Chapter 314-42 WAC

LIQUOR CONTROL BOARD OPERATIONS

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

314-42-025	Appearance in certain proceedings may be limited to attorneys. [Statutory Authority: RCW 66.08.030, 66.44.010, 66.24.010(3), chapter 34.05 RCW. WSR 01-11-058, § 314-42-025, filed 5/11/01, effective 6/11/01.] Repealed by WSR 08-17-056, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030.
314-42-050	Subpoenas—Fees. [Statutory Authority: RCW 66.08.-030, 66.44.010, 66.24.010(3), chapter 34.05 RCW. WSR 01-11-058, § 314-42-050, filed 5/11/01, effective 6/11/01.] Repealed by WSR 08-17-056, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030.
314-42-060	Depositions upon interrogatories—Submission of interrogatories. [Statutory Authority: RCW 66.08.030, 66.44.010, 66.24.010(3), chapter 34.05 RCW. WSR 01-11-058, § 314-42-060, filed 5/11/01, effective 6/11/01.] Repealed by WSR 08-17-056, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030.
314-42-065	Official notice—Material facts. [Statutory Authority: RCW 66.08.030, 66.44.010, 66.24.010(3), chapter 34.05 RCW. WSR 01-11-058, § 314-42-065, filed 5/11/01, effective 6/11/01.] Repealed by WSR 08-17-056, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030.
314-42-075	Stipulations and admissions of record. [Statutory Authority: RCW 66.08.030, 66.44.010, 66.24.010(3), chapter 34.05 RCW. WSR 01-11-058, § 314-42-075, filed 5/11/01, effective 6/11/01.] Repealed by WSR 08-17-056, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030.
314-42-080	Form and content of decisions in contested cases and proposed orders. [Statutory Authority: RCW 66.08.030, 66.44.010, 66.24.010(3), chapter 34.05 RCW. WSR 01-11-058, § 314-42-080, filed 5/11/01, effective 6/11/01.] Repealed by WSR 08-17-056, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030.
314-42-090	Definition of issues before hearing. [Statutory Authority: RCW 66.08.030, 66.44.010, 66.24.010(3), chapter 34.05 RCW. WSR 01-11-058, § 314-42-090, filed 5/11/01, effective 6/11/01.] Repealed by WSR 08-17-056, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030.
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 34.05 RCW. WSR 01-11-058, § 314-42-100, filed 5/11/01, effective 6/11/01.] Repealed by WSR 08-17-

314-42-105	056, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030. How can a person petition the board for a declaratory order? [Statutory Authority: RCW 66.08.030, 66.44.-010, 66.24.010(3), chapter 34.05 RCW. WSR 01-11-058, § 314-42-105, filed 5/11/01, effective 6/11/01.] Repealed by WSR 08-17-056, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030.
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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. WSR 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). WSR 01-15-049, § 314-42-010, filed 7/13/01, effective 8/13/01; WSR 00-06-016, § 314-42-010, filed 2/22/00, effective 3/24/00.]

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. WSR 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. WSR 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. WSR 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. WSR 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. WSR 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. WSR 08-17-056, § 314-42-045, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030, 66.44.010,

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66.24.010(3), chapter 34.05 RCW. WSR 01-11-058, § 314-42-045, filed 5/11/01, effective 6/11/01.]

WAC 314-42-051 What are the procedures when a licensee or mandatory alcohol server training permit holder requests an administrative hearing? (1) If the licensee or permit holder requests an administrative hearing, it is conducted pursuant to chapter 34.05 RCW (Washington Administrative Procedure Act and chapter 314-42 WAC).

(2) The board's hearing coordinator will notify the assistant attorney general of the licensee's or permit holder's request for an administrative hearing.

(3) If the hearing concerns an administrative violation notice, the assistant attorney general will draft an administrative complaint and send it to the licensee or permit holder and to the office of administrative hearings.

(4) The office of administrative hearings will schedule the hearing date, and notify the licensee or permit holder and his/her attorney and the assistant attorney general in writing of the hearing date, time, and location.

(5) The hearing will be conducted by an administrative law judge assigned by the office of administrative hearings. Subpoenas may be issued by an attorney for any party, or by the assigned administrative law judge.

[Statutory Authority: RCW 66.08.030. WSR 08-17-056, § 314-42-051, filed 8/15/08, effective 9/15/08.]

WAC 314-42-070 Presumptions. Upon proof by direct, clear, and convincing evidence of the predicate facts in the following subdivisions, the board, with or without prior request and with adequate notice to all parties, may make the following presumptions. The facts may not be in substantial dispute and must be consistent with all surrounding facts and circumstances.

(1) **Identity.** Persons and objects of the same name and description are identical.

(2) **Delivery.** Mail, communications, express or freight, properly addressed, marked, billed and delivered to the post office, or authorized common carrier of property with all postage properly prepaid, is or has been delivered to the addressee or consignee in the ordinary course of business.

(3) **Spoilation.** When a party in bad faith destroys, suppresses, or withholds evidence material to the case, the administrative law judge can presume the evidence would have been unfavorable to that party's position.

[Statutory Authority: RCW 66.08.030. WSR 08-17-056, § 314-42-070, 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. WSR 01-11-058, § 314-42-070, filed 5/11/01, effective 6/11/01.]

WAC 314-42-085 Written arguments. (1) At the conclusion of the evidentiary portion of a hearing, the administrative law judge may call for an oral legal argument on the record, or the administrative law judge may call for written arguments to be submitted to his/her office by the licensee or his/her attorney and the assistant attorney general. Such written arguments must be submitted in triplicate to the administrative law judge and may not be exchanged by opposing counsel.

(2) When both arguments have been received, the administrative law judge shall deliver one of the copies of the

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.

[Statutory Authority: RCW 66.08.030, WSR 08-17-056, § 314-42-085, 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, WSR 01-11-058, § 314-42-085, filed 5/11/01, effective 6/11/01.]

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.

[Statutory Authority: RCW 66.08.030, WSR 08-17-056, § 314-42-095, filed 8/15/08, effective 9/15/08.]

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;

(17) Tobacco license denials per WAC 314-33-005;

(18) Marijuana license denials per WAC 314-55-050(2);

(19) Marijuana license denials per WAC 314-55-050(4);

(20) Marijuana license denials per WAC 314-55-050(8);

(21) Marijuana license denials per WAC 314-55-050(10);

(22) Marijuana license suspensions per WAC 314-55-050(11);

(23) Marijuana license denials per WAC 314-55-050(12); and

(24) Marijuana license denials per WAC 314-55-050(13).

[Statutory Authority: RCW 66.08.030, WSR 14-12-102, § 314-42-110, filed 6/4/14, effective 7/5/14; WSR 12-24-032, § 314-42-110, filed 11/28/12, effective 12/29/12.]

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;

(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:

(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.

(18) The preliminary record with respect to a marijuana license intent to deny due to failure or refusal to submit information per WAC 314-55-050(2) 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.

(19) The preliminary record with respect to a marijuana license application intent to deny where the applicant failed to meet the criminal history standards outlined in WAC 314-55-050(4) 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;

(c) Any communication from the Washington state patrol or Federal Bureau of Investigation pertaining to the criminal history of the applicant;

(d) Any interoffice correspondence reporting criminal history of applicant(s); and

(e) Copies of any correspondence submitted by the applicant explaining or rebutting the criminal history findings.

(20) The preliminary record with respect to a marijuana license intent to deny due to denial, suspension, or cancellation of a marijuana license in another jurisdiction per WAC 314-55-050(8) shall consist of:

(a) A copy of the application report prepared by licensing division staff; and

(b) Documentation from any other state or jurisdiction demonstrating the action taken against the applicant.

(21) The preliminary record with respect to a marijuana license intent to deny due to proximity to the perimeter of entities listed in WAC 314-55-050(10) shall consist of:

(a) A copy of the application report prepared by licensing division staff;

(b) Any interoffice correspondence reporting the measurement from the proposed business location to the facility within one thousand feet;

(c) Documentation of measurement data including Geographic Positioning System (GPS) and related calculations; and

(d) Correspondence from the applicant illustrating alternative measurement data and/or rebuttal of the LCB's measurement data.

(22) The preliminary record with respect to a marijuana license intent to suspension due to nonpayment of marijuana excise taxes per WAC 314-55-050(11) shall consist of:

(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.

(23) The preliminary record with respect to a marijuana license intent to deny due to failure to submit an attestation concerning current tax obligations per WAC 314-55-050(12) shall consist of:

(a) A copy of the application report prepared by licensing division staff; and

(b) All correspondence with the applicant related to the request for this information.

(24) The preliminary record with respect to a marijuana license intent to deny due to denial, suspension, or revocation of a liquor license per WAC 314-55-050(13) shall consist of:

(a) A copy of the application report prepared by licensing division staff; and

(b) Documentation from liquor control board records or any other state demonstrating the action taken against the applicant.

[Statutory Authority: RCW 66.08.030, WSR 14-12-102, § 314-42-115, filed 6/4/14, effective 7/5/14; WSR 12-24-032, § 314-42-115, filed 11/28/12, effective 12/29/12.]

WAC 314-42-120 Conduct of brief adjudicative proceedings. (1) Brief adjudicative proceedings shall be conducted by a presiding officer for brief adjudicative proceedings designated by the board. The presiding officer for brief adjudicative proceedings shall have agency expertise in the subject matter but shall not have personally participated in the decision to issue the initiating document.

(2) The parties or their representatives may present written documentation. The presiding officer for brief adjudica-

tive proceedings shall designate the date by which written documents must be submitted by the parties.

(3) The presiding officer for brief adjudicative proceedings may, in his or her discretion, entertain oral argument from the parties or their representatives.

(4) No witnesses may appear to testify.

(5) The presiding officer for brief adjudicative proceedings shall not issue an oral order. Within ten business days of the final date for submission of materials or oral argument, if any, the presiding officer for brief adjudicative proceedings shall enter an initial order.

[Statutory Authority: RCW 66.08.030. WSR 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. WSR 12-24-032, § 314-42-125, filed 11/28/12, effective 12/29/12.]

WAC 314-42-130 Appeal rights on brief adjudicatory proceeding initial order. (1) If you are dissatisfied with the order in the brief adjudicative proceeding, you may appeal to the reviewing officer, which shall be the board chair, or designee. This appeal process is called an administrative review. Your appeal must be received by the board, in writing, within twenty-one days after the brief adjudicative proceedings order is deposited in the U.S. mail.

(2) The reviewing officer considers your appeal and either upholds or overturns the brief adjudicative proceeding order. The reviewing officer's decision, also called an order, is the final agency decision. The order will be provided to you at the last address you furnished to the board.

(3) The order on review must be in writing, must include a brief statement of the reasons for the decision, and must be entered within twenty days after the date of the initial order or of the request for review, whichever is later. The order shall include a description of any further available administrative review or, if none is available, a notice that judicial review may be available.

(4) A request for administrative review is deemed to have been denied if the agency does not make a disposition of the matter within twenty days after the request is submitted.

[Statutory Authority: RCW 66.08.030. WSR 12-24-032, § 314-42-130, filed 11/28/12, effective 12/29/12.]