

Chapter 314-10 WAC

SALE AND DISTRIBUTION OF TOBACCO PRODUCTS

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

314-10-020	General—Applicable to all tobacco license holders. [Statutory Authority: RCW 66.08.030. WSR 93-23-016, § 314-10-020, filed 11/5/93, effective 12/6/93.] Repealed by WSR 01-06-014, filed 2/26/01, effective 3/29/01. Statutory Authority: RCW 66.08.030, 66.28-100, 66.28.040, 66.28.090, 66.44.010, 66.44.070, 66.44.200, 66.44.270, 66.44.291, 66.44.292, 66.44.310, 66.44.316, 66.44.318, 66.44.340, 66.44.350, and chapter 66.44 RCW.
314-10-050	Sales to persons under 18 years of age. [Statutory Authority: RCW 66.08.030. WSR 93-23-016, § 314-10-050, filed 11/5/93, effective 12/6/93.] Repealed by WSR 08-20-109, filed 9/30/08, effective 10/31/08. Statutory Authority: RCW 66.08.030.

WAC 314-10-010 General—Liquor control board responsibilities. (1) The liquor control board shall regulate all sales and distribution of tobacco products pursuant to chapter 507, Laws of 1993. The liquor control board shall report all tobacco enforcement activity in a manner agreed by the department of health and the liquor control board on a quarterly basis or as set forth in the interagency agreement.

[Statutory Authority: RCW 66.08.030. WSR 93-23-016, § 314-10-010, filed 11/5/93, effective 12/6/93.]

WAC 314-10-030 Tobacco mechanical dispensing machines—Licensees without a liquor license—Records. (1) Tobacco licensees who do not hold a liquor license and use a mechanical dispensing machine (vending machine) must provide to the board a listing denoting the address and specific location of each tobacco vending machine.

(2) The tobacco licensee with a vending machine(s) must notify the board in writing of any new proposed location(s) for a tobacco vending machine ten working days in advance of the move.

(3) Vending machines which dispense or store tobacco products may only be located in establishments where minors are prohibited, or in industrial worksites where minors are not employed in such locations. The vending machines used to dispense or store tobacco products must be located at least ten feet from each entrance and/or exit. The board may waive upon written request the "ten feet" requirement when perma-

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nent fixtures or the design of the room make it impractical to place a machine ten feet from each entrance and/or exit.

(4) Vending machines with an exception waiver shall have an endorsement posted on the vending machine license to denote that the board has granted an exception to the ten-foot rule.

[Statutory Authority: RCW 66.08.030. WSR 95-04-044, § 314-10-030, filed 1/25/95, effective 2/25/95; WSR 93-23-016, § 314-10-030, filed 11/5/93, effective 12/6/93.]

WAC 314-10-040 How old do employees have to be to sell and handle cigarettes or tobacco products? (1) Any employee can sell and handle tobacco products when:

- (a) The business has a cigarette retailer's license; or
- (b) The business has registered with the department of revenue; and
- (c) There is a supervising employee who is eighteen years of age or older on the retail premises.

(2) If someone under fourteen years of age is employed by a retailer, the retailer must comply with the requirements of the department of labor and industries under RCW 26.28-060 and WAC 296-125-018.

(3) Having an employee under eighteen years of age who handles and sells cigarettes and tobacco products according to subsections (1) and (2) of this section is not:

- (a) Considered "possessing" cigarettes and tobacco products and is therefore not a violation of RCW 70.155.080(1); or
- (b) Considered "giving" the employee cigarettes and tobacco products and is therefore not a violation of RCW 26.28.080.

[Statutory Authority: RCW 66.08.030. WSR 99-03-031, § 314-10-040, filed 1/13/99, effective 2/13/99; WSR 93-23-016, § 314-10-040, filed 11/5/93, effective 12/6/93.]

WAC 314-10-060 Persons under 18 years old attempting to purchase/obtaining tobacco products. (1) Any person whom a peace officer or enforcement officer has reasonable grounds to believe is under 18 years of age who purchases or attempts to purchase, or attempts to obtain or obtains tobacco products may be detained for a reasonable period of time and in such a reasonable manner as is necessary to determine the person's true identity and date of birth. A person under 18 years of age who is cited for attempting to purchase or purchasing tobacco products is subject to a fine as set by chapter 7.80 RCW or participation in a smoking cessation program or both.

(a) This provision does not apply to a person under the age of 18 who, with parental authorization, is participating in a controlled purchase as a part of a liquor control board, law enforcement, or local health department activity.

(2) Tobacco products possessed by persons under the age of eighteen years are considered contraband and may be

seized by an enforcement officer as defined in RCW 7.80.-040.

[Statutory Authority: RCW 66.08.030. WSR 93-23-016, § 314-10-060, filed 11/5/93, effective 12/6/93.]

WAC 314-10-080 Parents and guardians may not provide tobacco. No person, including parents or legal guardians of persons under 18 years of age may authorize any minor to purchase or obtain tobacco products.

[Statutory Authority: RCW 66.08.030. WSR 93-23-016, § 314-10-080, filed 11/5/93, effective 12/6/93.]

WAC 314-10-090 What tobacco products may be used for sampling promotions? (1) No person may engage in providing samples of tobacco products other than cigarettes within Washington state.

(2) No person may engage in providing samples of cigarettes without a valid sampler's license. A firm contracting with a tobacco manufacturer to distribute samples of a manufacturer's product is deemed to be the person engaged in the business of sampling. The liquor control board will issue any sampler's licenses.

(3) The annual fee for a manufacturer's cigarette samplers license within the state is \$500 and is designated a Class T1 license. The fee for independent businesses that provide samples of cigarettes is \$50 and is designated a Class T2 license. All sampler's licenses expire on the 30th day of June each year and must be renewed annually.

In adopting the language of subsection (4) of this section, the board affirms that sampling does have a direct impact upon the availability of product to minors. Many sampling activities, because of the large volume of product offered, promote secondary distribution to bystanders, especially minors. Addiction to nicotine can occur quickly after the use of a relatively small amount of product. It is the board's intention to limit this amount thereby reducing the opportunity and potential for product to be redistributed to minors.

(4) A sample is the smallest portion representative of the product that is available for retail sales and distribution. T1 and T2 license holders may distribute samples of cigarettes pursuant to chapter 70.155 RCW and chapter 314-10 WAC as follows:

(a) Cigarettes: No more than one sample package may be furnished per eligible customer per day. Such sample shall not contain more than twenty cigarettes per sample package.

(b) T1 and T2 licensees that have sample packages available that contain fewer cigarettes than allowed by this section are encouraged to provide such alternative sizes.

[Statutory Authority: RCW 66.08.030. WSR 08-20-109, § 314-10-090, filed 9/30/08, effective 10/31/08. Statutory Authority: RCW 70.155.110. WSR 96-19-018, § 314-10-090, filed 9/6/96, effective 10/7/96. Statutory Authority: RCW 66.08.030. WSR 93-23-016, § 314-10-090, filed 11/5/93, effective 12/6/93.]

WAC 314-10-100 How may cigarette sampling activity be conducted? (1) The cigarette sampler's license entitles the licensee, and employees or agents of the licensee, to distribute samples at any lawful location in the state during the term of the license. The person engaged in sampling shall carry the Class T1 or T2 license or a copy of the license at all

times and produce same at the request of an enforcement officer as defined in RCW 7.80.040.

(2) No person may distribute or offer to distribute samples in a public place. This prohibition does not apply to:

(a) An area to which persons under 18 years of age are denied admission,

(b) A store or concession to which a cigarette retailers license has been issued, or

(c) At or adjacent to a production, repair or outdoor construction site or facility.

(3) Notwithstanding subsection (2) of this section, no person may distribute or offer to distribute samples within or on a public street, sidewalk, or park that is within 500 feet of a playground, school, or other facility where that facility is being used primarily by persons under 18 years of age for recreational, educational or other purposes.

(4) Class T1 and T2 licensees shall provide the board, forty-five days prior to a sampling event, the locations, dates and times sampling activities will take place.

(5) All T1 and T2 licensees must provide to the liquor control board, in a format prescribed by the board, a listing of the location, date, hours and quantities of cigarettes distributed in the state for the previous six months.

(a) A report for the period covering January 1st through June 30th of each year is due by no later than July 31st of each year.

(b) A report for the period covering July 1st through December 31st is due by no later than January 30th of the immediately following year.

(c) The board may take administrative action against any cigarette sampler who fails to submit the required reports.

[Statutory Authority: RCW 66.08.030. WSR 08-20-109, § 314-10-100, filed 9/30/08, effective 10/31/08; WSR 93-23-016, § 314-10-100, filed 11/5/93, effective 12/6/93.]

WAC 314-10-110 Penalties, suspension notices, posting or advertising of—Other closing notices prohibited.

(1) The liquor control board may suspend or revoke a retailer's or sampler's license for violation of the board's administrative rules governing tobacco. Further, the board may impose a monetary penalty in lieu of license suspension for violation of said rules not covered by statute.

(2) Licensees are required to maintain compliance with all tobacco laws and regulations during any period of suspension. Whenever the board shall suspend the license of any licensee, the board shall on the date the suspension becomes effective cause to be posted in a conspicuous place on or about the licensed premises a notice in a form to be prescribed by the board, stating that the license or licenses have been suspended by order of board because of violation of the Washington State laws or the regulations.

(3) During the period of suspension:

(a) No person shall remove, alter, cover, or in any way disturb the posted notice(s) of suspension;

(b) No person shall place, permit or allow to be placed in, at, or upon the licensed premises, any notice or statement of reasons or purpose indicating that the premises have been closed or that sale of tobacco products has been discontinued for any reason other than as stated in the notice of suspension; Provided Further, That the prohibition of this subsection shall

apply to any nearby or adjacent property, such as a parking lot area that is owned by or under the control of the licensee.

(c) Neither the licensee nor his/her or its employees shall advertise, either by newspaper, radio, television, handbill, brochure, flyer or by any means whatever, that the licensed premises are closed or discontinuing the sale of tobacco products for any reason(s) other than those stated in the board's suspension notices.

(4) A tobacco licensee may operate the business during the period of suspension provided there is no sale or distribution of tobacco products.

[Statutory Authority: RCW 66.08.030. WSR 93-23-016, § 314-10-110, filed 11/5/93, effective 12/6/93.]