

# Chapter 314-34 WAC

## CIGARETTE AND TOBACCO PRODUCTS VIOLATIONS

### WAC

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**WAC 314-34-001 Purpose of chapter.** The purpose of this chapter is to outline what a cigarette and/or tobacco products licensee can expect if a licensee receives an administrative violation notice alleging a violation of a statute under chapters 82.24 and 82.26 RCW, or under chapter 314-33 WAC.

[Statutory Authority: RCW 82.24.510, 82.24.550, 82.26.150, 82.26.220. WSR 10-01-089, § 314-34-001, filed 12/16/09, effective 1/16/10.]

**WAC 314-34-003 Authority—Suspension or revocation of wholesale and retail cigarette and tobacco products licenses.** (1) The board has full power and authority to suspend or revoke the license of any cigarette wholesale or retail licensee and tobacco products distributor or retail licensee upon sufficient showing that the license holder has violated the provisions of chapters 82.24 and 82.26 RCW or chapter 314-33 WAC.

(2) Any person possessing both a cigarette license and a tobacco products license is subject to suspension and revocation of both licenses for violation of either chapter 82.24 or 82.26 RCW or this chapter. For example, if a person has both a cigarette license and a tobacco products license, revocation of the tobacco products license will also result in revocation of the cigarette license.

(3) A person whose license has been suspended or revoked must not sell or permit the sale of tobacco products or cigarettes during the period of the suspension or revocation.

(4) For the purposes of this rule, "cigarettes" has the same meaning as in RCW 82.24.010 and "tobacco products" has the same meaning as in RCW 82.26.010.

(5) Any person whose license has been revoked must wait one year following the date of revocation before requesting a hearing for reinstatement. Reinstatement hearings are held pursuant to chapter 34.05 RCW.

[Statutory Authority: RCW 82.24.510, 82.24.550, 82.26.150, 82.26.220. WSR 10-01-089, § 314-34-003, filed 12/16/09, effective 1/16/10.]

**WAC 314-34-005 What are the procedures for notifying a licensee of an alleged violation of a cigarette or tobacco products statute or regulation?** When an enforce-

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ment officer believes that a cigarette and/or tobacco products licensee has violated a board statute or regulation, the officer may prepare an administrative violation notice (AVN) and mail or deliver the notice to the licensee or the licensee's agent. The AVN will include:

- (1) A brief narrative description of the violation(s) the officer is charging;
- (2) The date(s) of the violation(s);
- (3) A copy of the law(s) and/or regulation(s) allegedly violated;
- (4) An outline of the licensee's options as outlined in WAC 314-34-010; and
- (5) The penalty.

[Statutory Authority: RCW 82.24.510, 82.24.550, 82.26.150, 82.26.220. WSR 10-01-089, § 314-34-005, filed 12/16/09, effective 1/16/10.]

**WAC 314-34-010 What options does a licensee have once they receive a notice of administrative violation? (1)**

A licensee has twenty days from receipt of the notice to:

- (a) Accept the recommended penalty; or
- (b) Request a settlement conference in writing; or
- (c) Request an administrative hearing in writing. A response must be submitted on a form provided by the board.

**(2) What happens if a licensee does not respond to the administrative violation notice within twenty days?** If a licensee does not respond to the administrative violation notice within twenty days, the recommended penalty will go into effect.

**(3) What are the procedures when a licensee requests a settlement conference?**

(a) If the licensee requests a settlement conference, the hearing examiner or captain will contact the licensee or permit holder to discuss the violation.

(b) Both the licensee and the hearing examiner or captain will discuss the circumstances surrounding the charge, the recommended penalty, and any aggravating or mitigating factors.

(c) If a compromise is reached, the hearing examiner or captain will prepare a compromise settlement agreement. The hearing examiner or captain will forward the compromise settlement agreement, authorized by both parties, to the board for approval.

(i) If the board approves the compromise, a copy of the signed settlement agreement will be sent to the licensee and will become part of the licensing history.

(ii) If the board does not approve the compromise, the licensee will be notified of the decision. The licensee will be given the option to renegotiate with the hearings examiner or captain, of accepting the originally recommended penalty, or of requesting an administrative hearing on the charges.

(d) If the licensee and the hearing examiner or captain cannot reach agreement on a settlement proposal, the licensee may accept the originally recommended penalty, or the hear-

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ing examiner or captain will forward a request for an administrative hearing to the board's hearings coordinator.

[Statutory Authority: RCW 82.24.510, 82.24.550, 82.26.150, 82.26.220. WSR 10-01-089, § 314-34-010, filed 12/16/09, effective 1/16/10.]

**WAC 314-34-015 What are the penalties if a cigarette and/or tobacco products license holder violates a cigarette or tobacco products law or rule?** For the purposes of chapter 314-33 WAC, a two-year window for violations is measured from the date one violation occurred to the date a subsequent violation occurred.

(1) 1st offense - License suspension for not less than thirty consecutive business days.

(2) 2nd offense - License suspension for not less than ninety days - or more than twelve months.

(3) 3rd and consecutive offenses - Subject to revocation.

[Statutory Authority: RCW 82.24.510, 82.24.550, 82.26.150, 82.26.220. WSR 10-01-089, § 314-34-015, filed 12/16/09, effective 1/16/10.]

**WAC 314-34-020 Information about cigarette and/or tobacco products license suspensions.** (1) On the date a cigarette and/or tobacco products license suspension goes into effect, a liquor enforcement officer will post a suspension notice in a conspicuous place on or about the licensed premises. This notice will state that the license has been suspended by order of the liquor control board due to a violation of a cigarette or tobacco products law or rule.

(2) During the period of cigarette and/or tobacco products license suspension, the licensee and employees:

(a) Are required to maintain compliance with all applicable cigarette and tobacco products laws and rules;

(b) May not remove, alter, or cover the posted suspension notice, and may not permit another person to do so;

(c) May not place or permit the placement of any statement on the licensed premises indicating that the premises have been closed for any reason other than as stated in the suspension notice;

(d) May not advertise by any means that the licensed premises is closed for any reason other than as stated in the liquor control board's suspension notice.

(3) During the period of cigarette and tobacco products license suspension:

(a) A retail cigarette and/or tobacco products licensee may operate his/her business provided there is no sale, delivery, removal, or receipt of cigarette and tobacco products.

(b) A cigarette wholesaler and tobacco products distributor licensee may operate his/her business provided there is no sale, delivery, removal, or receipt of cigarette and tobacco products.

[Statutory Authority: RCW 82.24.510, 82.24.550, 82.26.150, 82.26.220. WSR 10-01-089, § 314-34-020, filed 12/16/09, effective 1/16/10.]

**WAC 314-34-030 Cigarette and other tobacco products violations.** (1) The following is a list of cigarette violations:

- (a) Taxes - failure to pay taxes as required;
- (b) Stamps - tax stamp violations to include:
  - (i) Failure to affix stamps;
  - (ii) Forgery/counterfeit; or
  - (iii) Possession of unstamped cigarettes.

(c) Retailer obtaining cigarettes from an unauthorized source;

(d) Records - improper recordkeeping or failure to submit reports as required;

(e) Failure to allow inspections of any of the following:

(i) Premises;

(ii) Stamps;

(iii) Vehicles;

(iv) Cigarettes;

(v) Books; or

(vi) Records.

(f) Transporting violations to include failure to notify and improper records;

(g) Operating outside the capacity of the license and failure to secure the proper license; and

(h) License suspension violations.

(2) The following is a list of other tobacco product violations:

(a) Taxes - failure to pay taxes as required;

(b) Records - improper recordkeeping or failure to submit reports as required;

(c) Failure to allow inspections of any of the following:

(i) Premises;

(ii) Vehicles;

(iii) Tobacco products;

(iv) Books; or

(v) Records.

(d) Transporting violations to include failure to notify and improper records;

(e) Operating outside of the capacity of the license or failure to secure the proper license;

(f) Retailer not licensed as a distributor and obtaining tobacco products from an unlicensed distributor;

(g) Manufacturer representative's violation; and

(h) License suspension violations.

[Statutory Authority: RCW 82.24.510, 82.24.550, 82.26.150, 82.26.220. WSR 10-01-089, § 314-34-030, filed 12/16/09, effective 1/16/10.]