



Notice of Permanent Rules for Compliance Checks

This explanatory statement concerns the **Washington State Liquor Control Board's adoption of WAC 314-31-005 and WAC 314-31-015 for Compliance Checks.**

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. This statement must be provided to anyone who gave comment about the proposed rule making.

Once persons who gave comment during this rule making have had a chance to receive this document, the Liquor Control Board will file the amended rules with the Office of the Code Reviser. These rule changes will become effective 31 days after filing (approximately September 22, 2012).

The Liquor Control Board appreciates your involvement in this rule making process. If you have any questions, please contact Karen McCall, Rules Coordinator, at (360) 664-1631 or e-mail at rules@liq.wa.gov.

What are the agency's reasons for adopting this rule?

Compliance checks have been performed by law enforcement agencies for many years. Creating rules around alcohol compliance checks alleviates the conflict in legal interpretation surrounding language in RCW 66.44.290.

Summary of all public comments received on this rule proposal.

One comment was received at the public hearing held on August 15, 2012. Two written comments were received on this rulemaking:

Julia Clark – Washington Restaurant Association (WRA): WRA would like to add language to add a subsection (c) to WAC 314-31-015 (2) to read as follows:
During a compliance check, and investigative aide may not:
(c) Be deceptively mature in appearance.

LCB response: A question that comes up is what is deceptively mature? As you cannot clearly define this in statute or rule, our AAG did not feel it should be in the rule.

Amy Brackenbury – Washington Food Industry (WFI): WFI does not have any concerns with the rules as proposed.

Julia Clark – Washington Restaurant Association: WRA proposes the following language be added to WAC 314-31-015 (2) to explain “deceptively mature in appearance”:

During a compliance check, an investigative aide may not:

(c) Wear clothing or attire that does not belong to them; or

(d) Alter or enhance their appearance or stature for the purpose of the compliance check.

LCB response: Staff checked with the AAG and the AAG maintains this language should not be in rule. The language is still too subjective. LCB will keep the language as originally proposed.

WAC Changes

Chapter 314-31 WAC

COMPLIANCE CHECKS

NEW SECTION

WAC 314-31-005 Liquor compliance checks. (1) The Washington state liquor control board authorizes enforcement officers and investigative aides working with enforcement officers to conduct liquor compliance checks at any location where alcohol is sold, served or provided.

(2) Investigative aides working at the direction of enforcement officers during a liquor compliance check are considered agents of the Washington state liquor control board.

(3) Violations involving a licensee, its employee, or a member of the public that result from a liquor compliance check

are subject to criminal arrest and/or administrative action by the liquor control board.

NEW SECTION

WAC 314-31-015 What are the guidelines for liquor compliance checks? Enforcement officers conducting liquor compliance checks must comply with the following conditions:

(1) An investigative aide must:

(a) Be at least eighteen years of age and under twenty-one years of age;

(b) Transfer any physical evidence to the enforcement officer(s) at the conclusion of each compliance check during which alcohol is acquired; and

(c) Complete a written statement on a form provided by the enforcement officer(s) at the conclusion of each compliance check during which alcohol is acquired.

(2) During a compliance check, an investigative aide may not:

(a) Be directly related to the enforcement officer(s) conducting the compliance check; or

(b) Possess any funds other than the funds provided by the agency for the compliance check.

(3) An enforcement officer shall photograph the investigative aide prior to conducting a compliance check. At least one photograph shall be taken of the investigative aide's

face and at least one photograph shall be taken of the investigative aide from head to toe.

(4) An investigative aide is not required to possess identification during a compliance check, provided that if identification is possessed during the compliance check, the identification must be the investigative aide's lawfully issued identification.