

**OFFICE OF THE
WASHINGTON STATE LIQUOR CONTROL BOARD
Board Meeting Minutes – June 10, 2009**

Board Member Roger Hoen called the regular meeting of the Washington State Liquor Control Board to order at 10:05 a.m., on Wednesday, June 10, 2009 in the boardroom, 3000 Pacific Avenue SE, Olympia, Washington. Board Member Ruthann Kurose was present. Board Chairman Lorraine Lee was not present. This meeting was audio recorded.

Board Approval to File CR 103 on WAC 314-29-010 – Penalty Guidelines – Karen McCall, Rules Coordinator

Karen requested that the Board approve final rule making (CR 103) regarding WAC 314-29-010. The Board was briefed on the rulemaking background, public comment, and agency response for this rule making. Karen has had conversations with stakeholder groups regarding this rule making. *(See attached Approval of final rule making (CR 103) for rules review of WAC 314-29-010 and issue paper on rule making for WAC 314-29-010(2)).*

Public Hearing on Liquor Samples – Karen McCall, Rules Coordinator

As part of the Liquor Control Board's on-going rules review process, rules regarding liquor samples have been reviewed for relevance, clarity, and accuracy. Rules regarding liquor samples do not represent current practice in its entirety, and need to be expanded to provide more detail about the process and to plain talk the language used. Karen has had conversations with stakeholder groups regarding this rule making. *(See attached issue paper on rule making on liquor samples)*

The Board Meeting was adjourned at 10:20 AM.

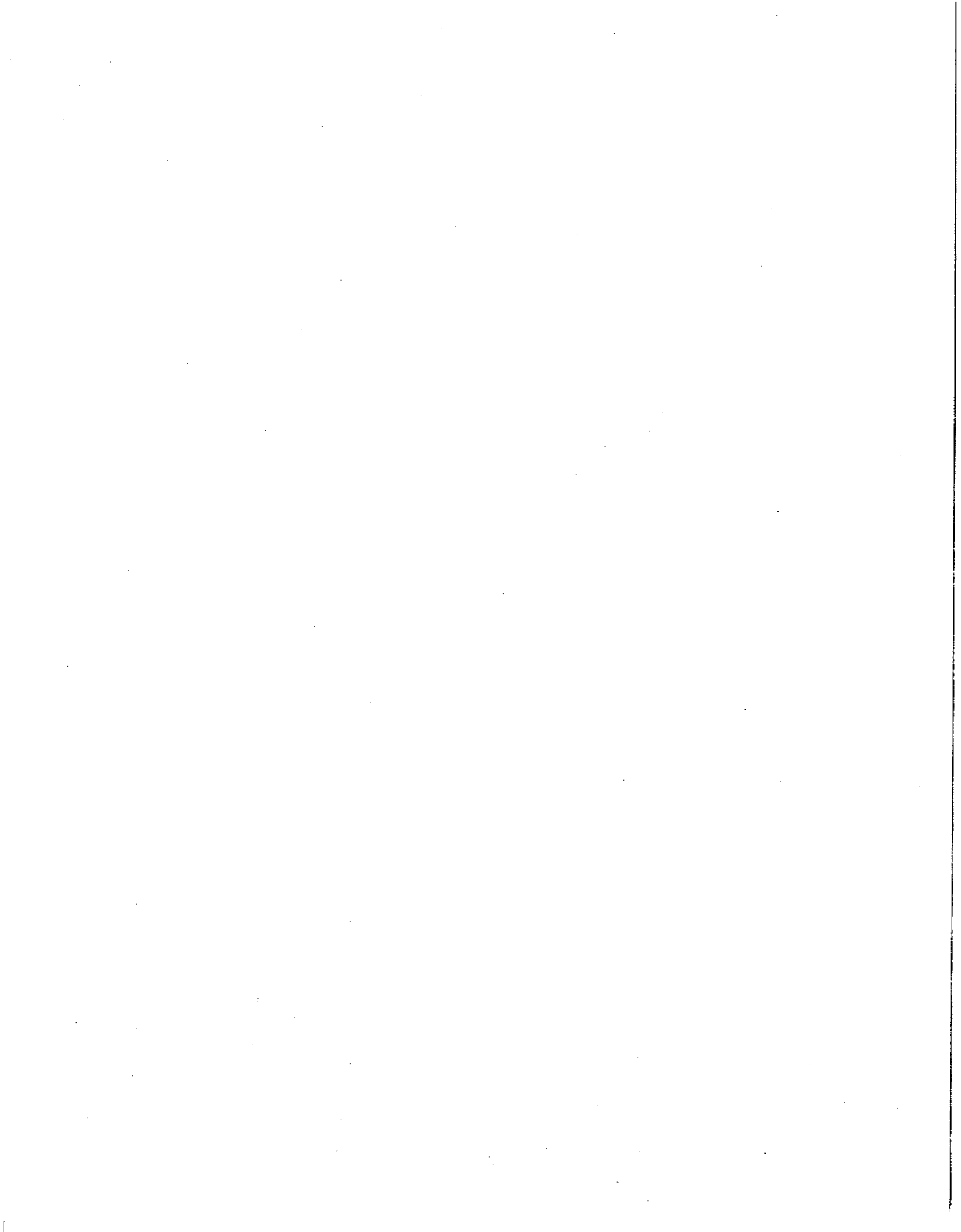
Lorraine Lee
Board Chairman



Roger Hoen
Board Member



Ruthann Kurose
Board Member

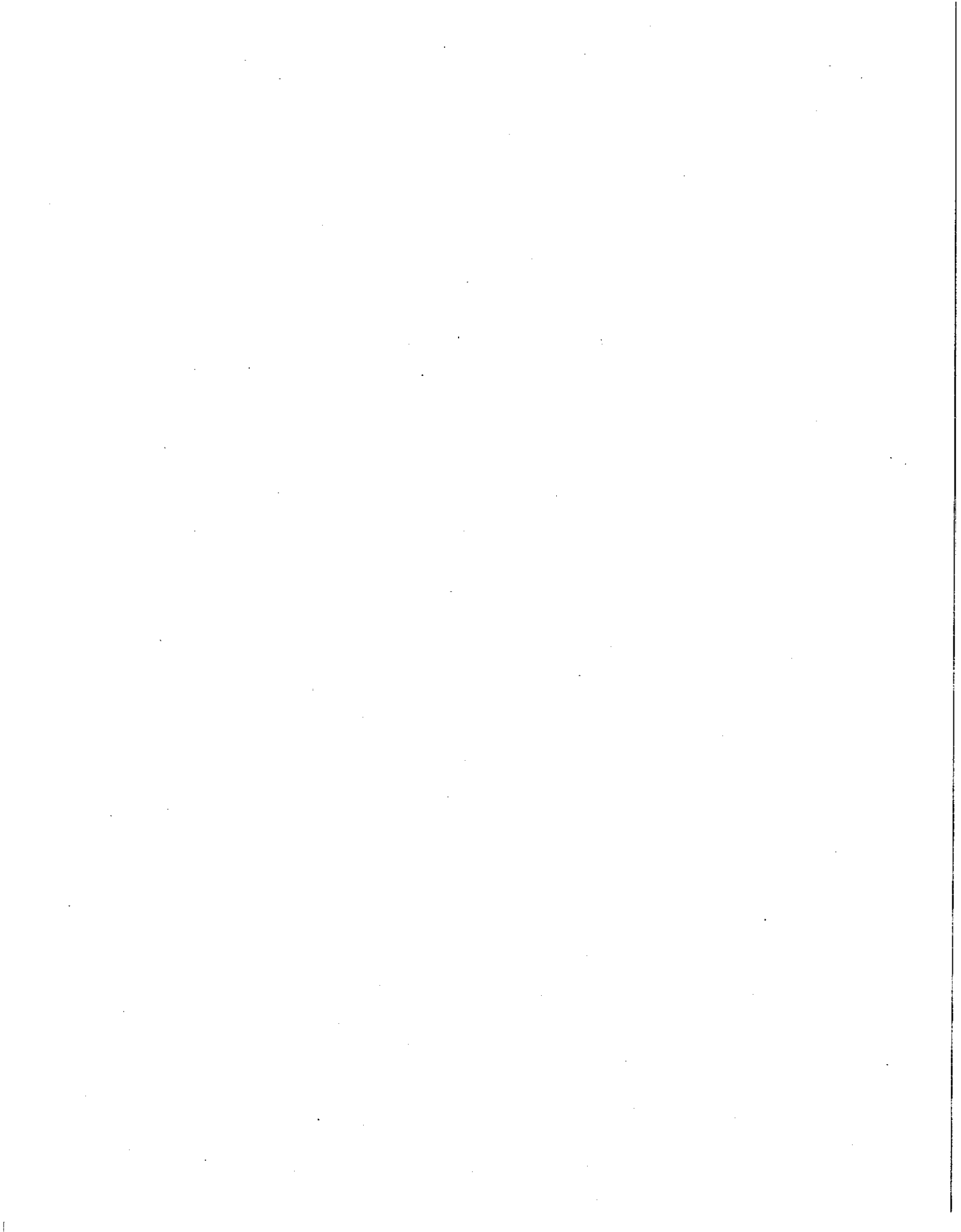


**AGENDA
BOARD MEETING
WA STATE LIQUOR CONTROL BOARD
Wednesday, June 10, 2009
Headquarter Building
3000 Pacific Ave, Olympia WA 98504**

10:00 a.m.

- 1. Board Approval to File CR 103 on WAC 314-29-010 – Penalty GuidelinesKaren McCall**
- 2. Public Hearing on Liquor SamplesKaren McCall**
- 3. Old Business.....Board Members**
- 4. New Business.....Board Members**

Recess/Adjourn





**Washington State
Liquor Control Board**

Date: June 10, 2009

To: Lorraine Lee, Board Chairman
Roger Hoen, Board Member
Ruthann Kurose, Board Member

From: Karen McCall, Agency Rules Coordinator

Copy: Pat Kohler, Administrative Director
Rick Garza, Deputy Administrator
Pat Parmer, Enforcement and Education Director

Subject: **Approval of final rulemaking (CR 103) for rules review of WAC 314-29-010.**

At the Board meeting on June 10, 2009, the rules coordinator requests that the Liquor Control Board approve final rule making (CR 103) regarding WAC 314-29-010.

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 Agency Rules Coordinator will send an explanation of the rule making to all persons who submitted comments. 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

Lorraine Lee, Chairman Date

Approve Disapprove



Roger Hoen, Board Member 6/10/09
Date

Approve Disapprove



Ruthann Kurose, Board Member 6/10/09
Date

Attachment: Issue Paper

WASHINGTON STATE LIQUOR CONTROL BOARD

Issue Paper

Rule Making on WAC 314-29-010(2)

Date: June 10, 2009

Presented by: Karen McCall, Agency Rules Coordinator

DESCRIPTION OF ISSUE

The purpose of this issue paper is to recommend that the Washington State Liquor Control Board (WSLCB) proceed with final rulemaking (CR 103) to adopt changes to WAC 314-29-010 (2).

BACKGROUND

The Liquor Control Board filed a Pre-Proposal (CR 101) for this rulemaking on March 4, 2009, and filed Proposed Rules (CR 102) April 22, 2009. The WSLCB now enters into the final step of rule development by adopting the proposed rule language (CR-103).

When licensees or permit holders fail to respond to an AVN within twenty days by electing to pay a fine or to request a hearing, disagreement often occurs over whether the licensee or permit holder retains the option of paying the fine in lieu of the suspension per WAC 314-29-010(2).

WAC 314-29-010(1) expressly provides that a licensee has 20 days from receipt of the notice to accept the recommended penalty. The benefit inherent in this time-limited election is the option to choose between the standard fine and suspension. If a licensee were to retain the option to choose between the fine and suspension even after failing to respond within the 20-day period, the requirement to respond within the 20-day period would be rendered meaningless. It is Enforcement's position that after a licensee or permit holder has failed to timely respond to an AVN by electing to pay the fine or to request a hearing, the only available penalty should be suspension.

The lack of clarity in WAC 314-29-010(2) creates a loophole which results in licensee confusion, increased administrative costs, a lack of adherence to due process timelines, growing contention and litigation. Additionally, permitting the licensee to retain the choice between the fine and suspension after failing to timely respond to the AVN necessarily results in higher labor costs because the licensee retains the choice to pay the fine even after officers have driven a great distance to suspend the liquor license.

To ensure that consistency, fairness, and appropriate due process apply to all licensees and permit holders, the loophole in WAC 314-29-010(2) should be closed. Allowing a licensee or permit holder who has failed to timely respond to an AVN to negotiate the default penalty merely perpetuates an unnecessary dialogue with associated costs, and weakens the alternative dispute resolution process.

No comments were received on this rulemaking.

WHAT CHANGES ARE BEING PROPOSED?

Amend WAC 314-29-010 (2) What happens if a licensee or mandatory alcohol server training permit holder does not respond to the administrative violation notice within twenty days?

The current rule states, "If a licensee or permit holder does not respond to the administrative violation notice within twenty days, the recommended penalty will go into effect." The rule needs to state that the recommended penalty is suspension.

RECOMMENDATION

Staff recommends that the Board proceed with final rulemaking (CR 103) to revise WAC 314-29-010 (2).

ATTACHMENT: WAC 314-29-010 (2)

AMENDATORY SECTION (Amending WSR 08-17-056, filed 8/15/08, effective 9/15/08)

WAC 314-29-010 What options does a licensee or permit holder have once he/she receives a notice of an administrative violation?

(1) A licensee or a mandatory alcohol server training permit holder 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 agency.

(2) **What happens if a licensee or mandatory alcohol server training permit holder does not respond to the administrative violation notice within twenty days?** If a licensee or permit holder does not respond to the administrative violation notice within twenty days, the recommended suspension penalty will go into effect.

(3) **What are the procedures when a licensee or mandatory alcohol server training permit holder requests a settlement conference?**

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

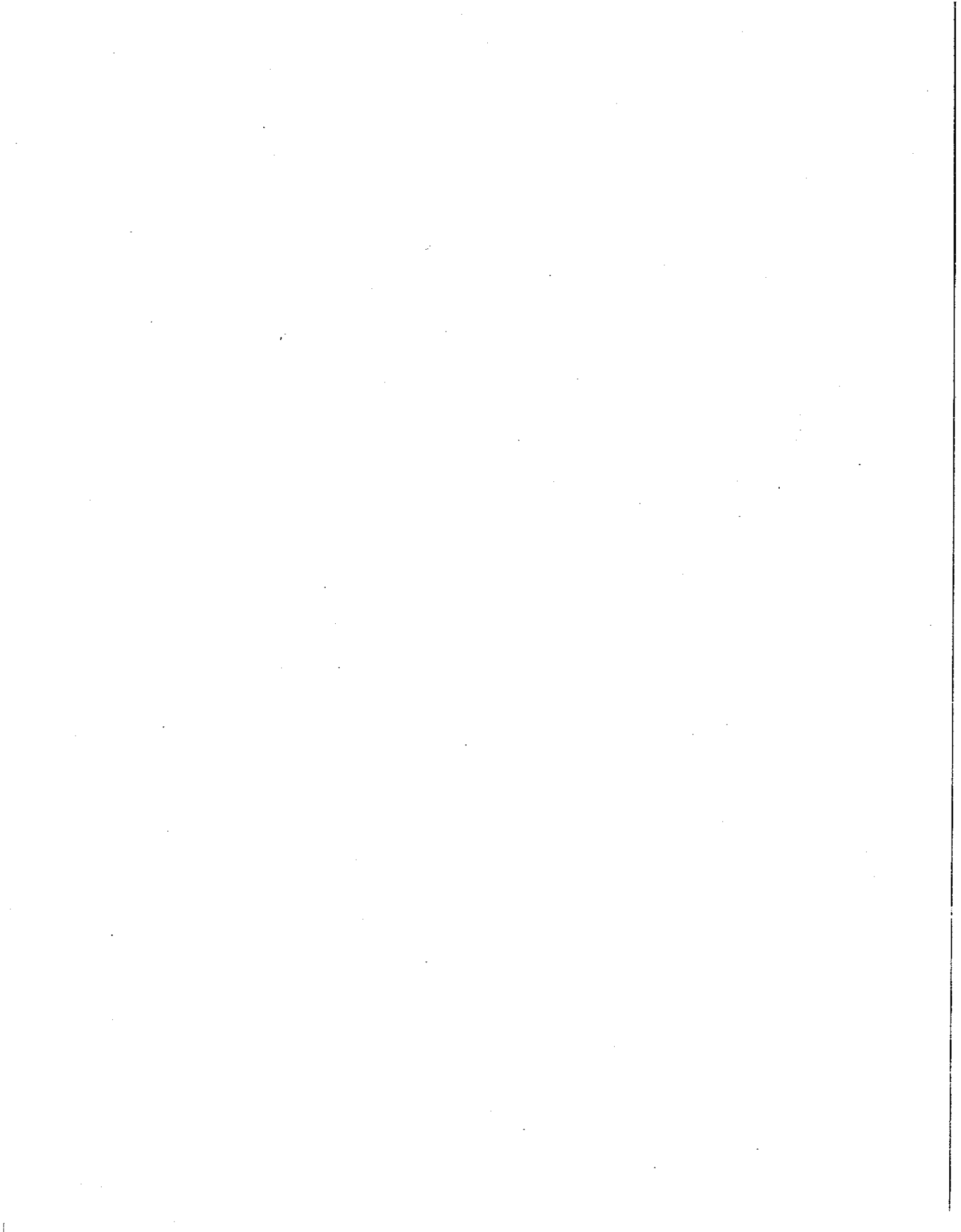
(b) Both the licensee or permit holder and the hearing examiner or captain will discuss the circumstances surrounding the charge, the recommended penalty, and any aggravating or mitigating factors.

(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 or permit holder, and will become part of the licensing history.

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

(d) If the licensee or permit holder and the hearing examiner or captain cannot reach agreement on a settlement proposal, the licensee may accept the originally recommended penalty, or the hearing examiner or captain will forward a request for an administrative hearing to the board's hearings coordinator.



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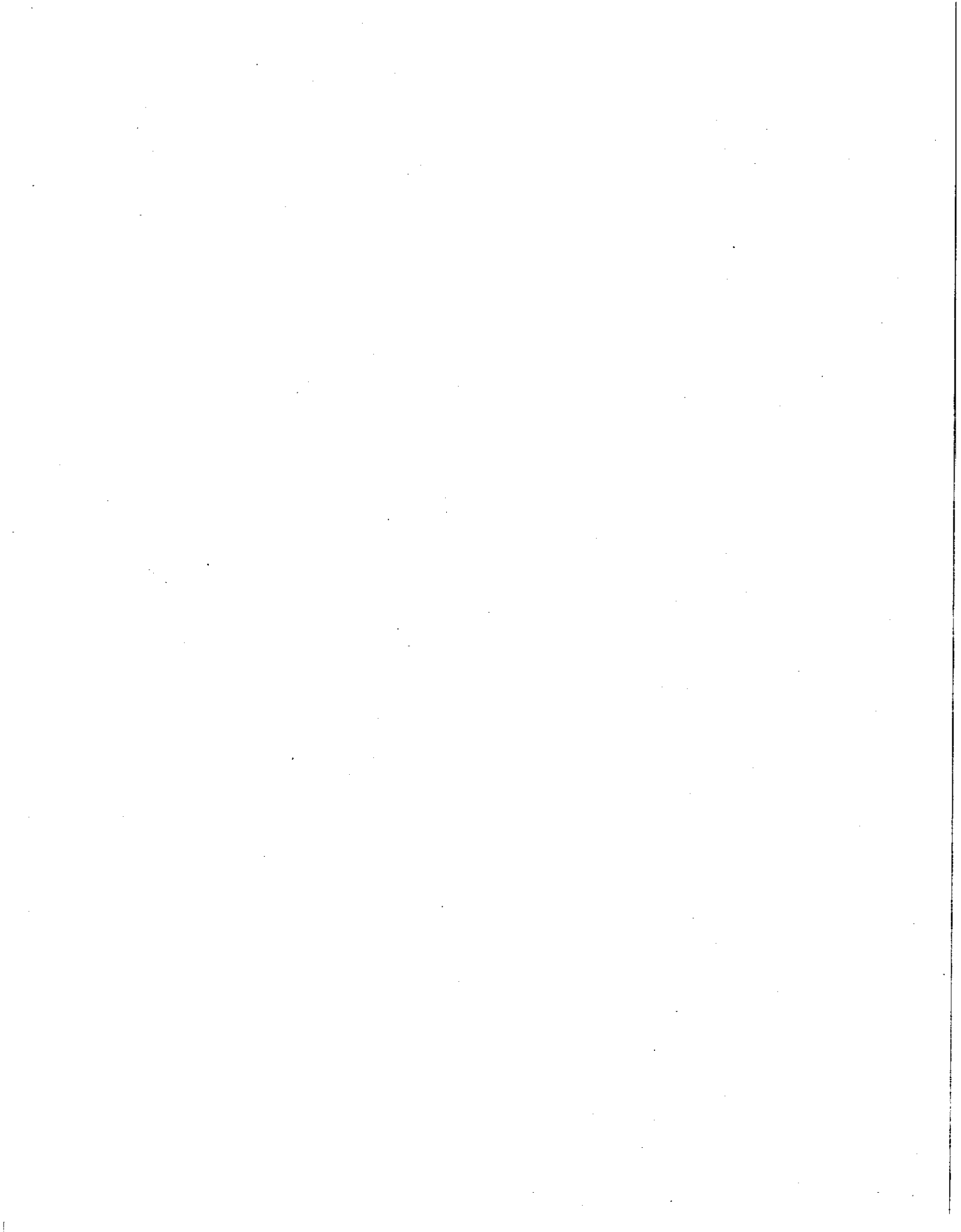
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(d) If the licensee or permit holder and the hearing examiner or captain cannot reach agreement on a settlement proposal, the licensee may accept the originally recommended penalty, or the hearing examiner or captain will forward a request for an administrative hearing to the board's hearings coordinator.



Issue Paper

Rule Making on Liquor Samples

Date: May 6, 2009

Presented by: Karen McCall, Agency Rules Coordinator

Description of the Issue

The purpose of this Issue Paper is to request approval from the Board to file proposed rules (CR 102) on rules regarding **Liquor Samples (Chapter 314-64 WAC)**.

Why is rule making necessary?

As part of the Liquor Control Board's on-going rules review process, rules regarding liquor samples have been reviewed for relevance, clarity, and accuracy. Rules regarding Liquor Samples do not represent the Liquor Control Board's current practice in its entirety, and need to be expanded to provide more detail about the process and to plain talk the language used.

What changes are being proposed?

No changes. WAC 314-64-010 – Purpose.

Amendatory Section WAC 314-64-020 – Definitions.

Defines "samples" submitted to the board.

Amendatory Section WAC 314-64-040 - Procedures for board samples.

Describes the procedures for submitting samples to the board for the purpose of negotiating the sale of liquor to the board.

Amendatory Section 314-64-050 – Accounting for board samples.

Explains how samples submitted to the board shall be accounted for.

No changes. WAC 314-64-070 – Definition for samples furnished to licensees.

No changes. WAC 314-64-080 – Procedures for furnishing samples of beer and wine to licensees for the purpose of negotiating a sale.

Amendatory Section WAC 314-64-08001 – Procedure for providing spirit samples to authorized retailers for the purpose of negotiating a sale.

Added craft distiller to this rule, and clarified language in subsection 3.

No changes. WAC 314-64-090 – Accounting.

Attachment: Issue Paper
WAC 314-64

AMENDATORY SECTION (Amending Order 40, filed 8/21/75)

WAC 314-64-020 Definitions. Samples shall mean:

~~((1) Beer and/or containers submitted to the board for chemical analysis of the beer, as required by WAC 314-20-020 (2) (b).~~

~~(2) Wine and/or containers submitted to the board for chemical analysis of the wine, as required by WAC 314-24-040 (1) (b).~~

~~(3) Malt liquor))~~ Beer, wine, spirits and/or containers submitted to the board for the purpose of negotiating the sale of liquor to the state liquor control board as provided in RCW 66.28.040.

AMENDATORY SECTION (Amending Order 200, Resolution No. 209, filed 10/21/86)

WAC 314-64-040 Procedures for board samples. Procedures for submitting samples to the board for the purpose of negotiating the sale of liquor to the board are as follows:

(1) Quantity. Samples shall not exceed in quantity that authorized by the ~~((U.S. Bureau of Alcohol, Tobacco and Firearms))~~ Tobacco Tax and Trade Bureau.

(2) Identification. Suppliers shall identify the items on the cartons and shipping documents as "samples for the board."

(3) Shipping instructions. Suppliers shall deliver or ship samples prepaid to the Washington State Liquor Control Board, Attention ~~((Liquor Purchasing Agent))~~ Director of Purchasing, ~~((1025 East Union Avenue))~~ 3000 Pacific Ave. S.E., Olympia, Washington 98504.

(4) In those instances where it becomes necessary for the board to incur some costs in receiving the samples, such costs shall be recovered from the supplier.

(5) Use and disposition of samples. Samples furnished for the purpose of negotiating the sale of liquor to the board shall be examined and tested by members of the board, or their designees, and/or the ~~((liquor purchasing agent))~~ director of purchasing, or ~~((his))~~ their designee, for appearance, aroma and taste, and to determine their probable customer acceptability. ~~((After such examination and testing, any remaining portion of said samples shall be disposed of by members of the board, or their designees who examined and tested said samples, or by the purchasing agent, or his designee who examined and tested said samples.))~~

(6) Reports. Members of the board, or their designees, and/or

the (~~liquor purchasing agent, or his~~) director of purchasing or their designee, shall report their findings and recommendations on (~~appropriate forms~~) sample surveys to the (~~liquor purchasing agent for consolidation and report to the board~~) director of purchasing or their designee. The board shall consider such findings and recommendations, along with other documents furnished by the supplier, in determining whether the items represented by the samples shall be purchased by the board for resale through state liquor stores.

(7) Excess. Samples received in excess of the quantity authorized in (~~WAC 314-64-040~~) this section for the purpose of negotiating the sale of liquor to the board will be held by the (~~liquor board purchasing agent~~) director of purchasing until the supplier has been notified of the overshipment and given fifteen days in which to respond as to whether he wants the excess returned to him at his expense. Failure of the supplier to respond within the time limitation, or notification from the supplier that he does not want the excess returned to him, will result in the excess item or items being destroyed by a liquor control board auditor in the presence of the (~~liquor purchasing agent~~) director of purchasing, or (~~his~~) their designee, after which a destruction notice will be prepared by the auditor and be certified by the (~~liquor board purchasing agent~~) director of purchasing or (~~his~~) their designee who witnessed the destruction. Copies of such destruct notices shall be (~~distributed to members of the board, the liquor purchasing agent, and the liquor control board controller~~) kept in the purchasing division of the liquor control board.

(8) Containers. Containers submitted without alcohol to the board for the purpose of negotiating the sale of liquor shall, after examination by the board and/or the (~~liquor purchasing agent~~) director of purchasing, be disposed of as follows:

(a) Figurines, decanters, or other decorative containers may be retained for public display in the board offices in Olympia. After such display, the containers shall be disposed of as provided in (b) of this subsection.

(b) Figurines, decanters, or other decorative containers will be held by the (~~liquor purchasing agent~~) director of purchasing until the supplier has been notified that the containers have been examined by the board, and the supplier will be given fifteen days in which to respond as to whether he wants the containers returned to him at his expense. Failure of the supplier to respond within the time limitation, or notification from the supplier that he does not want the containers returned to him, will result in the containers being disposed of as surplus property, pursuant to RCW 43.19.1919, if the anticipated revenue to be derived from the sale of the containers as surplus property is deemed to exceed the anticipated costs attributable to the sale.

~~((c) Containers whose anticipated revenue to be derived from their sale as surplus property is deemed not to exceed the anticipated costs attributable to the sale shall be disposed of by members of the board, or their designees who examined and tested said samples, or by the liquor purchasing agent, or his designee~~

~~who examined and tested said samples.))~~

AMENDATORY SECTION (Amending WSR 91-19-070, filed 9/16/91, effective 10/17/91)

WAC 314-64-050 Accounting for board samples. Samples as defined in WAC 314-64-020 shall be accounted for as follows:

~~((1) Malt liquor, wine or spirits submitted to the board for the purpose of negotiating the sale of liquor to the board.~~

~~((a)) (1) Upon receipt of the samples by the ((liquor purchasing agent)) director of purchasing in Olympia, the ((liquor purchasing agent)) director of purchasing, or his designee, shall ((prepare a multiple copy receiving and disposition report)) record the receipt for said samples(~~, clearly identifying them as "samples for the purpose of negotiating the sale of liquor to the board."~~~~

~~((b)).~~

~~(2) If more than the amount authorized in WAC 314-64-040 is received, the ((liquor purchasing agent)) director of purchasing, or ((his)) their designee, ((shall prepare a separate receiving report for the)) will record them as excess samples and dispose of them as provided in WAC 314-64-040(7).~~

~~((c)) (3) The ((liquor purchasing agent)) director of purchasing, or ((his)) their designee, shall sign the ((multiple copy receiving and disposition report in the applicable section,)) record of receipt indicating ((his)) receipt of the samples.~~

~~((d)) (4) The ((liquor purchasing agent)) director of purchasing, or ((his)) their designee, shall ((distribute)) retain the signed ((multiple copies of the receiving and disposition reports as follows: The original to be retained by the liquor purchasing agent, one copy to each member of the board, and one copy to the liquor control board controller)) record of receipt.~~

~~((e)) (5) The ((purchasing agent)) director of purchasing, or ((his)) their designee, shall provide ((an analysis report form, as required in WAC 314-64-040(6)) a sample survey for each sample. ((The receiving and disposition reports and analysis report forms shall be numbered consecutively, and shall correspond one with the other.~~

~~((f)) (6) The ((liquor purchasing agent)) director of purchasing shall deliver a copy of the ((receiving and disposition report and the analysis report forms)) sample survey with the samples, to members of the board, or their designees, and/or to the ((liquor purchasing agent)) director of purchasing, or ((his)) their designee, for examination, testing and reporting as provided in WAC 314-64-040 (4) ~~((7)) and (5) ((and (6))).~~~~

~~((g)) (7) Members of the board, or their designees, and/or the ((liquor purchasing agent)) director of purchasing, or ((his)) their designee, shall sign the ((receiving and disposition report))~~

copy of the record of receipt in the applicable section, indicating receipt of the samples.

~~((h) The purchasing agent shall distribute the signed receiving and disposition report as follows: The original to the member of the board, or his designee, or the liquor purchasing agent, or his designee, to whom the sample was delivered; one copy to the liquor control board controller, and one copy to be retained by the liquor purchasing agent.~~

~~((i)) (8) Members of the board, or their designees, and/or the ((liquor purchasing agent)) director of purchasing, or ((his)) their designee, shall examine, test and report on the sample, as provided in WAC 314-64-040 ((4), (5), and (6),)) complete the ((analysis report form,)) sample survey, sign, and ((distribute the form as follows: The original)) return to the ((liquor purchasing agent, one copy to the liquor control board controller, and one copy to be retained by the member of the board, or his designee, and/or the liquor purchasing agent, or his designee who examined and tested the sample.~~

~~((j)) director of purchasing, or their designee.~~

~~(9) The ((liquor control board controller)) purchasing division shall maintain the official copies of the ((receiving and disposition reports)) records of receipt, together with the ((matching analysis report forms)) sample surveys, and, where applicable, the destruction notices.~~

AMENDATORY SECTION (Amending WSR 94-14-022, filed 6/27/94, effective 7/28/94)

WAC 314-64-080 Procedures. Procedures for furnishing samples of beer and wine to licensees for the purpose of negotiating a sale are as follows:

(1) Quantity. Except as provided in (d) of this subsection, samples may be furnished only in their original packages or containers as produced by the manufacturer or bottler, as follows:

(a) Wholesaler or importer. A brewer, winery or importer may furnish a sample of beer or wine to a wholesaler or importer who has not previously purchased the brand and type or vintage year from the supplier furnishing the sample. For each wholesaler or importer, the brewer, winery or importer may give not more than seventy-two ounces of any brand and type of beer, and not more than one liter of any brand and type of wine.

(b) Retailer. A brewer, winery, importer or wholesaler may, except as hereinafter provided, furnish a sample of beer or wine to a retail licensee who has not previously purchased the brand and type or vintage year from the supplier furnishing the sample. For each retail licensee, the brewer, winery, importer or wholesaler may give not more than seventy-two ounces of any brand and type of beer, and not more than one liter of any brand and type of wine.

If a particular product is not available in a size within the quantity limitations of this section, a brewer, winery, importer or wholesaler may furnish the next largest size.

(c) Out-of-state brewers and wineries who hold a certificate of approval to ship their products into this state who provide samples to retailers as outlined in (b) of this subsection shall be responsible for reporting monthly to the board any shipments of samples to retailers in Washington state and shall also be responsible for paying the taxes due on such beer and wine samples provided to retailers as provided for in WAC 314-20-010 and 314-24-110 as if they were a domestic brewer or a domestic winery.

(d) Samples in other than the original packages or containers may, subject to the conditions and limitations stated in (a), (b), and (c) of this subsection, be furnished as follows:

(i) A brewery, winery, importer, or wholesaler, either directly or through their licensed agents, may furnish to authorized licensees at their licensed premises or business office samples of beer and wine from an opened container carried by a licensed agent, provided such samples are furnished only in single-serving samples not to exceed two ounces of wine or twelve ounces of beer.

(ii) A brewery, winery, importer, or wholesaler, either directly or through their licensed agents, may furnish samples of beer or wine to authorized licensees at the premises of a retail licensee.

(iii) A licensed importer or licensed wholesaler may furnish samples to authorized licensees on the licensed premises of the importer or wholesaler.

(2) Identification. Brewers, wineries, importers or wholesalers shall identify the samples on the containers, cartons and shipping documents as "Samples for licensees."

(3) Shipping instructions. Brewers, wineries, importers or wholesalers shall, except as provided in subsection (1)(d) of this section, deliver or ship samples to licensees at their licensed premises or business office.

(4) Use and disposition of samples. Samples may be furnished for the purpose of negotiating a sale of beer or wine to a wholesaler, importer, or retail licensee.

AMENDATORY SECTION (Amending WSR 98-08-041, filed 3/25/98, effective 4/25/98)

WAC 314-64-08001 Procedures for providing spirit samples to authorized retail licensees for the purpose of negotiating a sale. A distiller, craft distiller, or their agent may, for the purpose of product promotion, provide without charge single samples to retail licensees authorized to sell spirits and their employees.

1. Samples are limited to 1.7 ounces (50 ml) and no more than

one sample of each product may be provided to any one licensed business.

2. All spirit samples must be purchased at retail from the board from existing stocks or by special order.

3. Only products not (~~previously~~) purchased by the retail licensee within the last twelve months from the distiller or their agent or existing products with a change in alcohol proof or formula may be sampled. If there is a complete change of ownership of the retail licensee to another entity, the former retail licensee's purchase of the product is not deemed a purchase made by the successor retail licensee for purposes of this provision.

4. Both the retailer and distiller must retain records of sampling for a period of two years. The records shall include the brand and type of sample and the date of sampling.