

**OFFICE OF THE
WASHINGTON STATE LIQUOR CONTROL BOARD
Board Meeting Minutes – March 18, 2009**

Board Chairman Lorraine Lee called the regular meeting of the Washington State Liquor Control Board to order at 10:03 am, on Wednesday, March 18, 2009 in the boardroom, 3000 Pacific Avenue SE, Olympia, Washington. Board Members Roger Hoen and Ruthann Kurose were present. This meeting has been audio recorded.

Years of Service Recognition – Debi Besser, Purchasing Director and Randy Simmons, Administrative Services Director

Debi recognized Lacinda Thomas for 25 years of state service. Randy Simmons recognized James Lunsford for ten years of state service, Tia Livingood for ten years of state service, and Robin Thompson for fifteen years of state service.

Potential New Listings and Rejections – Debi Besser, Purchasing Director

Debi presented the Board with a memo listing products recommended for listing and rejecting. *See attached March 18, 2009 memo – potential new listings and rejections.*

The Board Members unanimously approved the recommended listings and rejections.

Potential New Wine Listings and De-Listings – Steve Burnell, Marketing Manager

Steve presented the Board with a memo listing potential new wine listings and de-listings. *See attached March 18, 2009 memo – potential new wine listings and de-listings.*

The Board Members unanimously approved the recommended listings and rejections.

Potential Size Extension – Steve Burnell, Marketing Manager

Steve presented the Board with a memo on a potential size extension for Absolut Mandarin Vodka. *See attached March 18, 2009 memo – potential size extension.*

The Board Members unanimously approved the recommended size extension.

Potential Proof Changes – Steve Burnell, Marketing Manager

Steve presented the Board with a memo on potential proof changes. *See attached March 18, 2009 memo – potential proof changes.*

The Board Members unanimously approved the recommended proof changes.

Board approval to file CR 101 for Liquor Samples and Liquor Vendors – Karen McCall, Rules Coordinator

The rule making process begins by announcing LCB's intent to change existing rules and propose new rules by filing a CR 101 form. This allows staff and stakeholders to begin discussing necessary changes and new rules. No proposed language is offered at this stage. Notice will be sent to all who have indicated that they want to receive notice of rule changes. The notice will identify the public comment period and where comments can be sent. Based on public input received, staff will draft proposed changes for presentation to the Board at the next phase of the rule making process. Tentative timelines are provided. *See attachments on rulemaking for liquor samples and liquor vendors.*

Lorraine Lee asked Karen to ensure the following actions occur during the CR 101 filing process:

- Change BATF (Bureau of Tobacco and Firearms) language to TTB (Alcohol and Tobacco Tax and Trade Bureau)
- Ensure records retention changes are consistent with other records retention requirements
- Ensure Martha Lantz (AAG) reviews new language
- Review the term "Liquor Vendors" to ensure appropriate

Presentation of Interpretive Statement # LCB-INT 01-2009 Clarification of the Return of Exported Washington Wine for Ultimate Sale – Alan Rathbun, Licensing and Regulation Director

Alan presented the Board with a recommended interpretive statement to provide clarity regarding the return of exported Washington wine into the state. Current interpretation does not allow a state winery to bring its product back into Washington State. If a scenario arises where product is not performing well in another state or another demand causes the need to bring its product back, the current rule does not allow the process. The current interpretation used by staff only allows for sparkling wine to be brought back into the state. The proposed interpretive statement will add clarity and flexibility.

Jean Leonard, Executive Director with the Washington Wine Institute indicated a recent LCB audit finding brought the issue to their attention. Jean has heard nothing but positive comments about the proposed interpretive statement from the members of her organization.

The Board Members do not see these changes as a threat to public safety and asked Alan to post the Interpretive Statement on our website to seek public comment and bring the final Interpretive Statement to the March 25, 2009 Board Meeting for potential approval.

See attached proposed Interpretive Statement #LCB-INT 01-209.

Interim Policy #03-2009 – Washington Domestic Winery Returning Exported Product back to Producing Winery – Stacey Sitko, Comptroller

Stacey Sitko presented the Board information on how the LCB will ensure proper tax collection occurs for wineries bringing product back into the state. The LCB has the ability to collect Washington wine liter tax when/if returning wine is sold in Washington, maximizing revenue back to the state. Stacey indicates the LCB has attempted to keep the new process simple for affected wineries and an additional form completion will be required for those wineries affected by the new process.

As written, the language of RCW 66.24.170 is ambiguous insofar as it relates to Washington wine exported out of state and its subsequent return into Washington by the manufacturing winery. LCB staff have previously interpreted this statute to preclude such return; in other words, only sparkling wine is allowed to be returned and, therefore, if it is not sparkling wine then it cannot be returned.

However, another reasonable interpretation of this language is that this provision only addresses those instances when the wine is made into sparkling wine out of state. And, because the provision provides for the wine's return into Washington in its new form of sparkling wine, the language does not either permit or prohibit the return of wine. Thus, this statutory provision is silent with respect to wine that remains unchanged in form. And this is the interpretation adopted in the draft interim policy prepared by Stacy.

With these possible interpretations in mind, we use the general guiding principle that, unless public safety considerations dictate otherwise, the activity is permitted. However, additional procedures will be necessary to ensure the efficient and accurate collection of taxes.

The Board Members are supportive of the new interim policy and have asked Stacey to seek public comment and prepare the interim policy for potential approval at the March 25, 2009 Board Meeting.

See attached proposed Interim Policy #03-2009.

Delegation of Threshold Determination – Issue Paper on Intent to Deny or Not Renew a Liquor License – Alan Rathbun, Licensing & Regulation Division Director

March 18, 2009 Board Minutes

Alan Rathbun presented the Board with a proposal to delegate to the Director of Licensing and Regulation the authority to make the initial determination to grant licenses or seek denial or non-renewal of a liquor license application when an objection has been made.

RCW 66.24.010 governs the issuance of liquor licenses. When either a new license application is received or when a license is pending renewal, state law requires the applicable local government authority to be notified and given the opportunity to object to said issuance. Under current procedure, a pending application or renewal with a timely and appropriate objection is forwarded to the Board for an initial decision whether to seek denial or non-renewal. In its submission to the Board, Licensing (and often Enforcement) staff submits recommendations with justification. Upon making a threshold determination on licensure, the Board must again make the final determination in the same case. This final determination may be in reaction to either an appeal by the licensee/applicant or the local government authority.

The process of threshold review is complex and somewhat confusing. While not inappropriate under the Administrative Procedures Act (RCW 34.05 APA), the current process presents an *appearance of fairness* concern. A procedure where both the threshold determination and final determination are made by the same body, it may appear that the final determination is biased. The current process also is inefficient because it usually takes longer for the file to be processed internally when the 3-member Board makes the initial determination, than when a staff person makes the initial determination.

Under this proposal, the initial determination by the Licensing Division will be reviewed and approved by the Administrative Director before notice is given to any party in the action. Notice to either the applicant/licensee and/or local authority will be signed by the Administrative Director. If the licensee/applicant either chooses not to contest the staff's initial determination or the request for hearing is not timely, staff will prepare a Final Order for the Board to consider. Alternatively, if staff's initial determination is to seek licensure over the objection of a local authority, staff will communicate that initial decision to the local authority and they will be given the opportunity to seek a hearing. In this circumstance a hearing is at the discretion of the Board.

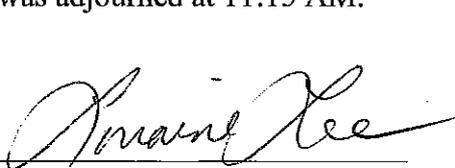
Board Members asked Alan to revise the issue paper to include the option of the Licensing Director receive the delegated authority to make the initial determination on license issuance or non-renewal in contested licensing matters.

The Board Members are supportive of the issue paper and will consider all proposals. They requested that Alan seek stakeholder feedback and prepare the revised issue paper for consideration at the March 25, 2009 Board Meeting.

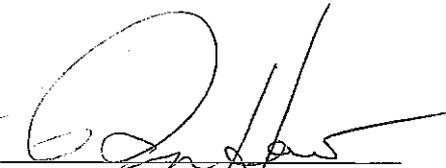
See attached Intent to Deny or Not Renew a Liquor License Issue Paper and attachments.

Approval of Minutes – Board Members

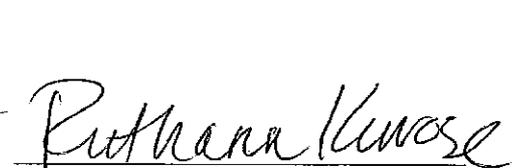
Board Members unanimously approved the March 4, 2009 Board Meeting minutes. The Board Meeting was adjourned at 11:15 AM.



Lorraine Lee
Board Chairman



Roger Hoen
Board Member



Ruthann Kurose
Board Member

WASHINGTON STATE LIQUOR CONTROL BOARD
INTEROFFICE CORRESPONDENCE

Date: March 18, 2009

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

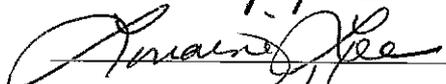
From: Debi Besser, Director of Purchasing

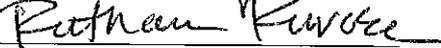
Subject: POTENTIAL NEW LISTINGS AND REJECTIONS

In accordance with the criteria set forth in Agency Policy #915 Listing and Delisting Liquor Products, I recommend that the Board approve the following actions.

| <u>Description</u> | <u>Recommendations</u> |
|--|------------------------|
| Glenmorangie Nectar D'or Scotch Whisky, 750 ml (\$59.95) | List |
| NUVO French Sparkling Liqueur, 750 ml (\$29.95) | List |
| Sauza Margarita In A Box, 1.75 Liter (\$19.95) | List |
| HRD Rootbeer Schnapps, 750 ml (\$9.95) | List |
| Thai Style Mild Bloody Mary Mix, 32 oz. (\$6.49) | List |
| Thai Style Hot Bloody Mary Mix, 32 oz. (\$6.49) | List |
| Thai Style Spicy Bloody Mary Mix, 32 oz. (\$6.49) | List |
| Appleton Estate Extra 12 Year Rum, 750 ml (\$29.95) | List |
| Bacardi Dragon Berry Rum, 750 ml (\$17.95) | List |
| Skyy Infusion Pineapple Vodka, 750 ml (\$17.95) | List |
| Sweet Carolina Sweet Tea Vodka, 750 ml (\$14.95) | List |
| Glenmorangie Signet Scotch Whisky, 750 ml (\$189.95) | Reject |
| Governor General Golden Rum, 750 ml (\$10.95) | Reject |
| Coruba Dark Rum, 750 ml (\$19.95) | Reject |
| Jacques Cardin Cognac VSOP, 750 ml (\$32.95) | Reject |
| Gran Centenario Rosangel Teuqila, 750 ml (\$36.95) | Reject |
| Gran Centenario Tenampa Azul Tequila, 750 ml (\$19.95) | Reject |

FOR BOARD CONCURRENCE: 3/18/09 DATE





ma

cc: Pat Kohler
Pat McLaughlin
John Redal
Randy Simmons
Steve Burnell
Meagan Renick
Kelly Higbee
Jeffrey James
Cindy Doughty
Robin Hall
Kim Ward
Casey Walker
Lacinda Thomas
Frances Munez-Carter
Gary Hacker



**WASHINGTON STATE LIQUOR CONTROL BOARD
INTEROFFICE CORRESPONDENCE**

Date: March 18, 2009

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

From: Steve Burnell, Marketing Manager

Subject: POTENTIAL NEW WINE LISTINGS AND DELISTINGS

From blind tastings, the following selections and recommendations were made by the Committee and the Purchasing Division. I recommend the Board approve the following listing actions.

| Wine | Region | Vntg | Retail | Recommendation |
|---------------------------------------|---------------|-------------|---------------|-----------------------|
| Washington Hills Riesling 3.0 L Box | WA | NV | \$14.99 | Regular Listing |
| Washington Hills Chardonnay 3.0 L Box | WA | NV | \$14.99 | Regular Listing |
| Washington Hills Merlot 3.0 L Box | WA | NV | \$14.99 | Regular Listing |
| Sagelands Riesling | WA | 2007 | \$ 8.99 | Regular Listing |
| Pepperwood Grove Viognier | CA | 2007 | \$ 6.99 | Regular Listing |
| Mirth Chardonnay | OR | 2007 | \$ 8.99 | Regular Listing |
| Santa Margherita Chianti | Italy | 2006 | \$19.99 | Regular Listing |
| Da Vinci Pinot Grigio | Italy | 2007 | \$11.99 | Regular Listing |
| Da Vinci Chianti | Italy | 2006 | \$11.99 | Regular Listing |
| Alamos Malbec | Argentina | 2007 | \$ 8.99 | Regular Listing |
| Alamos Cabernet Sauvignon | Argentina | 2007 | \$ 8.99 | Regular Listing |

The following wines are offered as a One-Time-Only purchase. The Purchasing Division and I recommend the Board approve the following *One-Time-Only listings*.

| Wine | Region | Vntg | Retail | Number of Cases |
|-----------------------|---------------|-------------|---------------|------------------------|
| Primarius Pinot Noir | OR | 2006 | \$ 9.99 | 56 Cases |
| Big Fire Pinot Gris | OR | 2008 | \$12.99 | 56 Cases |
| Big Fire Pinot Noir | OR | 2007 | \$15.99 | 56 Cases |
| Terra Blanca Viognier | WA | 2007 | \$9.99 | 56 Cases |

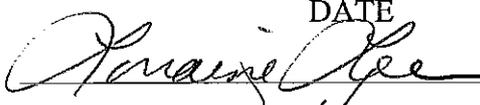
continued...

The Board currently lists the following wines. I recommend the Board “*delist*” the wines below for the reasons given.

| Wine | Region | Brand Code | Reason for Delisting |
|------------------------------|--------|------------|----------------------|
| Ruffino IL Ducale Chianti | Italy | 379730 | Poor Sales |
| Cayalla Col Valley Red Table | WA | 452640 | Poor Sales |
| Gordon Brothers Merlot | WA | 471380 | Poor Sales |
| Hyatt Cabernet Merlot | WA | 901039 | Poor Sales |
| Hyatt Chardonnay | WA | 900508 | Poor Sales |
| Hyatt Syrah | WA | 901144 | Poor Sales |
| Preston Cabernet Sauvignon | WA | 900057 | Poor Sales |
| Preston Merlot | WA | 900066 | Poor Sales |

Note: All delistings are 750 ml size unless noted otherwise.

FOR BOARD CONCURRENCE:

DATE _____


 Patricia Kover

- cc: Pat Kohler
- Pat McLaughlin
- Debi Besser
- John Redal
- Randy Simmons
- Meagan Renick
- Kelly Higbee
- Jeffrey James
- Cindy Doughty
- Robin Hall
- Kim Ward
- Casey Walker
- Lacinda Thomas
- Frances Munez-Carter
- Gary Hacker

WASHINGTON STATE LIQUOR CONTROL BOARD

INTEROFFICE CORRESPONDENCE

March 18, 2009

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

From: Steve Burnell, Marketing Manager

Subject: POTENTIAL SIZE EXTENSION

In accordance with the criteria set forth in Agency Policy #915 Listing and Delisting Liquor Products. I recommend that the Board approve listing the following size extension.

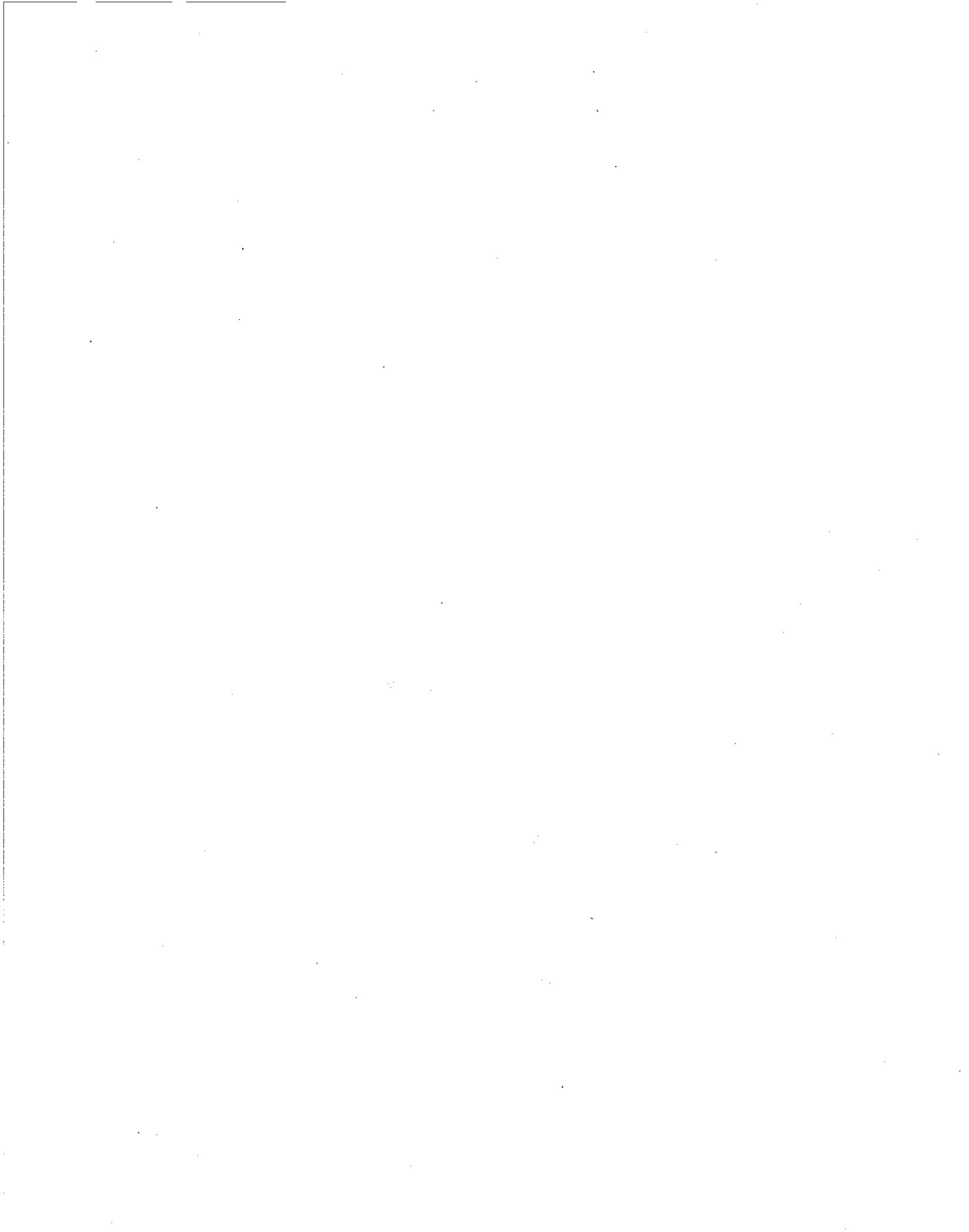
| Requested Size Extension | Size | Retail Price | Current Average Monthly Case Sales of the 750 ml Size | Current Monthly Gross Profit | Rank in Category |
|--------------------------|-------|--------------|---|------------------------------|------------------|
| Absolut Mandarin Vodka | 50 ml | \$2.00 | 844 | \$54,870 | #1 |

FOR BOARD APPROVAL:

3/18/09
DATE

Lorraine Lee
Ruthann Kurose

cc: Pat Kohler
Pat McLaughlin
Debi Besser
John Redal
Randy Simmons
Meagan Renick
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WASHINGTON STATE LIQUOR CONTROL BOARD

INTEROFFICE CORRESPONDENCE

Date: March 18, 2009
To: Chairman Lorraine Lee
Board Member Roger Hoen
Board Member Ruthann Kurose
From: Steve Burnell, Marketing Manager
Subject: POTENTIAL PROOF CHANGES

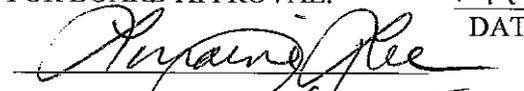
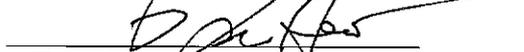
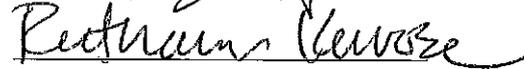
The supplier's of the following products are requesting that the Board approve their proof changes. The supplier's will no longer be producing the original proof of these products.

| <u>Brand</u> | <u>Description</u> | <u>Original Proof</u> | <u>New Proof</u> | <u>Current Retail</u> | <u>Average Monthly Case Sales</u> |
|--------------|----------------------------|-----------------------|------------------|-----------------------|-----------------------------------|
| 034262 | Finlandia Mango Vodka | 70 | 75 | \$16.95 | 63 |
| 035136 | Finlandia Grapefruit Vodka | 70 | 75 | \$16.95 | 64 |
| 004825 | The Dalmore 12 Year Scotch | 86 | 80 | \$44.95 | 40 |

I recommend that the Board approve the supplier's request for the proof changes. We will post signage in our retail outlets notifying customers of the proof changes.

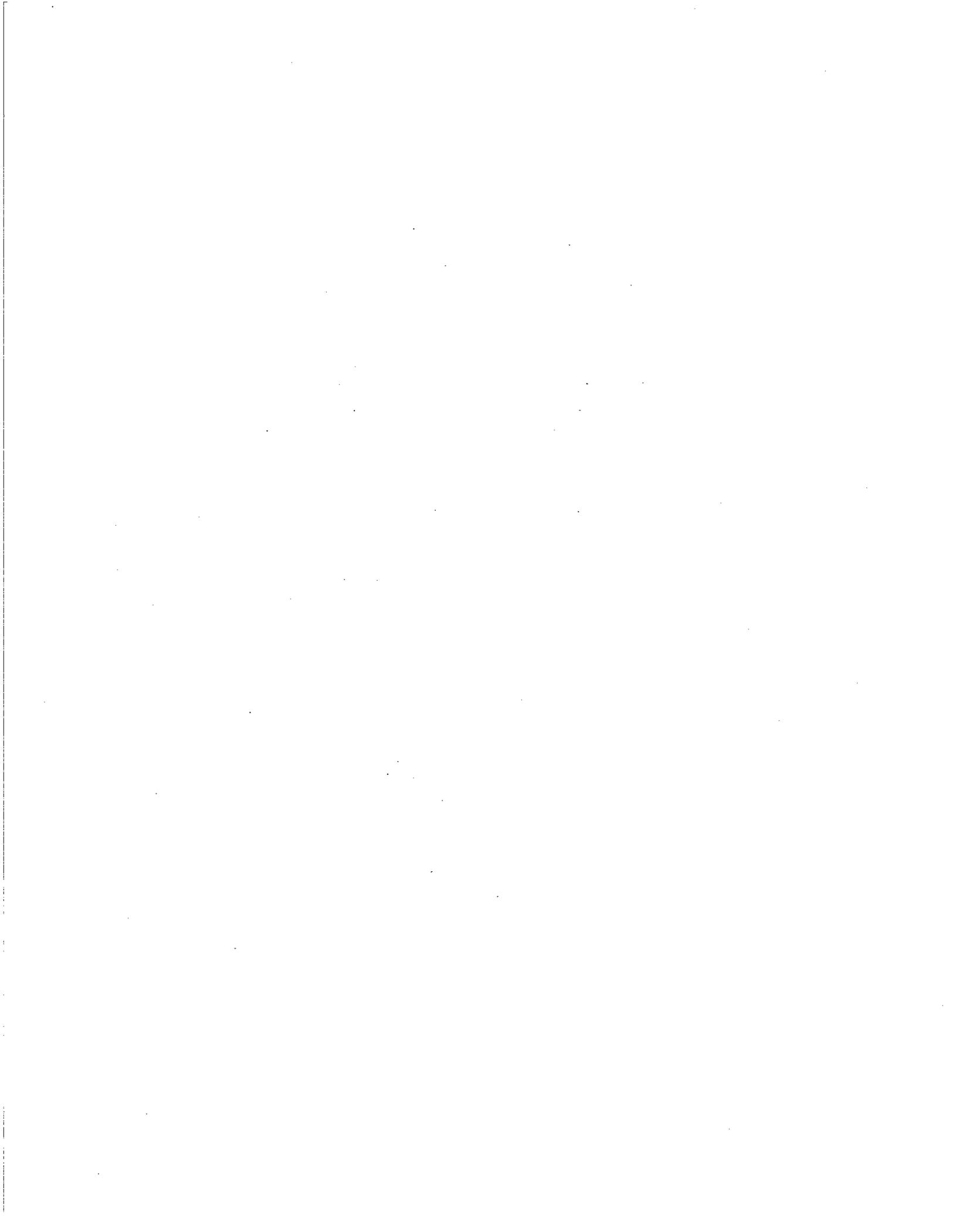
FOR BOARD APPROVAL:

3/18/09
DATE

ma

cc: Pat Kohler
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Gary Hacker





**Washington State
Liquor Control Board**

Date: March 18, 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 McLaughlin, Director of Business Enterprises
Debi Besser, Director of Purchasing

Subject: **Approval for filing a preproposal statement of inquiry (CR 101) for rules review of Chapter 314-37 – Liquor Vendors**

Under Executive Order 06-02, Governor Gregoire directed state agencies to improve and simplify service to Washington citizens. Agencies must engage in on-going regulatory improvement and develop rules that talk clearly to the public. The review of rules dealing with **Liquor Vendors** is part of this on-going review.

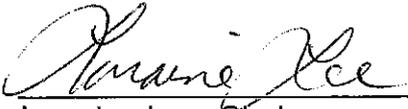
Process

The Rules Coordinator requests approval to file the preproposal statement of inquiry (CR 101) for the rule making described above. An issue paper on this rules review was presented at the Board meeting on March 18, 2009, and is attached to this order.

If approved for filing, the tentative timeline for the rule making process is outlined below:

| | |
|----------------|---|
| March 18, 2009 | Board is asked to approve filing the preproposal statement of inquiry (CR 101 filing) |
| April 1, 2009 | Code Reviser publishes notice, LCB sends notice to rules distribution list |
| April 30, 2009 | End of written comment period |
| May 6, 2009 | Board is asked to approve filing the proposed rule making (CR 102 filing) |
| May 20, 2009 | Code Reviser publishes notice, LCB sends notice to rules distribution list |
| June 10, 2009 | Public hearing held |
| June 15, 2009 | End of written comment period |
| June 17, 2009 | Board is asked to adopt rules |

| | |
|---------------|---|
| June 19, 2009 | Agency sends notice to those who commented both at the public hearing and in writing. |
| June 19, 2009 | Agency files adopted rules with the Code Reviser |
| July 20, 2009 | Rules are effective (31 days after filing) |

Approve Disapprove  3-18-09
 Lorraine Lee, Chairman Date

Approve Disapprove  3-18-09
 Roger Hoer, Board Member Date

Approve Disapprove  3/18/09
 Ruthann Kurose, Board Member Date

Attachment: Issue Paper

Washington State Liquor Control Board

Issue Paper

Rule Making on Liquor Vendors

Date: March 18, 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 the first stage of rule making (CR 101) to review rules regarding **Liquor Vendors (Chapter 314-37 WAC)**.

Why is rule making necessary?

As part of the Liquor Control Board's on-going rules review process, rules regarding liquor vendors are being reviewed for relevance, clarity, and accuracy.

Process

The rule making process begins by announcing LCB's intent to change existing rules and propose new rules by filing a CR 101 form. This allows staff and stakeholders to begin discussing necessary changes and new rules. No proposed language is offered at this stage. Notice will be sent to all who have indicated that they want to receive notice of rule changes. The notice will identify the public comment period and where comments can be sent. Based on public input received, staff will draft proposed changes for presentation to the Board at the next phase of the rule making process. A tentative timeline for the rule making process is outlined below:

| | |
|----------------|--|
| March 18, 2009 | Board is asked to approve filing the pre-proposal statement of inquiry (CR 101 filing) |
| April 1, 2009 | Code Reviser publishes notice, LCB sends notice to rules distribution list |
| April 30, 2009 | End of first written comment period |
| May 6, 2009 | Board is asked to approve filing the proposed rule making (CR 102 filing) |
| May 20, 2009 | Code Reviser published notice, LCB sends notice to rules distribution list |
| June 10, 2009 | Public hearing held |
| June 15, 2009 | End of written comment period |
| June 17, 2009 | Board is asked to adopt rules |
| June 19, 2009 | Agency sends notice to those who commented both at the public hearing and in writing. |
| June 19, 2009 | Agency files adopted rules with the Code Reviser |
| July 20, 2009 | Rules are effective (31 days after filing) |

Attachment: Issue Paper
WAC 314-37

Chapter 314-37 WAC

LIQUOR VENDORS Last Update: 2/3/99 WAC

- 37-010 Liquor sales in Indian country--Appointment of tribal liquor vendors--Qualifications.
- 37-020 Manufacturer's on site vending appointment--Qualifications.
- 37-030 Bank credit cards and debit cards.

WAC 314-37-010 Liquor sales in Indian country--Appointment of tribal liquor vendors--Qualifications. (1) The Washington state liquor control board deems it necessary and advisable to adopt this rule for the following reasons:

(a) The decision of the United States Supreme Court in the case of *Rice v. Rehner* (filed July 1, 1983) has established that the state of Washington has licensing jurisdiction over tribal liquor sales in Indian country and that those sales, when made in conformity with federal law, are subject to both tribal and state liquor regulatory requirements.

(b) It is contrary to state law (see chapter 66.44 RCW) for purchasers of Indian liquor to remove that liquor from the reservation and into the state of Washington in those instances where the tribal liquor sellers are not authorized by the board to sell liquor.

(2) Accordingly, pursuant to RCW 66.08.050(2), the Washington state liquor control board will appoint qualifying

Indian tribes, which have entered into negotiated business agreements with the board, as liquor vendors which will authorize those vendor tribes to sell liquor by the bottle to such persons, firms or corporations as may be sold liquor from a state liquor store. All such appointments will be subject to the following conditions:

(a) The tribe must enter into a business agreement with the Washington state liquor control board for the purchase and sale of liquor which will insure that the state's control over liquor traffic will be maintained while taking into consideration the unique nature of a tribal liquor vendor operation.

(b) The tribe must purchase all of its spirituous liquor for resale in Indian country from the board at a negotiated price: Provided, That a quota of spirituous liquor will be sold by the board each year to the vendor tribe without the payment of state taxes, which quota shall be negotiated between the board and the qualified tribes and approved by the department of revenue.

(c) The tribe must have in force a tribal ordinance governing liquor sales, which ordinance must have been certified by the Secretary of the Interior and published in the Federal Register as required by 18 U.S.C. § 1161.

(d) The tribe must make all liquor sales in Indian country in conformity with both state and federal law.

(3) Should a tribe which has been appointed as a liquor vendor pursuant to this section fail to comply with all the

above enumerated conditions, which shall be construed as continuing requirements to maintain the status of liquor vendor, the appointment of that tribe as a liquor vendor may be revoked by the board.

(4) A tribe, whether or not it has status as an Indian liquor vendor, which desires to sell beer and wine purchased from a licensed distributor must obtain state licenses for the sale of beer and wine and must abide by all state laws and rules applicable to sale of beer and wine by state licensees. Tribes selling beer and wine shall collect and remit to the state department of revenue the retail sales tax imposed by RCW 82.08.020 on retail sales of beer and wine to nontribal members.

(5) "Indian country" as used herein shall have the meaning ascribed to it in Title 18 U.S.C. § 1151 as qualified by Title 18 U.S.C. § 1154 as of July 1, 1983.

[Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060 and 82.08.150. 98-18-097, § 314-37-010, filed 9/2/98, effective 10/3/98. Statutory

Authority: RCW 66.08.030 and 66.08.050(2). 83-24-021 (Order 131, Resolution No. 140), § 314-37-010, filed 11/30/83; 83-04-017 (Order 118, Resolution No. 127), § 314-37-010, filed 1/26/83.]

WAC 314-37-020 Manufacturer's on site vending

appointment--Qualifications. (1) Pursuant to RCW 66.08.050, the board, in its discretion, may appoint a domestic winery which also manufactures liquor products other than wine pursuant to a license under Title 66 RCW, as a vendor for the purpose of sale of liquor products of its own manufacture on the licensed premises only.

(2) Such appointment may not be made to domestic wineries located inside incorporated cities or towns in which there is a state liquor store.

(3) Such appointment shall only be made after a contract has been entered into between the board and the domestic winery. Such contract shall contain the following:

(a) A designation of the location on the licensed premises from which the sales will be made;

(b) A designation of the nonwine products manufactured by the winery which will be sold under the appointment;

(c) That the manufacturer/vendor shall not be considered an employee of the state for any purpose;

(d) That the manufacturer/vendor shall agree to hold the

state harmless from any and all claims resulting from operation of the manufacturer's on site vendorship; and

(e) Such other aspects of the appointment relationship as the parties may agree to.

(4) All sales made under a manufacturer's on site vending appointment shall be made at the prices established by the board for sales of the same product through state liquor stores and agencies.

(5) All sales made under a manufacturer's on site vending appointment shall be subject to all applicable state taxes.

[Statutory Authority: RCW 66.08.050(2). 86-07-023 (Order 180, Resolution No. 189), § 314-37-020, filed 3/13/86.]

WAC 314-37-030 Bank credit cards and debit cards. (1) May liquor vendors accept bank credit cards and debit cards? Yes. Per RCW 66.16.041, liquor vendors may accept bank credit cards and debit cards for liquor purchases from nonlicensees. Any equipment provided by the board to an agency liquor vendor may be used only for the sale of liquor obtained from the board.

(2) What are the procedures for accepting bank credit cards and debit cards for liquor purchases? The procedures for accepting bank credit cards and debit cards for liquor purchases are as follows:

(a) **Sales transactions.**

(i) All credit/debit card sales transactions will be made in accordance with liquor control board and SPS procedures.

(ii) Cash back is not allowed.

(iii) Batch closing must be done nightly in order to ensure transactions are processed in a timely manner.

(b) **Recording transactions.** Liquor vendors will record transactions on forms provided by the liquor control board.

(c) **Reporting.** Liquor vendors will report all credit/debit card sales to the administrative services division of the liquor control board.

(d) **Retention of records.**

(i) All credit/debit card receipts and balancing reports will be kept for the current fiscal year, in addition to the prior two complete fiscal years.

(ii) Liquor vendors are responsible for the security of all credit/debit card records.

[Statutory Authority: RCW 66.08.030 and 66.16.041. 99-04-114, § 314-37-030, filed 2/3/99, effective 3/6/99.]



**Washington State
Liquor Control Board**

Date: March 18, 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 McLaughlin, Director of Business Enterprises
Debi Besser, Director of Purchasing

Subject: **Approval for filing a preproposal statement of inquiry (CR 101) for rules review of Chapter 314-64 – Liquor Samples**

Under Executive Order 06-02, Governor Gregoire directed state agencies to improve and simplify service to Washington citizens. Agencies must engage in on-going regulatory improvement and develop rules that talk clearly to the public. The review of rules dealing with **Liquor Samples** is part of this on-going review.

Process

The Rules Coordinator requests approval to file the preproposal statement of inquiry (CR 101) for the rule making described above. An issue paper on this rules review was presented at the Board meeting on March 18, 2009, and is attached to this order.

If approved for filing, the tentative timeline for the rule making process is outlined below:

| | |
|----------------|---|
| March 18, 2009 | Board is asked to approve filing the preproposal statement of inquiry (CR 101 filing) |
| April 1, 2009 | Code Reviser publishes notice, LCB sends notice to rules distribution list |
| April 30, 2009 | End of written comment period |
| May 6, 2009 | Board is asked to approve filing the proposed rule making (CR 102 filing) |
| May 20, 2009 | Code Reviser publishes notice, LCB sends notice to rules distribution list |
| June 10, 2009 | Public hearing held |
| June 15, 2009 | End of written comment period |
| June 17, 2009 | Board is asked to adopt rules |

| | |
|---------------|---|
| June 19, 2009 | Agency sends notice to those who commented both at the public hearing and in writing. |
| June 19, 2009 | Agency files adopted rules with the Code Reviser |
| July 20, 2009 | Rules are effective (31 days after filing) |

Approve Disapprove Lorraine Lee 3-18-09
 Lorraine Lee, Chairman Date

Approve Disapprove Roger Hoen 3-18-09
 Roger Hoen, Board Member Date

Approve Disapprove Ruthann Kurose 3/18/09
 Ruthann Kurose, Board Member Date

Attachment: Issue Paper

Washington State Liquor Control Board

Issue Paper

Rule Making on Liquor Samples

Date: March 18, 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 the first stage of rule making (CR 101) to review 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 are being reviewed for relevance, clarity, and accuracy.

Process

The rule making process begins by announcing LCB's intent to change existing rules and propose new rules by filing a CR 101 form. This allows staff and stakeholders to begin discussing necessary changes and new rules. No proposed language is offered at this stage. Notice will be sent to all who have indicated that they want to receive notice of rule changes. The notice will identify the public comment period and where comments can be sent. Based on public input received, staff will draft proposed changes for presentation to the Board at the next phase of the rule making process. A tentative timeline for the rule making process is outlined below:

| | |
|----------------|--|
| March 18, 2009 | Board is asked to approve filing the pre-proposal statement of inquiry (CR 101 filing) |
| April 1, 2009 | Code Reviser publishes notice, LCB sends notice to rules distribution list |
| April 30, 2009 | End of first written comment period |
| May 6, 2009 | Board is asked to approve filing the proposed rule making (CR 102 filing) |
| May 20, 2009 | Code Reviser published notice, LCB sends notice to rules distribution list |
| June 10, 2009 | Public hearing held |
| June 15, 2009 | End of written comment period |
| June 17, 2009 | Board is asked to adopt rules |
| June 19, 2009 | Agency sends notice to those who commented both at the public hearing and in writing. |
| June 19, 2009 | Agency files adopted rules with the Code Reviser |
| July 20, 2009 | Rules are effective (31 days after filing) |

Attachment: Issue Paper
WAC 314-64

Chapter 314-64 WAC

LIQUOR SAMPLES Last Update: 3/25/98 WAC

| | |
|----------|---|
| 64-010 | Purpose. |
| 64-020 | Definitions. |
| 64-040 | Procedures for board samples. |
| 64-050 | Accounting for board samples. |
| 64-070 | Definition. |
| 64-080 | Procedures. |
| 64-08001 | Procedures for providing spirit samples to authorized retail licensees for the purpose of negotiating a sale. |
| 64-090 | Accounting. |

DISPOSITION OF SECTIONS FORMERLY
CODIFIED IN THIS CHAPTER

| | |
|------------|--|
| 314-64-030 | Procedures for chemical analysis. [Statutory Authority: RCW 66.08.030. 88-14-001 (Order 252, Resolution No. 261), § 314-64-030, filed 6/23/88. Statutory Authority: RCW 66.08.030 and 66.98.070. 82-04-035 (Order 95, Resolution No. 104), § 314-64-030, filed 1/28/82; Order 57, § 314-64-030, filed 7/28/77, effective 9/1/77; Order 40, § 314-64-030, filed 8/21/75.] Repealed by 91-19-070, filed 9/16/91, effective 10/17/91. Statutory Authority: RCW 66.08.030. |
| 314-64-060 | Purpose. [Statutory Authority: RCW 66.08.030, 66.08.060 and 66.98.070. 81-23-038 (Order 84, Resolution No. 93), § 314-64-060, filed 11/18/81.] Repealed by 94-14-021, filed 6/27/94, effective 7/28/94. Statutory Authority: RCW 66.08.030. |

WAC 314-64-010 Purpose. The purpose of this chapter is to comply with and implement provisions of section 9, chapter 175 [173], Laws of 1975 1st ex. sess., and RCW 66.28.035
WAC (3/16/09 10:38 AM) [1]

[66.28.045], and section 10, chapter 175 [173], Laws of 1975 1st ex. sess., and RCW 66.28.040.

[Order 40, § 314-64-010, Rule 129, 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, 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.

[Order 40, § 314-64-020, Rule 130, filed 8/21/75.]

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.

(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, 1025 East Union Avenue, 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, or his 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 designee, shall report their findings and recommendations on appropriate forms to the liquor purchasing agent for consolidation and report to the board. 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 for the purpose of negotiating the sale of liquor to the board will be held by the liquor board purchasing agent 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, or his designee, after which a destruction notice will be prepared by the auditor and be certified by the liquor board purchasing agent or his designee who witnessed the destruction. Copies of such destruction notices shall be distributed to members of the board, the liquor purchasing agent, and the liquor control board controller.

(8) Containers. Containers submitted to the board for the purpose of negotiating the sale of liquor shall, after examination by the board and/or the liquor purchasing agent, 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 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.

[Statutory Authority: RCW 66.28.045. 86-21-117 (Order 200, Resolution No. 209), § 314-64-040, filed 10/21/86. Statutory Authority: RCW 66.08.030 and 66.98.070. 82-04-035 (Order 95, Resolution No. 104), § 314-64-040, filed 1/28/82; Order 40, § 314-64-040, filed 8/21/75.]

WAC 314-64-050 Accounting for board samples. Samples

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

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

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

(d) The liquor purchasing agent, or his designee, shall distribute 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.

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

(f) The liquor purchasing agent shall deliver a copy of the

receiving and disposition report and the analysis report forms with the samples, to members of the board, or their designees, and/or to the liquor purchasing agent, or his designee, for examination, testing and reporting as provided in WAC 314-64-040 (4), (5) and (6).

(g) Members of the board, or their designees, and/or the liquor purchasing agent, or his designee, shall sign the receiving and disposition report 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) Members of the board, or their designees, and/or the liquor purchasing agent, or his 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, and distribute the form as follows: The original 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) The liquor control board controller shall maintain the official copies of the receiving and disposition reports,

together with the matching analysis report forms, and, where applicable, the destruction notices.

[Statutory Authority: RCW 66.08.030. 91-19-070, § 314-64-050, filed 9/16/91, effective 10/17/91; 88-14-001 (Order 252, Resolution No. 261), § 314-64-050, filed 6/23/88. Statutory Authority: RCW 66.08.030 and 66.98.070. 82-04-035 (Order 95, Resolution No. 104), § 314-64-050, filed 1/28/82; Order 40, § 314-64-050, filed 8/21/75.]

WAC 314-64-070 Definition. Samples for the purpose of this section shall mean beer and wine and/or containers furnished to licensees for the purpose of negotiating a sale as provided in RCW 66.28.040.

[Statutory Authority: RCW 66.08.030, 66.08.060 and 66.98.070. 81-23-038 (Order 84, Resolution No. 93), § 314-64-070, filed 11/18/81.]

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.

[Statutory Authority: RCW 66.08.030. 94-14-022, § 314-64-080, filed 6/27/94, effective 7/28/94; 86-11-015 (Order 185, Resolution No. 194), § 314-64-080, filed 5/13/86. Statutory Authority: RCW 66.08.030 and 66.98.070. 82-04-035 (Order 95, Resolution No. 104), § 314-64-080, filed 1/28/82. Statutory Authority: RCW 66.08.030, 66.08.060 and 66.98.070. 81-23-038 (Order 84, Resolution No. 93), § 314-64-080, filed 11/18/81.]

WAC 314-64-08001 Procedures for providing spirit samples to authorized retail licensees for the purpose of negotiating a sale. A 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 or existing products with a change in alcohol proof or formula may be

sampled.

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.

[Statutory Authority: RCW 66.08.030. 98-08-041, § 314-64-08001, filed 3/25/98, effective 4/25/98.]

WAC 314-64-090 Accounting. (1) Each brewer, winery, importer or wholesaler who furnishes samples of beer or wine to licensees shall keep at his place of business a complete record of the disposition of such samples, which record shall show (a) the name and address of the importer, wholesaler or retail licensee to whom the samples were furnished, (b) the brand name and type, (c) the quantities furnished to each importer, wholesaler or retail licensee, and (d) the date the samples were furnished.

(2) Each importer or wholesaler who receives samples of beer or wine shall keep at his place of business a complete current record of all such samples received, showing (a) the name and address of the brewer, winery, importer or wholesaler from whom the samples were received, (b) the brand name and type, (c) the quantities received, and (d) the date the samples were received.

(3) Each retail licensee who receives samples of beer or

wine shall keep at his place of business a complete current record of all such samples received, showing (a) the name and address of the brewer, winery, importer or wholesaler from whom the samples were received, (b) the brand name and type, (c) the quantities received, and (d) the date the samples were received.

(4) All records and documents prescribed by this section shall be retained by the person required to keep the documents for a period of not less than two years, and during this period shall be available, during business hours, for inspection and copying by members of the board or their accredited representatives.

(5) All beer or wine samples received or furnished by licensees shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210.

[Statutory Authority: RCW 66.08.030, 66.08.060 and 66.98.070. 81-23-038 (Order 84, Resolution No. 93), § 314-64-090, filed 11/18/81.]



Issue Paper: Intent to Deny or Not Renew a Liquor License

For Discussion at the March 4, 2009 Executive Management Team

Presented by: Alan Rathbun, Licensing and Regulation Division Director

Description of the Issue:

Propose delegation to the Director of Licensing and Regulation the authority to make the initial determination to grant licenses or seek denial or non-renewal of a liquor license application when an objection has been made.

Background:

RCW 66.24.010 governs the issuance of liquor licenses. When either a new license application is received or when a license is pending renewal, state law requires the applicable local government authority to be notified and given the opportunity to object to said issuance. Under current procedure, a pending application or renewal with a timely and appropriate objection is forwarded to the Board for an initial decision whether to seek denial or non-renewal. In its submission to the Board, Licensing (and often Enforcement) staff submits recommendations with justification. Upon making a threshold determination on licensure, the Board must again make the final determination in the same case. This final determination may be in reaction to either an appeal by the licensee/applicant or the local government authority.

The process of threshold review is complex and somewhat confusing. While not inappropriate under the Administrative Procedures Act (RCW 34.05 APA), the current process presents an *appearance of fairness* concern. A procedure where both the threshold determination and final determination are made by the same body, it may appear that the final determination is biased. The current process also has inefficiency because the Board will potentially see a case twice. Communication during the threshold or initial determination phase is also duplicated. Licensing staff must first communicate the case to the Board and then following the initial decision inform the licensee/applicant of the Board's ruling.

Proposal:

Other licensing agencies, including boards and commissions, utilize a different model in which the initial or threshold determination to seek denial of a license is made by licensing program staff. Upon an initial determination by licensing staff to seek denial or non-renewal, the applicant/licensee is notified through a Statement of Charges or Statement of Intent to Deny. This document clearly outlines the reason for the proposed action and the respondent's right to request a hearing on the initial determination.

Under this proposed process, if a hearing on staff's initial determination is timely requested, the hearing would be conducted before an ALJ. Any party aggrieved by the ALJ determination (including Licensing Division) can petition the Board for administrative review. Like the current model, the Board would issue the Final Order after reviewing the ALJ's Findings, Conclusions and Proposed Order.

Under this proposal, the initial determination by the Licensing Division will be reviewed and approved by the Administrative Director before notice is given to any party in the action. Notice to either the applicant/licensee and/or local authority will be signed by the Administrative Director.

If the licensee/applicant either chooses not to contest the staff's initial determination or the request for hearing is not timely, staff will prepare a Final Order for the Board to consider.

Alternatively, if staff's initial determination is to seek licensure over the objection of a local authority, staff will communicate that initial decision to the local authority and they will be given the opportunity to seek a hearing. In this circumstance a hearing is at the discretion of the Board.

Attached are flowcharts of the existing procedure and proposed procedures applied to both contested liquor applications and contested renewals.

Authority for this proposed approach:

While RCW 66.24.010 grants the Board authority to delegate approval of uncontested licenses to staff, it does not contain a specific authorization for the Board to delegate other initial licensing decisions to staff. Martha Lantz has provided rationale whereby this proposed authority could be delegated to staff and a copy of her March 17, 2008 memorandum is ***attached***. The basis behind this delegation is that license issuance truly does not become contested until the initial determination is made. Under the proposal described above, the final determination still lies with the Board and the aggrieved party in any initial determination still has the opportunity for a hearing.

Advantages of Proposal:

- Removes the appearance of fairness concern because the Board only acts once on a proposal and that is when a party is aggrieved by the initial decision.
- The proposal enhances efficiency and saves "Board time". This is of added importance with the potential of a volunteer board.

Disadvantages of Proposal:

- There may be discomfort in staff making this initial decision. Lack of specific statutory authority may be raised in an objection. Amending the

provisions of WAC 314-42 (Board Operations) would make the procedure more transparent and clarify what is meant by a “contested” case.

Implementation and Communication Plan:

Depending on the Board’s support for this proposal and their urgency to move in this direction, there are alternative ways of communicating this proposed delegation of authority:

- Distribute this Issue Paper to industry stakeholders and hold a public meeting to accept comments. The Board could proceed with implementation through an interim policy while rules are drafted to implement the change in procedure; or
- Commence rule making with industry stakeholders encouraged to participate. Await implementation until rule amendments are adopted; and
- Post Issue Paper and supporting documentation on LCB website; and
- Communicate processes during local authority reach-out initiative.

Recommendation:

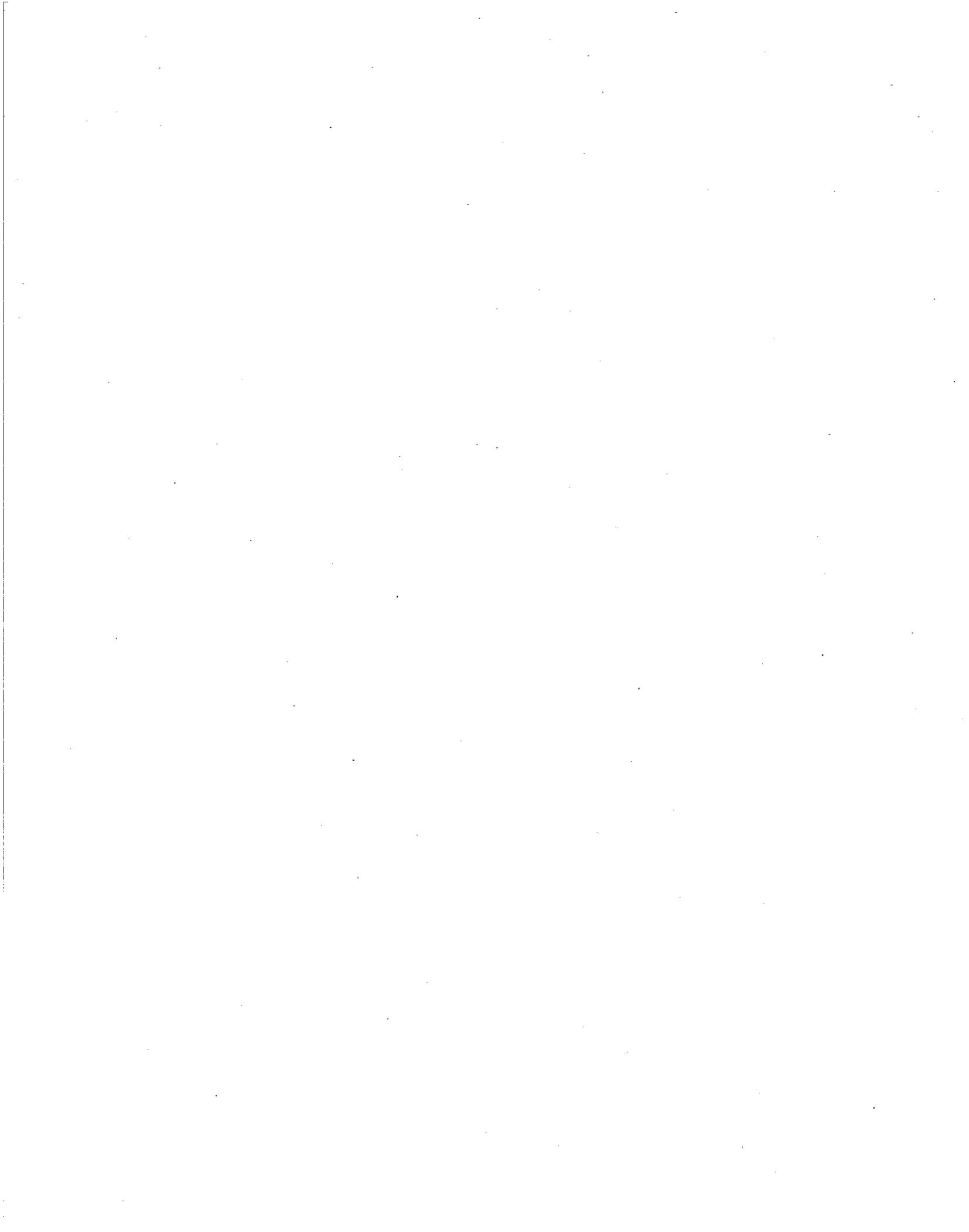
Send the proposal to stakeholders for comment. Include stakeholders’ comments with the proposed submission to the Board. Action on this recommendation should be made at an open public Board meeting. Execute the stakeholder communication plan and direct the commencement of rule making should the Board approve the proposal.

Lorraine Lee
Chair

Roger Hoen
Board Member

Ruthann Kurose
Board Member

Attachments





Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

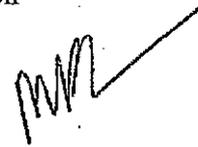
Licensing & Administrative Law Division

PO Box 40110 • Olympia, WA 98504-0110 • (360) 753-2702

MEMORANDUM

DATE: March 17, 2008

TO: Alan Rathbun
Director Licensing and Regulation Division
Washington State Liquor Control Board

FROM: Martha Lantz, Assistant Attorney General 

SUBJECT: **Delegation of Initial Determination to Grant or Deny "Contested" or "Opposed" Liquor Licenses**

I. BACKGROUND

We have discussed the issue of whether existing statutes and LCB rules allow the Board Members to delegate to the Licensing Division authority over initial licensing determinations in cases where an objection to a license application has been filed. As is set out below, it is my informal opinion that such a delegation is permissible should the Board Members determine delegation is an approach they wish to pursue.

II. CURRENT PRACTICE¹

RCW 66.24.010 governs issuance of liquor licenses. When a license application is received 66.24.010 (8) (a) requires notice to the applicable local government authority "before the board issues a license to an applicant." Licensing division staff prepares and sends notice. The local governmental authority has 20 days to from the "transmittal of such notice" to file "written objections against the applicant or against the proposed location." The 20 day deadline can be extended by "the board." RCW 66.24.010 (8)(c). My understanding is that staff (not Board Members) extends that 20 day deadline if circumstances warrant (though I am not sure what constitutes cause to extend the 20 days).

Numerous other entities (such as churches and schools further than 500 feet from the premises) have the right in RCW 66.24.010 (9) (a) to notice of license applications and the right to file objections, but only a local government subdivision has the right to a hearing on its objections, should the licensing be contemplated over the local government's objection. If a school located within 500 feet of the premises objects, however, the license will not be issued. An applicant has

¹ This memo contains my personal understanding of various stages in the process, with the caveat that I might be incorrect or confused about some of the steps in the existing process.

ATTORNEY GENERAL OF WASHINGTON

March 17, 2008

Page 2

the right to a hearing on any decision denying licensure, whether the decision to deny the license is discretionary or mandatory.

Written objections from local government "shall include as statement of all facts upon which such objections are based" and "may request and the liquor control board may in its discretion hold a hearing" on the objections. RCW 66.24.010 (8) (d). The current process at this step as I understand it is that the staff's initial notification to local government transmits a request for written objections and gives the local authority the opportunity to return a form stating that if the license is contemplated to be granted over the written objections it files that the local authority would like a hearing.

The staff reviews the objections filed by local government and compiles all relevant documentation into a packet for the Board Members review ("blue folder" I believe). The staff also includes a preliminary recommendation as to whether Board Members wish to grant the license over local government objection or to deny the license based on the local government's objections. If the Board Members indicate they wish to grant the license, they should also be asked whether they would like to grant the local jurisdiction a hearing if the local jurisdiction desires a hearing. The Board Member's determination should be communicated to the local government and the applicant as a preliminary or initial decision as per WAC 314-09-010 (2) (a) which states that if the "board contemplates issuing a license over the objection of a governmental jurisdiction in which the premises is located, the government subdivision may request an adjudicative hearing. . ."

The "blue folder" process is also used to communicate to the Board Members a staff recommendation that an application be denied in light of the local government objection. In that case too, according to WAC 314-09-010 (b) (ii) the Board Members determination should be treated as an initial determination and communicated to the applicant as such. The applicant then has 20 days to request a hearing on the Board Member's initial determination to deny the license application. WAC 314-09-010.

In either event if a hearing is timely requested by the local government or by the applicant, the hearing is held before an Administrative Law Judge from the Office of Administrative Hearings. The ALJ will hear the evidence in support of the Board Members' initial determination. The Licensing Division AAGs present the case in support of the Board Members' initial determination. The ALJ prepares Findings of Fact, Conclusions of Law and a Proposed Order. The parties (applicant, local government, licensing division) may file petitions for review of the ALJ's proposed order. Those are filed to the Board. Whether petitions for review are filed or not the Board Members must review the ALJ's Proposed Order, and review the record that was before the ALJ, and then issue a Final Board Order that affirms, reverses or modifies the ALJ's order. The local government or the applicant (but not the licensing division) may seek Judicial Review of the Final Board Order.

ATTORNEY GENERAL OF WASHINGTON

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We have discussed the awkward and often confusing nature of the process as set out above. Among the concerns are that the Board Members make the initial ("threshold") determination on licensure and then the same Board Members make the final determination in the same case. Although not improper under the Administrative Procedure Act, this does present appearance of fairness issues.

Also problematic is the Board Members' basis for the initial determination on licensing is often not clearly stated. This is because the Board Members do not draft an initial order that sets out findings and conclusions and initial decision, but simply return the form to the licensing division and the licensing division communicates the Board Members' initial decision to the parties, in the form of a letter (or some other form), which does not include any specific findings or analysis. This often makes it difficult for the licensing division attorneys to present the case to the ALJ.

III. ALTERNATIVE APPROACH

Other adjudicative and licensing agencies present a different model, where the initial determination on granting or denying the license is made by the licensing program staff. Applicants are notified, in a formal document (Statement of Charges or Statement of Intent to Deny etc.), of the licensing program's initial determination, the reasons for it, and of the right to request a hearing on that initial determination.

If a hearing on the staff's initial determination is timely requested, it is held before an ALJ. Any party aggrieved by the ALJ determination (including program staff) can petition the agency Director or other adjudicative authority (the Board Members in this case) for further administrative review. The Board Members would issue a Final Order after reviewing the ALJ's Findings and Conclusions and Proposed Order. The ALJ (and Board Members) would review an initial staff determination, rather than Board Members making the initial determination and then reviewing the ALJ's treatment of the same determination.

IV. AUTHORITY FOR ALTERNATIVE APPROACH

In the Department of Licensing example above the Director or the Disciplinary Authority (Board) delegates to staff the ability to issue Statements of Charges/Notice of Intent to Deny Licenses. The authority for the Director or Disciplinary Authority to delegate to staff the authority to reach an initial determination is clearly set out in the Uniform Regulation of Business and Profession Act (RCW 18.235).

I understand there to be concerns that Title 66 and LCB rules do not contain similar authorization to delegate initial decisions to staff, or, even that Title 66 and LCB rules prohibit such a delegation. My review of the discussion of delegation suggests there is the possibility for more flexibility on this issue than the current practices suggests.

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First, RCW 66.24.010 (2) states that "authority to approve an **uncontested or unopposed** license may be granted by the board to any staff member the board designates in writing." Additionally, WAC 314-42-020 states that the Board may **not** delegate approval of **contested** license and permit applications. (Emphasis added).

As discussed above, however RCW 66.24.010 (8) and WAC 314-09 describe out a process where the licensing determination in response to an objection is by definition an initial, non final, decision on licensure. So long as the aggrieved party with a right to a hearing timely requests a hearing the determination on licensure cannot become final until the Board Members issue a Final Order.

WAC 314-09 confirms that the prehearing determination on licensing is not final, and is not binding (if a hearing is timely requested) but rather is a decision that is **contemplated**. 66.24.010 and WAC 314-09 out a process for objection to the initial determination. The Board must issue a Final Order in any event where a hearing is timely requested.

Because the initial "threshold" determination of whether to grant or deny the license application in contested cases is not the final determination in a contested case, it does not appear to me that the initial determination by staff is an improper delegation in a "contested" case. If no hearing is requested following the initial determination then the case can no longer said to be "contested" or "opposed" and the staff's initial determination can legitimately become final. Similarly, if a hearing is not timely requested, the agency loses jurisdiction; the matter ceases to be contested and the staff's decision can legitimately become final. If the hearing is timely requested (or even if a hearing is granted following an untimely request), the case remains contested or opposed but the Board Members retain the authority over the Final Order, and no delegation of a contested case has occurred.

The Board's rule, WAC 314-42-020 lists the Board Member functions which may not be delegated. WAC 314-42-020 appears to be interpreting RCW 66.24.010 which says only "uncontested or unopposed" license decisions may be delegated to staff. I do not find a definition of "contested" or "opposed" which would preclude a more liberal interpretation of the delegation authority than is presently in place. If the party with a right to request a hearing over an initial determination does not request the hearing, it seems fair to conclude that the "contest" or "opposition" to the license has also been withdrawn and the staff's delegated authority can legitimately become the final determination of the matter.

V. CONCLUSION

In short, I think existing LCB authority can reasonably support a move toward a process more like is used in DOL license adjudications, where the ultimate decision maker (Board Members) delegates to licensing staff the authority to make an initial decision, from which there is a due

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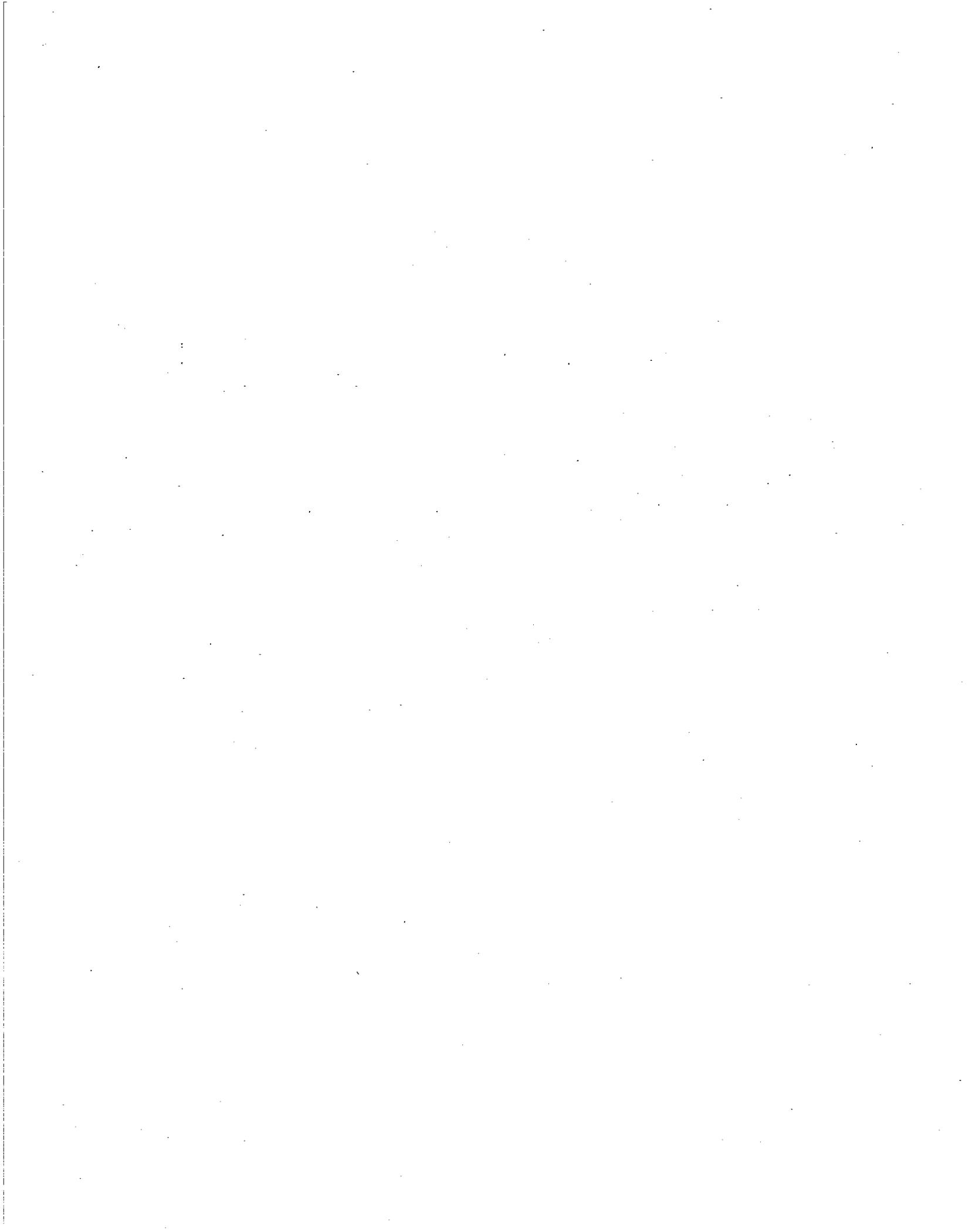
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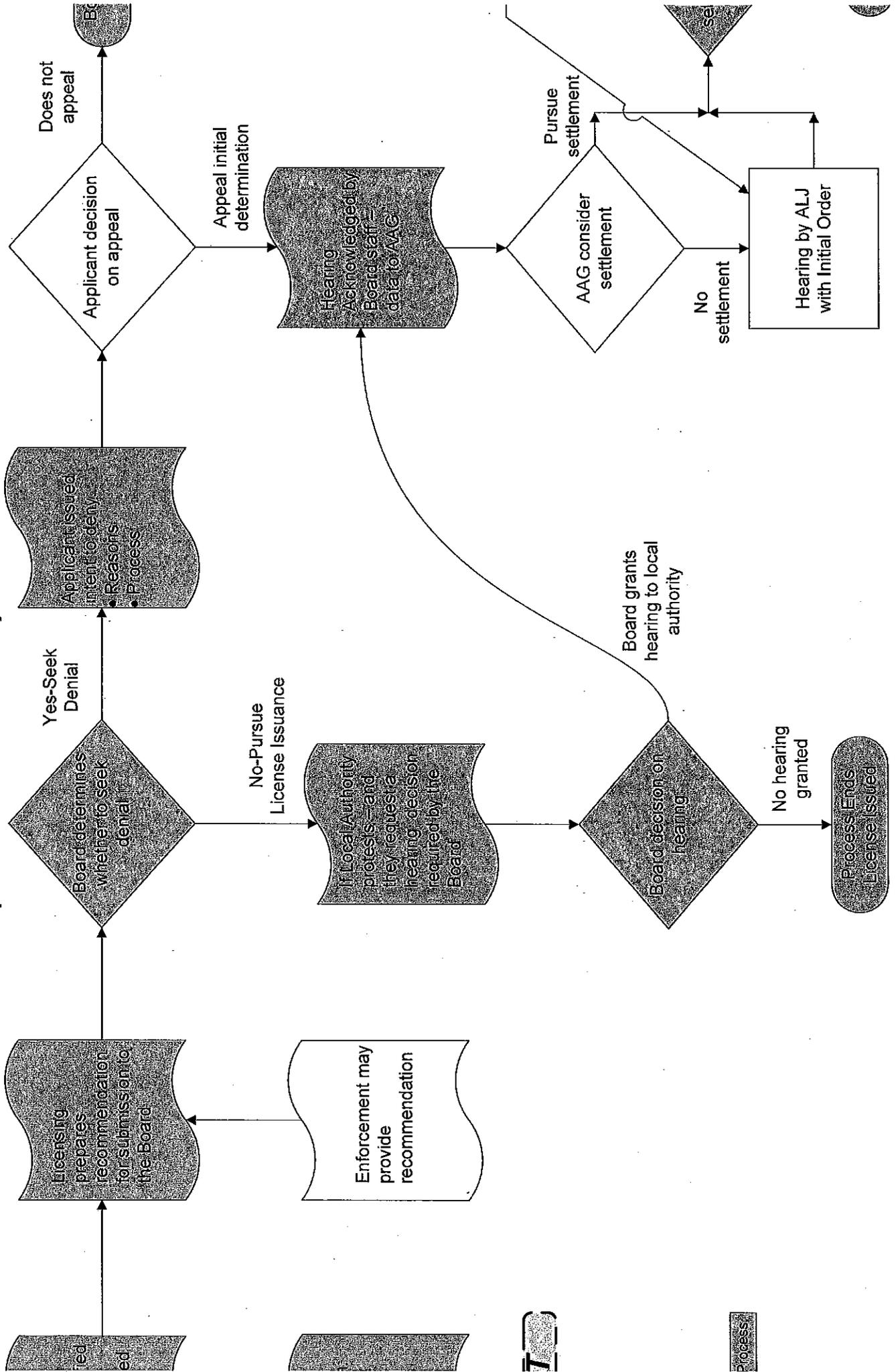
process right to a hearing, which allows the Board to retain authority over the final decision in truly contested cases.

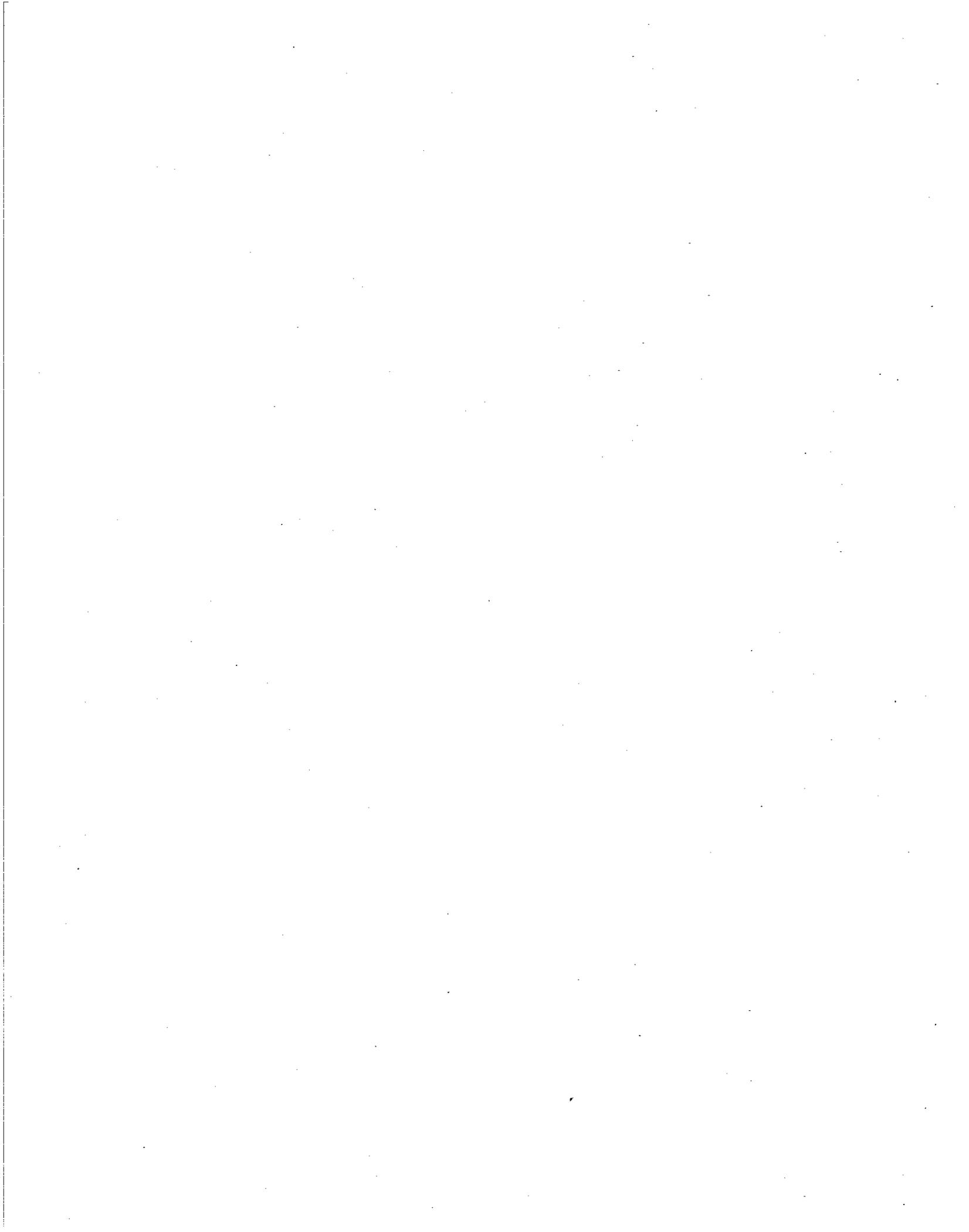
If there is ongoing discomfort with such an approach, it appears that a rule change to WAC 314-42-020 would clear up any question over the delegation authority. A rule could define the circumstances in which a case is considered "contested" or "opposed" (as those terms are used in RCW 66.24.010) as those cases in which the initial determination of the staff has been appealed and a hearing requested. In such cases the Board Members alone would have final authority over whether the license was granted or denied.

This is my informal opinion only and is not an official opinion of the Office of the Attorney General. I have discussed this matter to some extent with some of the AAGs for the Licensing Division and I would suggest sharing my opinion with them as well as involving them if the change of approach of the type discussed in this memo proceeds toward further consideration. Please do not hesitate to contact me with questions.

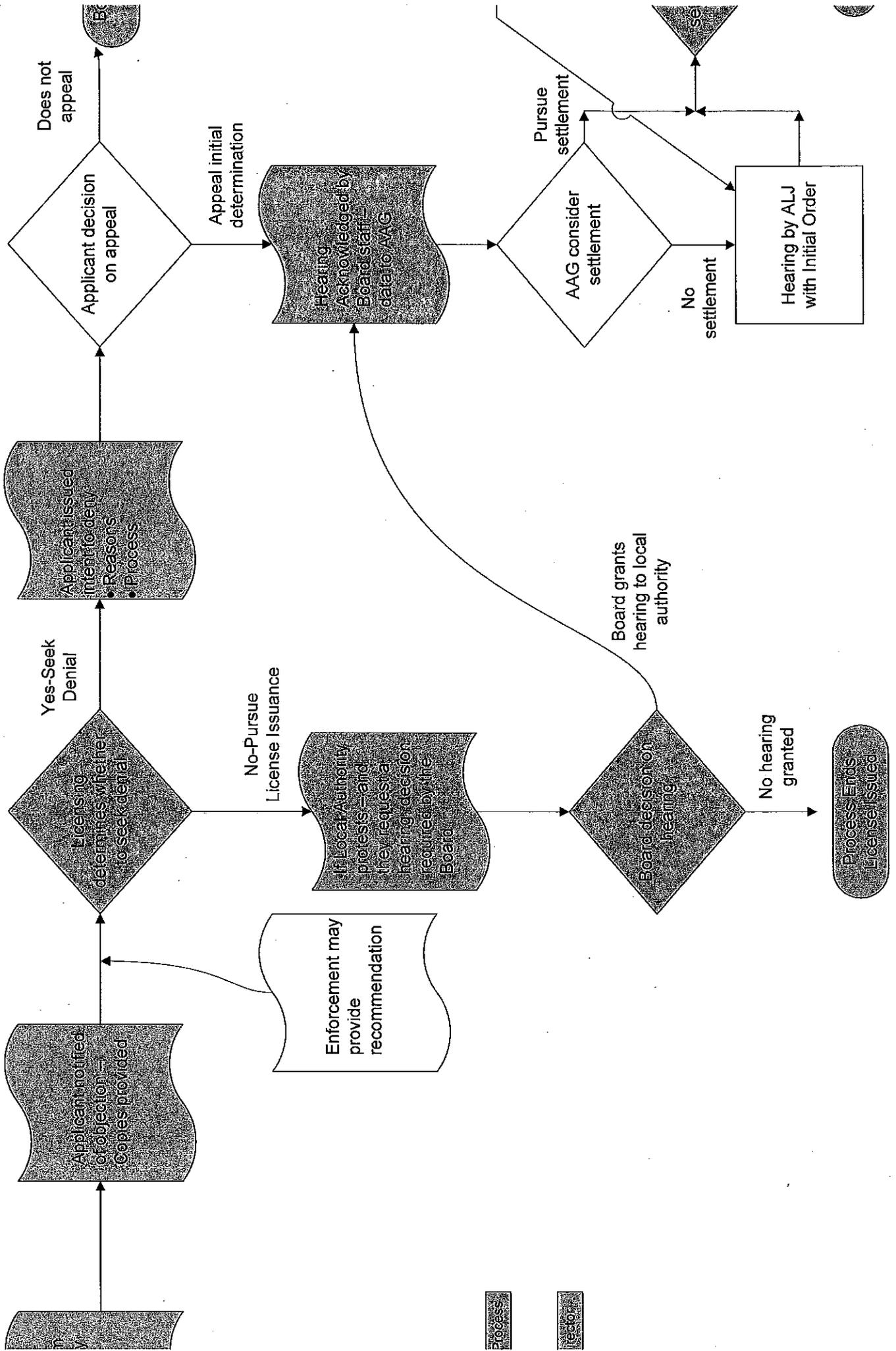


Contested License Application (Current Procedure)



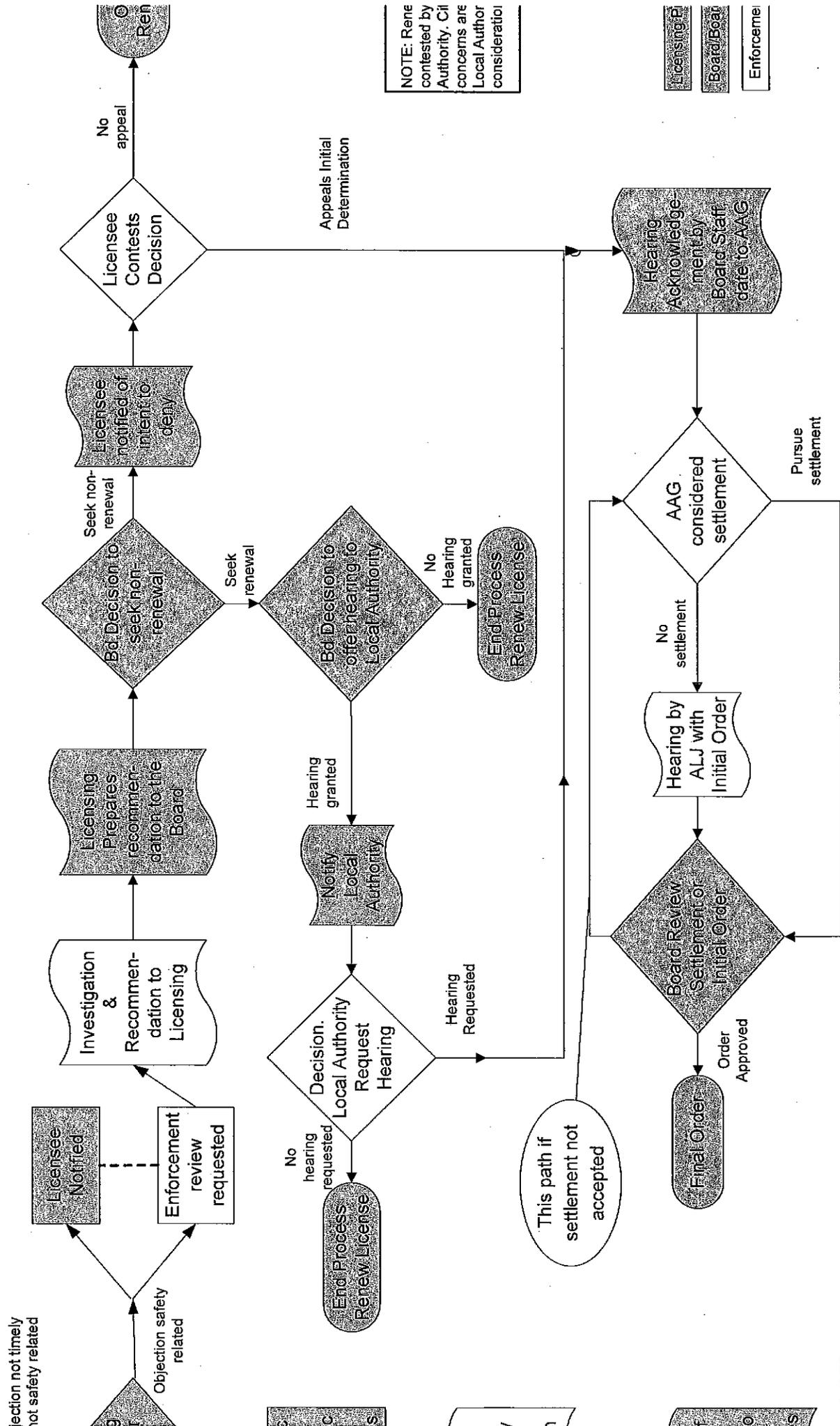


Contested License Application (Proposed)





Contested Renewal (Current)



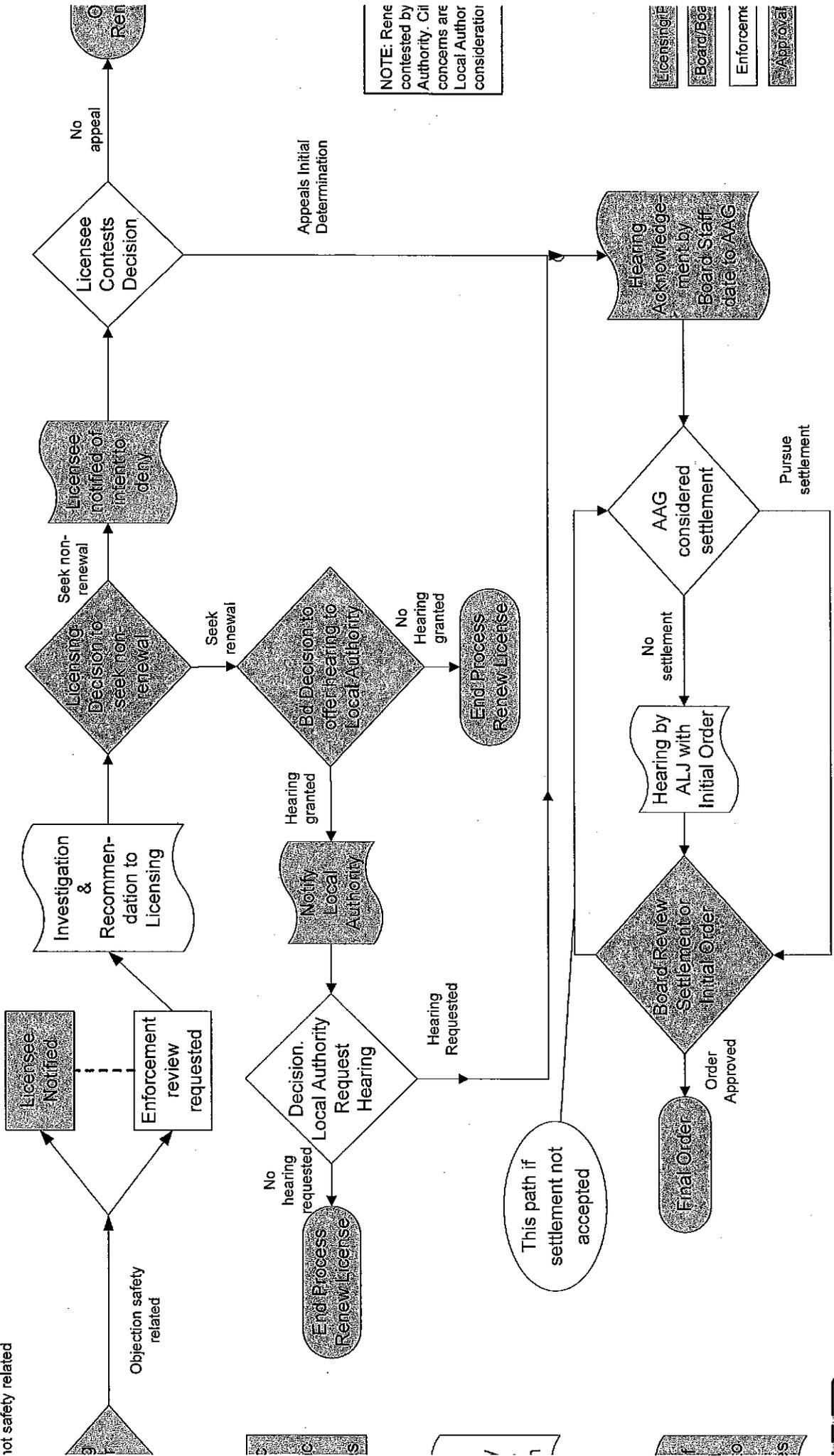
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Licensing P
Board/Boat
Enforcement



Contested Renewal (Proposed)

objection not timely
not safety related



NOTE: Rene
contested by
Authority. Cil
concerns are
Local Author
consideration

Licensing
Board/Boa
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Approval





**REVISED
AGENDA
BOARD MEETING
WA STATE LIQUOR CONTROL BOARD
Wednesday, March 18, 2009
3000 Pacific Avenue SE
Olympia, WA 98504**

10:00 a.m.

- 1. Years of Service Recognition Randy Simmons and Debi Besser**
- 2. Potential New Listings and Rejections.....Debi Besser**
- 3. Potential New Wine Listings and De-Listings.....Steve Burnell**
- 4. Potential Size ExtensionSteve Burnell**
- 5. Potential Proof ReductionsSteve Burnell**
- 6. Board Approval - CR 101- Liquor Samples.....Karen McCall**
- 7. Board Approval – CR 101- Liquor VendorsKaren McCall**
- 8. Presentation of Interpretive Statement for Returning Wine into
WashingtonAlan Rathbun**
- 9. Interim Policy #03-2009 - Washington Domestic Winery Returning
Exported Product back to Producing WineryStacey Sitko**
- 10.Delegation of Threshold Determination – Issue Paper on Intent to Deny
or Not Renew a Liquor License.....Alan Rathbun**
- 11.Approval of MinutesBoard Members**
- 12.Old Business.....Board Members**
- 13.New Business.....Board Members**

Recess/Adjourn

