Washington State
Liquor Control Board

Date: December 17, 2014

To: Sharon Foster, Board Chair
Ruthann Kurose, Board Member
Chris Marr, Board Member

From: Karen McCall, Rules Coordinator

Subject: **Small Business Economic Impact Statement**
Fair Trade Practices Proposed Rules
WAC 314-23-060, WAC 314-23-065, WAC 314-23-070,
WAC 314-23-075, WAC 314-23-080, and WAC 314-23-085

WASHINGTON STATE LIQUOR CONTROL BOARD

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement:

In order to assess the potential impact of the proposed rules on businesses, the Board circulated a survey to stakeholders and individuals on the rulemaking distribution list maintained by the Board. The Board received responses from146 businesses. At least one organization, the Washington Restaurant Association, sent the survey to all of their members. The analysis below incorporates comments received in response to the survey. The board had received comments on an earlier set of proposed rules and made the changes reflected in the proposed rules based on comments made in rulemaking hearings, as well as comments received from stakeholders.

1. **Description of the Reporting, Recordkeeping, and other compliance Requirements of the Proposed Rule:** The proposed rules do not add any reporting or recordkeeping requirements beyond what are required by existing law or rules.

2. **Kinds of additional professional services, if any, will your business need in order to comply with the rules as proposed:** 36% of the responses stated there would be no additional professional services needed to comply with the rules as proposed. In response to the Board's

proposed rule, one distributor notified its customers that the rule would require it to begin charging fees for delivering orders that included less than full case lots of one product (split case fees) to customers that it had not charged those fees in the past. The proposed rules do not allow or prohibit split case fees, but do require that charges that differ between customers be justified under one of the bases allowed in the law.

Despite the rule not addressing split case fees, 64% of the responses stated they would need additional professional services to maintain additional recordkeeping to monitor their alcohol ordering to avoid split case fees charged by distributors. Another cost listed was renting additional storage space to warehouse their inventory so they could order in full cases to avoid split case fees.
Respondents with more than one location stated they would need to rent a warehouse space to have their orders delivered to a central warehouse to take advantage of volume discounts on spirits and wine purchases. They also stated they would need to hire additional staff to maintain the warehouse and deliver product to their licensed locations. The Board maintains that practices that have been used in the past, with distributors providing volume discounts to licensees who have more than one location, but making separate deliveries to each location, are not allowed by the law, and the retail licensees should have been having deliveries to a central location in order to receive the volume discounts.

The estimated costs that survey respondents listed as imposed by the proposed rules break down as follows:

- Less than $1000 – 22%
- $1000 - $5000 – 29%
- $5000 - $10,000 – 11%
- $10,000 - $15,000 – 11%
- More than $15,000 – 27%

3. **Costs of compliance for businesses in the following areas; reporting, recordkeeping, equipment, supplies, labor and administrative costs:** 26% of the respondents stated there would be no additional costs for recordkeeping, labor, and administrative costs to comply with the proposed rules. 73% of the respondents stated there would be additional costs for recordkeeping, labor, and administrative costs to comply with the proposed rules. Despite the rule not addressing split case fees, 64% of the responses stated they would need additional professional services to

maintain additional recordkeeping to monitor their alcohol ordering to avoid split case fees charged by distributors.

Another cost listed was renting additional storage space to warehouse their inventory so they could order in full cases to avoid split case fees. Respondents with more than one location stated they would need to rent a warehouse space to have their orders delivered to a central warehouse to take advantage of volume discounts on spirits and wine purchases. They also stated they would need to hire additional staff to maintain the warehouse and deliver product to their licensed locations. The Board maintains that practices that have been used in the past, with distributors providing volume discounts to licensees who have more than one location, but making separate deliveries to each location, are not allowed by the law, and the retail licensees should have been having deliveries to a central location in order to receive the volume discounts. The estimated costs that survey respondents reported break down as follows:

- Less than $1000 – 6%
- $1000 - $5000 – 29%
- $5000 - $10,000 – 30%
- $10,000 - $15,000 – 12%
- More than $15,000 – 23%

4. **Will compliance with the proposed draft rules cause businesses to lose sales or revenue?** 13% of respondents stated their business would not lose sales or revenue. 87% of respondents stated their business would lose sales or revenue. For those respondents who listed a cause, the reasons for loss of revenue were split case fees charged by distributors and the allowance in the proposed rules for channel pricing for on-premises and off-premises liquor licensees. If the licensee is required to pay higher prices for their products they will have to raise the price of drinks to their customers. The estimated loss of revenue submitted by respondents is as follows:

- Less than $1000 – 8%
- $1000 - $5000 – 15%
- $5000 - $10,000 – 22%
- $10,000 - $15,000 – 16%
- More than $15,000 – 39%

5. **Number of jobs that will be created or lost as a result of complying with the proposed draft rules?** 60% of respondents stated there would be no jobs created or lost as a result of complying with the proposed rules. 30% of respondents stated one to five jobs would be created or lost as a result of complying with the proposed draft rules. 10% of respondents stated one to five jobs would be created as a result of complying with the proposed rules.

6. **Cost of compliance for small businesses compared with the cost of compliance of large businesses:** The survey sought information on the size of the businesses who replied, to enable a comparison of compliance costs. Most of the businesses who responded to the survey identified themselves as small businesses. 72% of the respondents stated they had ten to 50 employees. 28% of respondents stated they had over fifty employees.

   Despite the rule not addressing split case fees, 83% of the responses stated they would need additional professional services to maintain additional recordkeeping to monitor their alcohol ordering to avoid split case fees charged by distributors. They are smaller businesses and don't always purchase product in full cases.

   Central warehousing is also not part of the proposed draft rules, but 8% of respondents stated the reason for additional costs and loss of revenue would be due to central warehousing. Respondents stated they would need to rent a warehouse space to have their orders delivered to a central warehouse to take advantage of volume discounts on spirits and wine purchases. They also stated they would need to hire additional staff to maintain the warehouse and deliver product to their licensed locations.

   9% of respondents stated the reason for additional costs and loss of revenue would be the allowance of channel pricing. All 9% of those respondents were small business employing fewer than 50 employees.

   The Board considered whether any changes could be made to the proposed rules to lessen or eliminate the potential impact on small businesses. This rulemaking was originally begun in response to a petition from small businesses who believe that the law prohibits certain sales and marketing practices that are addressed by the proposed rules. The Board determined to open this rulemaking to examine the business

practices that are occurring, and whether those practices comply with the law. The comments on the rulemaking demonstrate a strong split of opinion on what the law does, and does not, allow, thus the Board believes the rules are necessary to interpret the law to define the limits on business practices in the liquor industry. The original petitioners believe the proposed rules allow too much leeway in spirits pricing and delivery, while other stakeholders assert the Board is prohibiting practices that are allowed by law. The Board believes the proposed rules strike a legitimate balance in the liquor marketplace and appropriately prohibit unfair trade practices.