



Notice of Permanent Rules

Regarding Chapter 314-05 WAC – Special Occasion Licenses.

This concise explanatory statement concerns the Washington State Liquor and Cannabis Board's (WSLCB) adoption of amendments to existing rules regarding chapter 314-05 WAC – Special Occasion Licenses.

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. The concise explanatory statement must be provided to any person upon request, or from whom the WSLCB received comment.

The WSLCB appreciates and encourages your involvement in the rule making process. If you have questions, please contact Audrey Vasek, Policy and Rules Coordinator, at (360) 664-1758 or e-mail at rules@lcb.wa.gov.

Background and reasons for adopting these rules

In January of 2019, the WSLCB began the initial stages of rule review regarding special occasion licenses. This regulatory review was designed to determine whether the rules described in current chapter 314-05 WAC should be retained in their current form, amended, or repealed. The review also concentrated on rules or portions of rule that have been the subject or source of complaints, concerns, or other difficulties that related to matters other than the specific mandates of the statute or statutes on which the rules are based.

The following criteria are used for the review of each rule WSLCB identifies for review:

- **Need.** Is the rule necessary to comply with the statutes that authorize it? Is the rule obsolete, ambiguous or duplicative that suggests a revision? Have laws or other circumstances changed so that the rule should be amended or repealed? Is the rule necessary to protect or safeguard the health and safety of Washington's citizens?
- **Effectiveness and Efficiency.** Is the rule providing the results that it was originally designed to achieve in a reasonable manner? Are there regulatory alternatives or new technologies that could more effectively or efficiently achieve the same objectives?

- **Clarity.** Is the rule written and organized in a clear and concise manner so that it can be readily understood by those to whom it applies?
- **Intent and Statutory Authority.** Is the rule consistent with the legislative intent of the statutes that authorize it? Is the rule based upon sufficient statutory authority? Is there a need to develop more specific legislative authorization in order to protect the health, safety, and welfare of Washington citizens?
- **Coordination.** Could additional consultation and coordination with other governmental jurisdictions and state agencies with similar regulatory authority eliminate or reduce duplication and inconsistency?
- **Cost.** Have the qualitative and quantitative benefits of the rule been considered in relation to its cost?
- **Fairness.** Does the rule result in equitable treatment of those required to comply with it? Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community? Should it be strengthened to provide additional protection?

The adopted rule revisions amend, reorganize, clarify, and modernize existing requirements related to special occasion licenses. Specifically, the adopted rule clarifies that a special occasion license is a retail license; updates application requirements and adds information from the current on-line application; provides clarifying updates for special occasion events; and adds statutory references that clarify requirements for alcohol and monetary donations, advertising, ticket and alcohol sales, and payment information. These revisions more clearly describe existing processes, and are anticipated to result in increased access to and use of on-line licensing resources by applicants and licensees, as well as consistent rule application, interpretation, and guidance designed to support applicant and licensee success.

Rulemaking history for this adopted rule:

CR 101 – filed January 10, 2019 as WSR #19-03-060;

CR 102 – filed November 13, 2019 as WSR #19-23-046;

Public hearing held January 8, 2020.

Supplemental CR 102 – filed May 27, 2020 as WSR #20-12-024;

Public hearing held July 8, 2020.

Four people testified at the January 8 public hearing. Four written comments were received.

No one testified at the July 8, 2020 public hearing. Four written comments were received.

Public comment received on the rule proposal

The following comments were received as indicated below, and are presented in their native form, including text and spelling. A response to each comment is provided, along with an indication regarding whether the comment was reflected in the adopted rule.

1. Email received January 7, 2020, in addition to oral testimony provided January 8, 2020:

From Laura Pierce:

January 7, 2020

Washington State Liquor and Cannabis Board
ATTN: Janette Benham
1025 Union Ave SE
Olympia, WA 98504

Dear Ms. Benham,

We just learned of today of the fast-closing comment period for proposed rulemaking related to special occasion licenses. We did comment on the proposed rules back in September, but apparently revised rules were issued in mid-November with a hearing scheduled for Jan. 8, 2020. We were not aware of this until today, which does not afford us adequate time to review and analyze the proposed changes and comment in a meaningful way about how they may affect nonprofits and their efforts to raise charitable dollars through fundraising events.

These rules have the potential to affect nonprofit organizations significantly, and we are concerned that we were not aware of the process and timeline. In addition, the comment period took place over the holidays when it is more difficult to solicit input.

The comment period should be extended, and the Liquor and Cannabis Board should make an effort to meet with multiple nonprofit stakeholders to explain the rationale for making these changes and explain what they mean in plain language. Nonprofits do serve alcohol at fundraisers, but this is not their primary area of expertise, nor should it be. Given adequate time and dialogue, we can make meaningful comments about the likely impacts of the proposed rule changes. Please do not proceed without this input.

Please add me to the list of stakeholders receiving notice regarding this and future rulemaking by the Liquor and Cannabis Board that may impact nonprofit organizations.

WSLCB response: The WSLCB appreciates this comment, and the demonstration of interest in collaborative participation in the rulemaking process.

The WSLCB worked with Ms. Pierce to assure she had access to resources regarding Board meeting updates and messaging, rule development updates, and other messaging regarding rule activity.

Was the comment reflected in the adopted rule? This comment is not reflected in the final rule.

2. **Email received January 7, 2020, in addition to oral testimony provided January 8, 2020:**

From David LeClaire:

Hello Janette, Robert, and Beth. I appreciate all of you taking time to meet with me on Dec. 30th. I do plan to be at the meeting in the WSLCB offices tomorrow Jan. 8th and hope to briefly speak to the board. As I know such an opportunity would be limited to a few minutes, I have included my comments in writing below for the record as suggested and hope they will be considered as you make your final decisions on the wording of the proposed changes.

Washington State Liquor and Cannabis Board

Janette Benham, Policy and Rules Coordinator

Lt. Robert Knowles, MIW Unit Supervisor

Beth Lehman, Customer Service & Support Mgr. - Licensing & Regulation

Jane Rushford, Board Chair

Ollie Garrett, Board Member

Russ Hauge, Board Member

Dustin Dickson, Executive Assistant to the Board

Rick Garza, Agency Director

Megan Duffy, Deputy Director

Justin Nordhorn, Chief of Enforcement

Becky Smith, Licensing Director

SUBJECT #1: Approval to file proposed rules (CR 102) regarding special occasion licenses - Chapter 314-05 WAC

This letter is for board consideration as you review proposed changes to the Special Occasion Event Regulations. On behalf of many charities (and wineries who participate) who utilize Special Occasion Licenses, before approving in its current form I urge you to consider asking the WSLCB to amend the definition of a "Retailer" as it pertains to these permits, as in its traditional interpretation the LCB is forced to apply laws intended for brick and mortar retailers, not charities hosting fundraising events. Based on this inadequate definition, public safety will be compromised as existing controls used will no longer be effective.

314-05-030(2) suggests it's following RCW 66.28.070 (which does not directly address the subject) to add a requirement that alcohol for a special occasion event "may only be purchased in the manufacturer's approved container or package." Because of other LCB agency policies combined with the manufacturer's approved container restrictions, charities will have to always pay for a full bottle of wine even if only one glass is poured.

From a recent LCB email on the subject: Collecting tickets for samples is allowed, but sharing proceeds from the event based on the collection of tickets is currently considered a tied-house violation. Special Occasion licenses are retail licenses, and the event belongs to the nonprofit. They must either purchase the alcohol to be served, or have it donated by the industry member. If alcohol is paid for at the end of the event, the retail licensee must pay for all alcohol opened or served, not just the number of tickets collected.

How does this impact special events? **Wineries and other alcohol manufacturers will no longer be able to be reimbursed for the product they sample to event attendees per tasting token or ticket collected when the sample is poured for the event guest. Collecting tickets that have value to the winery and attendee ensure that those pouring require these tickets/tokens to give out samples, and the attendees are only given a limited number of such tickets. This control has been utilized for many years and was very effective in the past.** In 2019 the LCB determined paying wineries per tasting ticket was illegal because the non-profit is deemed a "retailer," and retailers can not buy partial bottles from manufacturers.

While this rule makes sense from a traditional interpretation of the term "retailer," it is counterproductive to efforts to control alcohol consumption - we've seen those pouring now be less concerned about collecting tickets/tokens once they know they aren't getting paid for them. This is a serious public safety issue that I strongly urge you to consider.

By acknowledging there is indeed a practical difference between a charity host of an event and a "retailer" and supporting the practice of charities being able to pay per token/ticket collected everyone wins: the winery gets reimbursed for what they pour as samples, the charities have less liability for over intoxication, and the streets are safer. After all, public safety is paramount to a successful fundraising event that includes alcohol. If amending the definition of a Special Occasion License holder as special form of Retailer is not possible at this time, please ask the LCB to modify their enforcement practices to allow some form of payment per tasting ticket/token at special events as a responsible short-term compromise.

If the concern is to not have charities pay for partial bottles of alcohol to be consistent with the existing law that applies to retailers (outside of special fundraising events) then why not allow an agreed upon amount of tickets that are collected to be converted to represent full bottle purchases? For example, there's 26 oz in a bottle of wine and pours at events are 1 oz, so every 26 tickets collected could account for a bottle. Thus if a winery collects 22 tickets they need to be paid for 26. All tickets or tokens collected would need to be rounded up to the equivalent of full bottle purchases for payment to the manufacturer at the end of the event.

The point of collecting tickets at an event is to limit consumption for public safety. If you remove their value by requiring that events pay for all bottles poured, wineries have demonstrated they will not worry about collecting tickets for every pour, which increases what they get paid for at the end of the event – and they then pour much more wine – and worse yet this allows wineries to essentially pour “free” wine - and dramatically increases the risk of attendees being over-served.

I urge you to consider asking the LCB to create an exception to the standard “Retailer” determination that would allow host charities to reimburse wineries per tasting ticket

collected, at a pre-set and standardized agreed to price per ticket. This truly is the only fair and consistent way to restrict over serving and encourage wineries to make collecting tickets a priority – which should be the WSLCB priority as it pertains to public safety.

In today's environment, getting paid something for samples poured is now expected and necessary. If the charity host has to pay for all samples, that's incredibly expensive and comes with a high financial risk, making the fundraising ineffective and not worth the risk of loss. If wineries have to donate all of their product, many will choose to simply not participate as the cost of production for small craft producers is so high. With as many non-profit events as there is today, it's become increasingly harder to get wineries to participate, and not being able to get paid for their samples at all will make a vast array of fundraisers disappear as they won't be able to attract wineries. The legislature created the special occasion license because they wanted to help charities raise money and give craft producers a place to show their wares – thus supporting the non-profits needs to raise funds and at the same time help small producers of wine, beer & spirits an avenue for promotion and sales for their products. The regulations are intended for events to be run responsibly and have processes in place to be in the best interest of public safety.

* It is my understanding per the discussion we had on this topic during the Dec. 30, 2019 meeting in the WSLCB offices that the Special Occasion licensee must purchase full bottles of what has been poured at an event at a pre-determined price that is above the manufacturers cost. Featured manufacturers may collect tickets and report this number to the Special Occasion License holder at the end of event. Any opened bottles not purchased by the Special Occasion License holder must be accounted for and considered a donation to the event SOL holder.

Non-profit organizations are not retailers

Non-profit organizations are not retailers in the ordinary sense of the word. They are charities and civic groups that may, a few times a year, hold a fundraiser at which alcohol may be sold. Unlike typical alcohol "retailers," they don't have sales staffs, and don't have brick and mortar stores or restaurants with fixed locations. Selling alcohol is not their primary source of business or income, or their reason for seeking a temporary license from the LCB. They are a very unique category and should be treated as such in the regulations.

When the legislature created the special occasion license it did not intend for non-profits to be treated as retailers, instead it stated that the license was a "retail license" meaning that nonprofits may sell tickets for alcohol events and sell bottles at retail (or more specifically, not at wholesale like a manufacturer or distributor would) The legislature probably should have considered the uniqueness of non-profits while developing the language for special occasion regulations.

LCB staff have been interpreting the term "retail license" to mean "retailer" and use this interpretation to make non-profits subject to literally every regulation applicable to traditional brick and mortar retailers, including all tied-house restrictions, all money's worth restrictions and all advertising restrictions.

The legislature showed its intent to treat non-profits differently when it permitted non-profits to accept donations of alcohol while continuing to prohibit alcohol donations to or from retailers. The legislature did not include non-profits in the definition of retailers because the word "retailer" was not defined in the RCW until 2009, the year the legislature repealed the

mandatory tied-house prohibition. At that time the term "retailer" was defined to distinguish it from "industry member," which the legislature defined as manufacturers and distributors.

Aspects of the regulations as they pertain to retailers have economic components that in many cases date back to tied house/money's worth restrictions, developed in the 1930's at the close of Prohibition. Washington's tied-house prohibition was repealed by the Legislature in 2009 and direct and indirect financial interests between and among industry members and retailers are now permitted "so long as the financial interest does not result in undue influence or have an adverse impact on public health and safety."

Having the LCB focus on economic regulations created for traditional retailers is distracting from its core mission of public safety when it comes to special events. Trying to squeeze nonprofits into a broad definition of "retailer" creates a unique set of problems for charities who are trying to host responsible fundraising events that take into account public safety and effectively limit alcohol consumption.

While the tasting ticket payment is my primary concern, since I am engaging in conversation regarding the proposed rules, here are a few other perspectives I ask you to consider when reviewing the proposed changes in language.

314-05-035 (Advertising and branded promotional items for special occasion events)

In this section the LCB proposes to impose all of the advertising restrictions applicable to retailers to charities. It is unclear as to why this action is needed. No threat posed by charity advertising has been identified nor is there evidence that charities have undue influence over wineries. The language in this LCB proposal could severely limit how charity fundraising wine events can be advertised. No legitimate public interest is served in making it harder for nonprofits and wineries to advertise charitable events, and it should be dropped or modified.

314-05-035(3)(c) *Industry members may not provide money for advertising or promoting (sponsoring) an event directly to: (a) The special occasion licensee; (b) Employees of the special occasion licensee; or [4]OTS-1667.2 (c) Promoters, event coordinators, or third parties hired by the special occasion licensee.*

314-05-035(4) *If a third-party organization is holding an event in which a special occasion licensee participates, industry members may provide money for advertising or promoting (sponsoring) the event directly to the third-party organization only when: (a) The third-party organization does not hold a special occasion license for the event; and (b) The third-party organization has not been hired by the participating special occasion licensee.*

Here not only wineries are prohibited from providing money for advertising or promoting or sponsoring events, but also unable to pay "promoters," "event coordinators" and "third parties"- terms which are not defined. Here the LCB proposes to expand Tied-House rules to entities that lie outside of the three-tier system. These entities are contractors hired by the charity. They do not have liquor licenses and are not industry members.

One of the main reasons that charities hire promoters to help them with special occasion events is their lack of staffing to put together and promote their own fundraising events, as well as they often need additional outreach beyond their existing support base. The special occasion event licensee is responsible for the event, not the promoter. I can't find anything in the statute supporting any proposed

regulation prohibiting the paying of promoters. A promoter is not an industry member or retailer, so tied-house should not apply. Experienced promoters help ensure events run smoothly and without public safety issues.

It is also my understanding per the discussion we had on this topic during the Dec. 30, 2019 meeting in the WSLCB offices that industry members may pay an advertiser directly.

314-05-030 (3) *Per RCW 66.28.270, a retail licensee must pay cash for spirits, beer, and wine prior to or at the time of delivery by an industry member.*

*It is my understanding per the discussion we had on this topic during the Dec. 30, 2019 meeting in the WSLCB offices that wineries, breweries, cideries and distillers may be paid at the end of an event as long as an invoice exists at the beginning of the event showing the product(s) featured and agreed to pricing.

314-05-030 (10) *Wineries, breweries and distilleries participating in a special occasion event may pay reasonable booth fees to the special occasion licensee. Booth fees must be comparable to normally accepted industry standards and uniform for all participating wineries, breweries, and distilleries.*

Booth fees should be payable to not just Special Occasion Licensees but also to event producers/promoters. This helps the charity hosting the event keep their costs down when they partner with another entity to produce a fundraising event, as many charities are not capable of running big events on their own when it comes to both logistics and promotions. Of course this assumes that no exclusivity agreements are agreed to and participating costs are uniform for all participating wineries, breweries, and distilleries.

314-05-030 (13) *Pouring or dispensing may be provided by breweries at a beer tasting exhibition or judging event. A beer tasting exhibition or judging event must be sponsored by the special occasion licensee and have at least three breweries represented that are pouring samples.*

Nothing in RCW 66.28.305 prohibits:

(ii) Advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event; or

Pouring or dispensing of beer by breweries is a common practice at almost all Special Occasion licensed events, and occurs by representatives of all wineries and distilleries at such events. It is also my understanding per the discussion we had on this topic during the Dec. 30, 2019 meeting in the WSLCB offices that enforcement agents in the past considered having breweries pour their own beer could only be done at a “beer tasting exhibition or judging event” but in fact this is no longer accurate and that all that needs to occur order for a brewery to pour their own product at any Special Occasion event is to have 3 or more breweries featured.

The former interpretation does not protect the public in any way and is not in line with any other industry such as wine, beer, and cider. Untrained volunteers should not be encouraged to pour versus the manufacturers of the actual product who are much better versed in this regard.

Thank you for your consideration of these issues and concerns.

WSLCB response: The WSLCB appreciates these comments, and the demonstration of interest in collaborative participation in the rulemaking process. The WSLCB considered each of these comments and does not agree with some of the positions the commenter asserts with respect to the nature of this license. This license is designed for nonprofit entities as opposed to event producers or promoters. Public safety rests with the nonprofit licensee in these situations as opposed to the producer or promoter. Also, no alternative language or resolution options were offered for the agency to consider.

Was the comment reflected in the adopted rule? These comments were not reflected in the adopted rule.

3. **Oral Testimony Provided January 8, 2020:**

From Annie McGrath:

Good morning, Board members. For the record, my name is Annie McGrath and I'm the executive director of the Washington Brewer's Guild. The Washington Brewer's Guild is a nonprofit trade association that represents our state's small and independent craft brewers.

The vast majority of the over 400 brewers in our state are small and independent brewers. We're here to support the rules draft before you today. We're really appreciative of this work as an association whose members participate in many of these events per year. Actually, a lot of our members participate anywhere between two to six of these events per month, so it's a big part of our business. And, it is one of the most frequently asked questions that we get as an association is "I'm being asked to do this, I'm being asked to provide this, is this appropriate?" We think that this work is going to do a lot to clear out a lot of those questions that we get.

As Janette mentioned, many of the nonprofits that host these events are not aware that the special occasion license is a retail license and that with that, it is implied that all retail laws apply unless it is otherwise exempted. Something that's really helpful for us as an association and our members when we look at these questions is we think about this license and how it was created. And really, it is an exemption to regular retail laws. It was created to allow charities to raise funds for their associations, so retail laws do apply in some areas that are not very clear in the WACs currently.

We're appreciative of the clarity provided and we're also very happy to see some of our comments taken into consideration regarding language adjusting the definition of beer exhibition. By law, brewers cannot pour at these events unless it is a beer exhibition. The definition for beer exhibition has been really unclear and that's been a point of contention for our members and I think even your agents. We think the clarity in this draft is going to help with that question a lot.

We're also really appreciative of the clarity on whether or not brewers can be paid by tokens at the end of the night. We forget sometimes that because this license exists to help charities, because our industry really loves to participate in these events and give back to

local communities, we are subsidizing these events through the donation of our product and donation of our labor. If there's a violation that occurs at these events, it is our brewery license that is on the line for enforcement. So it is in the best interest of our members that these rules are very clear. We appreciate your work on that. Thank you.

WSLCB response: The WSLCB appreciates these comments, and the demonstration of interest in collaborative participation in the rulemaking process.

Was the comment reflected in the adopted rule? These comments were not reflected in the adopted rule.

4. Email received January 8, 2020:

From Josh McDonald:

From: Washington Wine Institute
Re: Comments regarding proposed CR 102 rule making WAC 314-05 "Special Occasion License"

Dear Washington State Liquor and Cannabis Board Rules Coordinator

Please accept this letter as the Washington Wine Institute's (WWI) formal comments on the Liquor and Cannabis Board's (LCB) rule making regarding the proposed CR 102 rule making on WAC 314-05 "Special Occasion License."

We understand that the CR102 being proposed does not create any new rules or regulations. Instead, it attempts to pull all the different existing rules those using the special occasion license into one place so our nonprofits/charities trying to utilize this license each year have an easier time understanding how the license works and what they can and cannot do while using the special occasion license. In addition, we understand that this rules' update brings needed grammatical and related language within these rules up-to-date from the previous time WAC 314-05 was updated, which we understand to be many years ago thus initiating the need for such updates. In summary, this effort simply provides clearer guidance to special occasion license users and updates outdated WAC language within 314-05. We are hopeful these updated rules will provide our local wine industry associations using the special occasion license now with clearer guidance and one place to find all the need to use the license properly and we thank Janette Benham and her team for undertaking this effort.

On behalf of the Washington Wine Institute, the official statewide trade association representing the Washington State wine industry, with a membership including over 98% of all wine produced in Washington State, we thank you for the opportunity to provide comments on this proposed LCB rule-making. If you have any questions or need further clarification on any of the above comments, please don't hesitate to contact me.

WSLCB response: The WSLCB appreciates this comment, and the demonstration of interest in collaborative participation in the rulemaking process.

Was the comment reflected in the adopted rule? This comment was not reflected in the final rule.

5. **Email received June 8, 2020:**

From John Morgan:

Washington State Liquor Control Board
Olympia Washington
Subject: Proposed revisions to Special Occasion License Rules
Thank you for the opportunity to comment on the proposed rules.
June 7, 2020

I remain dismayed, but perhaps baffled would be a better word, by the Board's pursuit of revisions of the Special Occasion License rules, over the pointed and detailed objections of trade groups such as Family Wineries of Washington.

The concept seems to be driven by the desire to bring charities more into line with regular retailers particularly as far as tied house statutes, are concerned. I have never understood the Board's willingness in the first place to support these creaking, archaic, special interest rules that defy both logic and understanding. The justification for these rules literally predates prohibition (i.e. the "tied house", which nowadays presents itself as that terrifying den of inequity "the local brew pub"). But to extend tied house rules to charitable organizations defies even the "logic" of the economic self-interest that sustains these outdated concepts.

This latest proposal appears to be a continuation of the Board's zeal, of recent years, to regulate every possible aspect of our industry under the concept of "permissive regulation" (arguably a logical impossibility as grey areas will always occur within any regulatory mission). The result of this over the twenty years I have been in the wine industry, is an increasingly complex, and increasingly incomprehensible body of regulation that is not only beyond the understanding of your licensees, but also more and more beyond the coherent understanding of your rank and file enforcement employees. Simply stated, if a historian or a law professor is required to explain the basis of your mission, it will be extremely difficult for your employees to fill in the grey areas, based on logic, and with consistency. Public comprehension of your mission will be, in this regard, a hopeless cause.

Beyond all of this I believe there is a more specific failure of logic contained in the current proposal, which is the fundamental confusion of a charitable organization with a regular retailer. While I have always understood and accepted the Board's lumping together of Special Occasion licenses with retail licenses, I have always likewise assumed that this was an expedient. That is, SO licensees did not fit into the round hole of producers, or the triangular hole of wholesalers, so this octagon of a function was pounded, by necessity, into the square hole of a "retailer". However, as a matter of function, ask anyone on the street if a charity exists for the same purpose as a for-profit retailer and you are likely to get a puzzled look in response. Obviously they do not. By definition they do not as they are non-profit. In fact, your own rules which prohibit (for reasons that are nonsensical in my view but nevertheless existential) the "giving of any money or thing of monetary value" by a

wholesaler to a retailer, specifically allow the giving of product outright and without limitation as to value to a charity, in order to support their work. In fact that's the whole point, is it not? Failing a logical basis for lumping together non-profit charities with for-profit retailers, the result will inevitably be confusion.

Perhaps the hope is that the number of Special Occasion licenses will be reduced because licensees will no longer benefit from the charities praising their public spirit in advertising, and the intrinsic value of the gift will be somewhat diminished. If so, this would logically result in a reduction of workload and associated operating costs for the Board – a valid goal. However, in my view anyone who believes this will happen fundamentally fails to understand the nature charitable giving. By way of analogy, while getting a tax break for a charitable gift is a welcome bonus, it has never been a significant motivation for me to make such gifts.

Beyond minor technical and fee related changes, this proposed rule change seems to be a solution in search of a problem.

WSLCB response: The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process.

The revisions to the special occasion license rules clarify language based on feedback from nonprofits. These rules do not increase the regulatory burden on special occasion licensees or change the existing requirements for special occasion licensees.

Was the comment reflected in the adopted rule? This comment is not reflected in the final rule.

6. Email received January 8, 2020 and July 3, 2020:

From Paul Beveridge:

Hi Katherine, it looks like I should have sent these comments to you.

Family Wineries would love to meet with you to discuss our many ideas for modernizing Washington's alcohol regulations.

Paul

----- Forwarded message -----

From: Paul Beveridge <. . .>

Date: Fri, Jul 3, 2020 at 4:00 PM

Subject: Re: Proposed Special Occasion Rules Revisions

. . .

Hi Janette,

Family Wineries of Washington State is dismayed that the LCB is re-proposing it's special occasion license regulations with only minimal changes from the January proposal that was roundly criticized by industry members and charities alike. It's disappointing that instead of modernizing the regulations, the LCB proposes to double down on antiquated tied house

restrictions that the Ninth Circuit Court of Appeals has called "pernicious" and "lacking in redeeming virtue." That the LCB wants to apply these outdated restrictions to charities trying to raise money for good causes is particularly disappointing. There is no problem to be solved by these regulations and why they are a priority for the LCB is not explained. We therefore resubmit in full our comments on the prior draft, none of which have been seriously addressed by the latest proposal.

Washington could have the best craft beverages in the nation, raise more money through charity events than any other state, and have the best public safety record in the country, but we won't get there if the LCB stays in the 1930s and continues to prioritize protecting large out of state corporations over modernizing. We would love to work with you on regulatory reforms that will actually help charities and the craft beverage industry, protect public safety, and benefit the public. The latest proposal furthers none of these goals and should be withdrawn.

Paul Beveridge
President
Family Wineries of Washington State

On Wed, Jan 8, 2020 at 7:34 AM Paul Beveridge <. . .>wrote:
Dear Ms. Benham,

Thank you for the opportunity to comment on the proposed revisions to the LCB's special occasion license rules. We wish we had been provided with more time to discuss this proposal with you and suggest alternative approaches. Family Wineries of Washington State strongly opposes these misguided regulations and asks that they be withdrawn.

Family Wineries of Washington State exists for the sole purpose of helping small Washington wineries succeed. The proposed special occasion license revisions will make it harder, not easier, for small wineries to succeed in Washington State. The proposal, if adopted, will have a devastating impact on small wineries and non-profit organizations that rely on these events for income. Faced with these new regulations, many non-profit organizations will simply throw up their hands and quit holding special occasion events. The wine consuming public, the taxpayers, and, most importantly, the beneficiaries of the charities that are funded by these events will all lose if the proposed revisions are adopted.

Family Wineries detailed comments on the proposed revisions are provided below and may be summarized as follows:

The proposed regulations do not provide clarity.

Contrary to the multiple claims in the LCB's issue paper accompanying the proposal, the revisions make the regulations more complex and difficult to understand. The lack of clarity is readily apparent to anyone who takes the time to actually read the proposal. The proposal makes the regulations longer, not shorter. The proposal makes the regulations more complex, not simpler. The regulations certainly will not be clear to laymen or charities who are not familiar with the anachronistic tied house system and related money's worth restrictions that are suddenly and inexplicably such high priorities for the LCB.

The proposed revisions grant too much discretion to LCB staff by not providing decision criteria and guidelines for determining when and why an event license will be denied.

No criteria are provided to guide applicants and decisions are left to the discretion of LCB staff.

The proposed revisions will make it harder, not easier, for non-profit organizations to raise money.

The legislature enacted the special occasion laws to help non-profit organizations raise money and to help craft producers sell their fine Washington State manufactured agricultural products. The LCB should be trying to make it easier for nonprofits to put on special occasion events to raise money, not harder.

The proposed revisions will make it harder for local Washington State craft producers to find places to market and sell their products.

The biggest problem facing small craft producers in Washington State is that there are few places for them to sell their fine agricultural products. Corporations dominate the market place. If a craft producer does not have a tasting room, special occasion licensed events are often their highest source of income -- income which they need to stay in business. The legislature enacted the special occasion laws to help local craft producers market and sell their products to adult Washington State consumers. The LCB should be encouraging the sale of local agricultural products by small businesses, not making it more difficult.

Nonprofit organizations are not retailers

Non-profit organizations are not retailers in the ordinary sense of the word. They are charities and civic groups. For instance, unlike typical alcohol retailers, they do not have brick and mortar stores or restaurants with fixed locations and regular hours. They do not have sales staff. Selling alcohol is not their primary source of income, their reason for existing, or their reason for seeking a temporary license from the LCB. In short, they are a unique category and should be treated as such in the regulations. They should be encouraged, not discouraged, by the LCB to raise money for their good causes.

The LCB should have considered the uniqueness of non-profits while developing the special occasion regulations. Instead, through the proposed revisions, the LCB staff seek to impose the full weight of antiquated tied house/money's worth restrictions on charities. However, the tied house/money's worth restrictions were developed in the 1930s at the close of Prohibition in a failed attempt to keep a few large manufacturers from having "undue influence" over small mom and pop retailers and allegedly to maintain an "orderly market" and "level playing field." Instead, in fact, the tied house/money's worth restrictions have resulted in a few giant out-of-state corporations controlling the majority of the alcohol trade in Washington State. For instance, two giant out-of-state corporations control the majority of alcohol distribution in the state. And the nation's largest tobacco company dominates the wine industry. That's hardly a level playing field and amply demonstrates that the tied house/money's worth restrictions have had the opposite effect of their original purpose.

In response, the legislature through statute, and the citizens through initiative, have been steadily reforming and modernizing the tied house/money's worth system -- all without the support, and often over the outright opposition, of LCB staff who see this reform as a threat to their job security. The result is that the tied house/money's worth system now has more

exceptions than rules, is honored mostly in the breach, and is only selectively enforced by the LCB. Honest industry members are hamstrung while unscrupulous industry members scoff and cheat.

Consider that the craft beverage industry would not even exist today if it were not for tied house reform. For example, a tasting room is an exception to tied house -- the manufacturer is allowed to sell its product directly to adult consumers without being forced to go through a middleman distributor. Despite the steady reform, more needs to be done. Scores of craft producers are going out of business every year while the LCB fails to even recognize that there is a problem. Scores more craft producers will go out of business if these regulatory proposals are adopted.

Considering the history of reform and the current state of the industry, it's inexplicable that LCB staff want to make doubling down on tied house/money's worth a priority. LCB staff should focus on their core mission of protecting public safety, not taking sides in the economy. We have met with each LCB board member and we know this current effort to resurrect economic trade regulation did not come from them. It's time for the Board to exercise its management role and direct staff to make public safety the priority.

When we raise these sort of issues with LCB staff, we are often told that they are only doing their jobs and that their hands are tied by the legislature. As shown above, this is not the case for special occasion licenses and the LCB could easily streamline the special occasion license process with no assistance from the legislature. But if LCB staff truly believe they are constrained by statute, they should be proposing and supporting amendments to the statute, not creating ever more complicated and counterproductive regulations.

Instead of continuing the modernization clearly intended by the legislature and the citizens of Washington, LCB staff seem intent on doubling down on the failed tied house/money's worth system. Through this proposal, they have proposed to try to squeeze non-profits into a broad definition of "retailer" that does not fit. That is one of the primary reasons the special occasion rules are so complex and difficult to understand. The LCB is metaphorically trying to force a round peg into a square whole. That's why the rules and application process are so complicated and difficult for non-profits to fathom. No amount of additional guidance and regulation will make the rules easier to understand because they make no sense in the first place. And they are certainly not in the public interest.

The legislature did not intend for charities to be treated as retailers when it established the special occasion retail license.

When the legislature created the special occasion license in 1997, it stated that the license was a "retail license." But it did not state non-profits were "retailers," and in fact the term "retailer" was not even defined in statute until tied house reform was enacted by the legislature in 2009. The 1997 language can be readily and logically read to mean that nonprofits may sell at retail but not at wholesale. Instead, the LCB is now choosing to read the term "retail license" to mean "retailer" and use this logic to make non-profits subject to each and every regulation applicable to brick and mortar retailers, including all tied house restrictions and all money's worth restrictions -- even though most of these restrictions make little sense and produce absurd results when applied to nonprofits trying to raise money. In fact, the primary intent of the proposed regulations appears to apply restrictions on nonprofits not appropriate to nonprofits and not intended by the legislature. In short,

these regulations do not address a problem in the real world. Instead, the LCB has created a problem with its "control state" interpretation of the statute and now claim to be fixing the problem it created by adding extensive restrictions on charity fundraising.

The LCB cannot approve everything.

It's far past time for the LCB to drop its illegal unwritten internal policy that "whatever is not expressly permitted by statute or regulation" is prohibited. Washington is no longer a control state and the LCB is not the Politburo. The LCB cannot possibly foresee and "permit" everything nonprofits and craft producers have to do to put on a successful fundraising event. The policy provides too much discretion to mid-level bureaucrats to say "no" based on unwritten or non-existent criteria or vague notions of "intent." These proposed regulations are just the latest examples of the trouble the LCB gets itself into by sticking to its illegal unwritten policy. In the meantime, the regulations keep getting longer and longer.

The proposed revisions do not promote public safety; in fact they will decrease public safety.

Other than making local craft beverages harder for adult consumers to obtain, the regulations do nothing to promote public safety. For instance, under a recent change in LCB staff interpretation, nonprofits will no longer be able to share special event tasting ticket income with the producers at an event. There will no longer be an economic incentive for producers to collect tasting tickets or pour small samples. This is silly and counterproductive. It's an example of the LCB prioritizing protecting a few giant corporate distributor middlemen from competition over public safety. In 2019 the United States Supreme Court ruled in the Tennessee Wine case that similar restrictive regulations must have a public safety purpose, should minimize their impact on free trade, and should not be used if alternatives are available to protect public safety. The LCB should be implementing this important Supreme Court decision, and modernizing its regulations to comply with it, not going backwards as proposed here.

The proposed revisions infringe on the rights of industry members to donate product and/or money to nonprofits of their choice.

Prior to meeting with the LCB on December 30, we assumed that the LCB did not actually intend to control which non-profits industry members could donate to, or control which industry members a non-profit could invite to its events. Unfortunately, at the meeting we learned that the LCB believes it has the power, and in fact the obligation, to control these relationships. For example, we were told that LCB staff might deny a special occasion license application if the charity restricted the number of wineries that could attend or told a winery it could not attend. When we asked what criteria would be applied by staff to make these decisions we were told it would depend on the "intent" of the charity. If staff felt the restrictions were based on good reasons the permit would be issued, but if the staff felt the restrictions had bad intent the permit would be denied. Plainly this does not provide clarity to the regulations and is beyond the statutory and constitutional authority of the LCB.

LCB staff further stated, and the new revisions propose, that industry members cannot give money or money's worth to charities under the tied house restrictions. The LCB appears to not understand that it is effectively saying that the LCB can prohibit an industry member

from donating to a charity of its choice. The LCB is also effectively saying that the charity cannot decide which producers it wants to work with at events.

This brings back memories of years ago when the LCB used to try to prohibit wineries from donating wine to charities. To get around this restriction, the wineries simply made a donation to the charity equal to the cost of the wine, and the charity wrote a check for the same amount to purchase the wine from the winery. Many of the proposed regulatory revisions have similar "work-arounds" that will once again become common in the industry if these rules are adopted

The above are examples of the absurdity of trying to put non-profits in the same box as typical retailers. The LCB needs to acknowledge, as intended by the legislature, that nonprofits are different from typical retailers and that it is therefore appropriate and necessary to treat them differently in the regulations. One size does not fit all. Nonprofits events are not a threat to the "orderly market" and should not be treated as if they are.

The process of proposing the revisions was not fair or in compliance with applicable law.

Through a Public Disclosure Act request, Family Wineries was able to discover that a few self-centered special interest industry groups were given early drafts of the proposal. Contrary to the Administrative Procedures Act, these special interest groups received advance drafts of the proposal in August 2019 and were granted early access to LCB staff while they were developing the regulations. These special interest groups were able to persuade the LCB to insert revisions that benefit their special interests at the expense of charities, producers who want to compete fairly, and the public. For instance, they were successful in persuading the LCB to insert a provision requiring charities to pay for a full keg of beer even if only one glass of beer is sold. With a very few minor exceptions, these special interest groups were fully supportive of the proposed regulations. That's sad, but not surprising, as the regulations support the goals of some of their members to dominate the market and make it hard for small producers to compete with them -- even at charity events.

In contrast, Family Wineries was not provided with a copy of the proposal until the end of November and was not permitted to meet with the LCB until December 30, nine days before the close of the public comment period on January 8. At that meeting, Family Wineries learned the full extent of the LCB's plans for the first time and therefore asked for a thirty day extension to the public comment period. Family Wineries reasonable request was denied by the LCB thereby exacerbating the unfairness of the rule adoption process.

The proposal was developed without the knowledge or support of the non-profit groups that will be most hurt by the proposal.

Most charities are not in the alcohol trade. They do not monitor the state register nor subscribe to list servers to keep abreast of new proposed alcohol regulations. They have more important things to do with their limited resources. Under the circumstances, the LCB should have reached out to these organizations to seek their input. The LCB's issue paper indicates that the LCB receives over six thousand special occasion license applications per year; but, according to the response to Family Wineries' Public Disclosure Act request, the LCB reached out to only one non-profit organization for comment. Considering that the LCB has contact information readily available for over six thousand directly impacted parties, this failure to seek additional comment is inexcusable. At a minimum, the LCB

should delay adoption of the proposal until it reaches out to the thousands of nonprofit groups that will be hurt by this proposal and provide them with a reasonable opportunity to comment.

Detailed Comments on the Proposed Rule Revisions:

For brevity, the following specific comments on the proposed rule revisions refer to wineries, but they apply equally well to breweries and distilleries and should be read to apply to all craft beverage manufacturers. The specific comments similarly refer to charities for brevity but are intended to apply to all nonprofit organizations that seek to raise money through special occasion events.

WAC 314-05-020

The proposed revisions inexplicably, and arbitrarily and capriciously, expand the \$60 license application fee from per each event day to per each "alcohol service area" at each event. Thus, for example, an event in a 10,000 square foot building with alcohol service throughout the building would require only the payment of \$60, while an event in a similar sized building with alcohol service limited to five discrete areas would require the payment of \$300! In fact, the LCB has already required charities holding events at golf courses to pay eighteen \$60 fees if they want to serve alcohol at every tee! The LCB provides no explanation or justification for the increased fees. Presumably, from a public safety perspective, the LCB would want to encourage charities to limit alcohol service to discrete areas rather than an entire facility. If the proposal is enacted, charities interested in wisely conserving their limited resources would always designate the entire property where the event will be held as a single service area to avoid paying the multiple fees. The multiple fee idea should be dropped from the proposal. Charities need the money more than the LCB does.

If the LCB wanted to help charities and wineries, it should have proposed to drop the current \$60 per event day multiple fees. It does not take double the resources for the LCB to approve a two day event over a one day event. The multiple day fees are another example of the LCB hurting charities and wineries for no good reason.

At the end of this section the LCB proposes to subject nonprofits to the entire brunt of the remaining antiquated trade practice regulations that still limit free and fair competition in the licensed beverage industry -- all with no benefit to public safety. The proposal does this by treating nonprofits holding a fundraising event as if they are exactly the same as brick and mortar retailers such as restaurants and wine shops. Charities are not regularly engaged in trade in licensed beverages and should not be treated by the LCB as if they are. The tied house, money's worth and promotion restrictions that were enacted at the close of Prohibition, and that have been steadily modernized by the legislature ever since, make little sense in a free democracy and are reminiscent of restrictions from the Politburo in the former Soviet Union. While supposedly designed to maintain an "orderly market," these antiquated restrictions have in practice allowed three giant out of state corporations to dominate the alcohol trade in Washington State -- which they continue to dominate only because they make massive political contributions every year. These corporations would not need to make these political contributions if these regulations were truly in the public interest. The Ninth Circuit Court of Appeals, after reviewing all the evidence from all sides, found these regulations "pernicious" and "lacking in redeeming virtue." The United States Supreme Court recently found that similar rules have nothing to do with public safety. The

LCB should be doing all it can to eliminate these unconstitutional and counterproductive restrictions on restaurants, wine shops and wineries, not expanding them to restrict fundraising by charities! Surely LCB staff have higher priorities and better things to do with their time?

This ill-conceived idea to treat charities exactly like restaurants and wine shops is discussed in further detail below.

WAC 314-05-025

In this section the LCB proposes, without explanation and for the first time in the regulations, to establish a mandatory time period before which applications for special occasion licenses "must" be filed with the LCB. In our experience working with non-profits under the current regulations, many worthwhile fundraising events have been cancelled or postponed because the volunteers working for the charity did not get the applications in on time. While LCB staff have sometimes been willing to work with charities that forgot to apply in time under the current regulations, the proposed regulations do not provide "clarity" to applicants. Rather they say in 314-05-025(1) that applications "must" be filed at least 45 or 60 days before an event but then state in 314-05-025(3) that they "may not" be approved.

The regulations also, again without explanation, expand the time period before which applications must be filed for some special events from the current permissive 45 days to a mandatory 60 days. This change will make it harder, not easier, for nonprofits to hold events to raise much needed funds for their good causes.

The proposed regulations also make it more difficult for nonprofits to put on events by adding a host of other new restrictions and paperwork. The proposal requires the charity to provide documentation that it is a registered nonprofit, but does not explain how the nonprofit is supposed to show this nor what documents will be considered sufficient. In our experience, it is difficult and time consuming, if not downright impossible, to obtain certification of nonprofit status from the IRS. The LCB provides no evidence that there is an epidemic of fake nonprofits applying for special occasion licenses; this restriction should be dropped.

Similarly, without explanation for why, the proposed regulations require the nonprofit applicant to keep track of all the wineries that will be taking orders at the event. This will make it harder, not easier, for charities to hold events to raise much needed funds for their good causes.

While claiming to promote clarity, the proposal instead creates confusion by granting the LCB (without legislative approval) the right to require "any additional information" in the application that it might desire. Most outrageously, in the last line of the section, the proposal purports to grant LCB staff the power to deny licenses to charities for reasons not contained in the regulations! While certainly not promoting clarity, these provisions actually constitute unconstitutional agency overreach.

WACs 314-05-030 and 035

In these sections the LCB more than doubles the length of the regulations in a misguided effort to apply the full weight of trade practice regulation onto nonprofits by defining them as

"retailers" identical to retailers such as restaurants and wine shops. That the LCB considers this plethora of text "clarifying" is mind blowing. No one, not even a scholar of alcoholic beverage law, could understand these regulations after one read. The proposed regulations perpetuate the LCB's unwritten and illegal "whatever is not expressly permitted is prohibited" control state policy.

What the LCB misses here again is that nonprofits are not retailers in the ordinary sense of the word. They do not have brick and mortar shops or restaurants. The sale of alcohol is not their primary purpose. They are charitable and civic organizations that may, a few times a year, hold a fundraiser at which alcohol may be sold. When the legislature created the special occasion license by statute in 1997 and stated that it was a "retail license," the legislature evidenced no coinciding intent to define nonprofits as "retailers" subject to all of the free trade restrictions still applicable to brick and mortar retailers and others in the alcohol trade. Instead, the legislature intended the opposite. For instance, the legislature showed its intent to treat nonprofits differently when it permitted nonprofits to accept donations of alcohol while continuing to prohibit alcohol donations to retailers.

The legislature did not include nonprofits in the definition of retailers in 1997 because the word "retailer" was not defined in the RCW until 2009 (and then only at the request of the corporate distributor lobby). In 2009, the legislature eliminated the mandatory tied house system in Washington State. The term "retailer" was then defined to distinguish it from "industry member," which the legislature defined as manufacturers and distributors. There has never been any indication of legislative intent to treat charities as typical retailers.

Since the 2009 elimination of mandatory tied house, the owner of a retailer may also own a manufacturer or a distributor in any industry tier, and vice versa. For instance, a person now may own a winery and a wine shop in Washington State. That's not undue influence, that's total influence. But despite this total influence, only a few "undue influence" complaints have been brought before the Board since 2009. That's because there was never a problem of undue influence to be fixed in the first place. There was never any real harm -- which is required to be shown under the United States Supreme Court's decision in *Midcal*.

That the statute does not mandate that nonprofits be regulated like retailers is also supported by Initiative 1183, which expressed the legislative will of the people to modernize the alcohol trade in Washington, but which has never been fully implemented by the LCB. In fact, the LCB has yet to adopt a single regulation to implement the wine (as opposed to spirits) provisions of Initiative 1183. RCW 66.28.070, which was enacted by the citizens through Initiative 1183, treats nonprofits differently from retailers. It states that "special occasion licensees" may only purchase alcohol from a "retailer." This further clearly shows the intent of the statute to treat nonprofit special occasion licensees differently from retailers.

It therefore makes little sense for the LCB to propose in 2019 that nonprofits be included in the definition of retailer so that the full weight of tied house restrictions may be brought to bear on nonprofits. These charities are simply trying to hold a few events a year to raise money for their good causes. There is no evil to be corrected. No harm is occurring. The free market has been working.

The most important point of the preceding six paragraphs is that the LCB is not required by statute to treat charities as retailers. The LCB is making a decision on its own to treat

charities as retailers -- a decision that it does not have to make. Instead, the LCB should be considering the public interest of the citizens of the state of Washington and doing what is best for them. What is better for the citizens of Washington: needlessly expanding regulations the Ninth Circuit labelled "pernicious" and "lacking in redeeming virtue" to apply against charities? Or instead making it easier for charities and civic groups to raise money for their good causes by eliminating unnecessary economic regulation? If the LCB wants to do what is best for the citizens of the State of Washington, the answer is clear that the LCB should withdraw these proposed regulations.

Considering what is clearly and plainly the overwhelming public interest in this case, if the LCB truly believe that these regulations are compelled by statute, the LCB should be petitioning the legislature to amend the statute rather than making this proposal.

WAC 314-05-030

In 314-05-030(1) the LCB proposes to increase the event posting burden. This does not help nonprofits or wineries and will not make it easier for them to put on events or succeed. At a golf course event, under the LCBs proposal, the charity would have to making eighteen separate postings.

In 314-05-030(2) the LCB claims to be following RCW 66.28.070 (which does not address the subject) to add a requirement that alcohol for a special occasion event "may only be purchased in the manufacturer's approved container or package." This is a classic example of a purely economic regulation that has nothing to do with public safety and only continues to exist because it protects some members of the industry from free and fair competition. That this provision is a regulatory priority for the LCB to apply to charities is simply incomprehensible. In every other industry involving the sale of goods, the industry members resolve ordinary commercial issues such as size of container through private contracts which may be enforced through private lawsuits in the courts with treble damages and attorney's fees if abuses occur. The alcohol industry is not so special that it deserves to have its own government enforcement agents, paid for at taxpayer expense, policing private transactions between willing buyers and willing sellers with no public safety impact. Nor are charities such a threat to society that they should be similarly policed. This is yet another example of economic regulation distracting the LCB from its core public safety mission.

Despite the history of some industry members using the LCB regulatory process to protect themselves from competition as described in the preceding paragraph, Family Wineries was nonetheless shocked to see it in action in 2019 with this very proposal. Pursuant to a Public Disclosure Act request, Family Wineries obtained documents showing that the LCB provided advance drafts of the proposed SOL regulations to the Washington Wine Institute and the Washington Brewers Guild months before they were made available to the public or Family Wineries. These organizations used the extra time to persuade the LCB to revise the proposal to benefit their members at the expense of charities.

In particular, the documents show that the LCB inserted the "manufacturer's approved container" provision into the proposal to protect members of these organizations from competition at the expense of charities and other nonprofits. As explained in the documents, because of other dubious agency policies which will be combined with the manufacturer's approved container restrictions, charities will have to pay for a full bottle of wine or a full keg of beer even if only one glass is poured. Therefore, this provision is a

thinly disguised attempt by the LCB to favor a few industry members over the interests of charities and the public.

The unfairness and illegality of the LCB's process in developing these regulations in concert with a few industry insiders is further exacerbated by the LCB's refusal to extend the comment period for this proposal. While other industry groups representing large corporations were able to begin discussions with the LCB in August, Family Wineries was not allowed to meet with the LCB until December 30, just a few days before the LCB imposed comment deadline of January 8. It was not until the December 30 meeting that Family Wineries worst fears regarding the proposed regulations were confirmed by the LCB. Sufficient time was not provided at the December 30 meeting for Family Wineries to express many of its concerns regarding the proposal and the devastating impact it will have on nonprofits and craft producers if adopted. We were also not provided with time to discuss alternatives to the proposal with the LCB.

Further we learned through the Public Disclosure Act request that the LCB reached out to only one charitable association in developing the proposal. The LCB has the names and addresses of thousands of charitable organizations that apply for special occasion licenses each year, but reached out to only one. This single organization expressed confusion and grave concerns with the proposal, but these concerns were completely ignored by the LCB. Under these circumstances, all of the LCB's current proposal is suspect and should be rejected in its entirety.

314-05-030(5) and (6) are ambiguously drafted and may unnecessarily and unconstitutionally limit First Amendment rights. That even LCB staff are confused by trying to treat charities as retailers is exemplified by the language proposed in (6): retailers are supposed to purchase from wholesalers, not manufacturers. Acquisition cost, not manufacturer cost, is what is relevant to retailers. Why these provisions are a priority for the LCB is not explained.

314-05-030(6) and (7) place unnecessary burdens on charities to enforce requirements that the LCB itself rarely enforces in the real world. The LCB has little information or expertise regarding the cost of manufacturing alcohol. Charity organizations have even less information and should not be expected to do the LCB's work for them. We know from the examples of "Two Buck Chuck," light beer, and vodka, that alcohol can be produced at a very low cost if one has the economies of scale of a large corporation. Much of the corporate alcohol that dominates Washington State is sold at retail stores for less than what it would cost craft producers to make similar products (if they ever wanted to). Also, the LCB again misses the point that charities are not retailers. Alcohol may be donated to charities. That is an acquisition cost of zero.

314-05-030(8) is another example of the "whatever is not permitted is prohibited" illegal LCB unwritten policy. In this provision the LCB graciously extends charities the "privilege" to sell tickets for their events. Does the LCB really think charities need express permission to sell tickets? If so, what else do charities need permission for from the LCB? Permission to rent event spaces? That's not in the statute or regulations. Permission to use unpaid volunteers? That's not in the statute or regulations. We could go on and on. The point is that there is no good place to draw the line. No guidelines are provided to instruct nonprofits or LCB licensing and enforcement staff in deciding what activities require express permission and which do not. It's all left to LCB staff discretion, and that's unlawful.

314-05-030(8)(a) will unduly hurt nonprofits with little or no benefit to the public interest. It is one of the most objectionable proposals in a draft full of objectionable proposals. By slavishly sticking to their "charities are retailers" rationale, the LCB is suddenly proposing to prevent charities from using third parties to help them sell tickets. It appears to illustrate a complete disregard by the LCB of the realities of putting on successful charity fundraising events in the modern era. For instance, If enforced as written, it would prevent charities from selling special occasion event tickets on internet sites such as Ticketmaster and Brown Paper Tickets. It will also prevent retailers such as Costco from selling tickets to special occasion charity events. Both of these practices have been used by charities under the current regulations with great success and no enforcement issues. There is no problem to be fixed by the proposal and it should be withdrawn.

In 314-05-030(8)(b) the LCB again prioritizes economic regulation over the public interest and real world common sense. As discussed above, the LCB and charities have no particular expertise in evaluating manufacturing costs and the LCB almost never enforces these types of restrictions in actual practice. It's also difficult for a charity to compare the ticket cost to the alcohol acquisition cost, because the ticket prices are typically set weeks before the event but final acquisition costs are not known until the end of the event. Different wines have different acquisition costs. No one can predict exactly what wines the donors to the charity will select in exercising their free will to determine what they consume that particular evening.

It will be very difficult for charities to enforce this requirement. Is the LCB trying to control exactly what people can choose to select to drink at an event? Will charities have to predetermine exactly what alcohol will be served and forced on donors with no exceptions? What if someone only likes white wine? Or what if someone only drinks expensive wine and tilts the cost balance? Will the doors to charity events have to be closed and the donors cut off when alcohol service purchase prices and volumes exceed the ticket cost? These are the sorts of absurd results that occur when regulatory rationales, that may appear to some to be well meaning or internally logical, are taken to their extremes. Can we rest assured that all LCB staff who have to enforce these rules will fully understand them and be reasonable? The law requires more when agencies draft regulations.

One of the most controversial and widely opposed actions of the LCB regarding special occasion events is actually not even mentioned in the proposed regulations -- but it does flow directly from the same flawed "charity as retailer" rationale. LCB staff have indicated that they will no longer permit wineries and charities to share tasting ticket income at special occasion events. Under this widely used practice, both wineries and charities had an economic incentive to make sure tasting tickets were collected and patrons were not overserved. LCB staff now say this practice, which has been used successfully without incident for years, is a violation. This is an example of the LCB letting the economic regulation "tail" wag the public safety "dog." By prohibiting the sharing of tasting ticket income, the LCB is putting enforcement of antiquated protectionist economic regulations ahead of public safety -- all without any public review or comment. That is a shame.

Another objection we have heard also stems from tied house/money's worth but is also not expressly stated in the regulations. LCB staff have started limiting how winery associations can promote events at member wineries. Winery associations are allowed to obtain special occasion licenses, but the LCB is applying these new restrictions to events at the wineries themselves. Winery associations exist to promote their members, so these new unwritten

restrictions on promotional activities are particularly troubling and deserve public review and comment.

314-05-030(10) is a blatant example of how large corporate interests have been able to co-opt LCB regulations to their own anti-competitive ends to the detriment of other industry members who are willing to compete fairly, adult wine consumers, and tax receipts. The saddest irony here is that, instead of punishing honest and hardworking alcohol industry members with these anti-competitive regulations as it usually does, here the LCB seeks to punish charities! The LCB proposes to police (at taxpayer expense) the prices charities may charge for wineries to attend their events ("booth fees"). Seriously? How is this in the public interest? In the real world is charities exerting "undue influence" over wineries a real problem? Just because some highly paid corporate lobbyists have succeeded in getting these "pernicious" requirements into law for alcohol industry members does not mean the LCB should extend such regulations to hurt charities. In a democracy, the free market is the only fair way to establish prices. Charities should be able to freely negotiate the prices for their events. If a winery does not like the price, they don't have to attend. If enough wineries decide not to attend, the charity will have to lower its price or cancel the event. This sort of economic protectionism always serves to help the few at the expense of the many. Here the "few" are alcohol industry members and the "many" are charities trying to raise money for their good causes. Unbelievably, the LCB is proposing to protect the interests of large alcohol corporations over charities. This is a new low in the sordid history of these "pernicious" regulations and illustrates how they have "no redeeming value."

The LCB does not explain where it will gain the necessary knowledge and expertise to determine the "industry standards" for special occasion event booth fees. Nor does it provide any criteria or guidelines for licensing and enforcement staff to follow in evaluating booth fees.

For instance, what is a reasonable booth fee for a charity event? Must the fee for an event held in a public park be the same as the fee for an event held on the top floor of a skyscraper? Who gets to decide?

Can a charity limit the number of wineries that may attend an event? What if there is only space for twenty wineries? Might the event be cancelled if the twenty-first winery complains to the LCB about being excluded?

What if an event is limited to wineries that donate to the charity? Is that reasonable? What if a chamber of commerce limits its event to include only wineries that are members of the chamber? Is that allowed?

Who gets to decide what is acceptable? The LCB? What are the criteria? Is the "intent" of the charity in limiting its event to certain wineries reasonable? What constitutes good intent? How is bad intent proven by the LCB? Regulations that do not resolve these sorts of questions do not provide "clarity" to LCB staff or the regulated community and should be reconsidered and rejected.

These rhetorical questions may seem silly, but they illustrate the futility of government agencies trying to control prices. That's what communist countries try to do. In the United States we use the free market to set prices.

There is a reason these sorts of regulations are called scoff laws. They are honored primarily in the breach and rarely enforced. They give good regulations a bad name. The LCB should drop its proposal to regulate booth fees.

In 314-05-030(11), breweries are given permission to install draft dispensing equipment. Under the LCB's "whatever is not permitted is prohibited" illegal unwritten policy, does this imply that wineries may not install draft wine dispensing equipment (i.e. wine kegs)?

314-05-030(12) permits wineries to provide "pouring or dispensing" but does not include "installing." It also does not permit winery distributors to pour or dispense. Does the LCB intend to prohibit these activities? No valid rationale is provided for prohibiting these activities. Is the LCB suggesting that the legislature intended to prohibit these activities because it did not give express permission for them? If the LCB is going to give "permission" to one class of manufacturers, it needs to give similar "permission" to the other classes of manufacturers as well. Otherwise, under the LCB's illegal unwritten "whatever is not permitted is prohibited" policy, the implication is that these activities may be prohibited. It means the LCB is favoring one class of producer at the expense of others. Such a prohibition would make it more difficult and expensive for charities to put on special occasion events and therefore should be avoided.

Most egregiously, 314-05-030(12) inexplicably violates the statute by deleting "advertising" from the list of activities specifically authorized for special occasion events by the legislature. See RCW 66.28.310(2). Deleting advertising is beyond the LCB's power under the Constitution and Administrative Procedures Act and must be corrected. Also, the fact that the legislature specifically authorized advertising for special occasion events is further evidence that the legislature did not intend to treat nonprofits exactly like retailers.

Proposed 314-05-030(13) is astonishing in its audacity. As described previously, the Washington Brewers Guild used its early access to LCB staff and the first draft of the regulations to persuade the LCB to include provisions such as 314-05-030(13) in the proposal. As a result, breweries now get special treatment at special occasion license events where three breweries attend and pour. No wonder breweries have not objected to these proposed regulations. Yet again corporate interests got what they wanted from the LCB behind the scenes -- at the expense of charities and the public interest.

314-05-030(14) impermissibly limits special occasion license events to "designated areas" even though the statute expressly also allows them at "specified premises." This unnecessary limitation of legislative intent was previously discussed in these comments under 314-05-020. This particular provision appears intended to make it hard for nonprofits to designate the entire premises of a facility as the specified premise and should be revised to make it consistent with the statute.

The restrictions in 314-05-030(15) are not found in the statute and should not be priorities of the LCB. Licensed premises are operated by licensees who are familiar with the laws regulating alcohol and have experience implementing public safety requirements. Rather than discourage nonprofits from holding their events at licensed premises through these extensive and complicated restrictions, if the LCB is truly motivated by a concern for public safety, it should be encouraging nonprofits to hold their events at such licensed premises. Can the LCB identify a better place to hold special occasion events?

The reasons for the separations called for in this provision are not explained nor justified. Modern bookkeeping software makes it easy to keep separate sales records, so that is not a legitimate reason for the restrictions. The liquor licensee has a retail license, so there are no tied house issues. As currently written, the regulations make it more difficult for charities to find venues for their fundraising events and discourage retail licensees from hosting charity events. Therefore the restrictions are not in the public interest and should be deleted.

314-05-035

In this section the LCB proposes to impose all of the advertising restrictions applicable to retailers to charities. The LCB provides no explanation for why it is taking this action. No threat posed by charity advertising has been identified. There is no evidence provided that charities have undue influence over wineries. Despite the lack of any identified harm, the LCB is proposing to severely limit how charity wine events can be advertised. No legitimate public interest is served in making it harder for nonprofits and wineries to advertise charitable events. And these proposed regulations violate the First Amendment of the Constitution.

In 314-05-035(1) the LCB grants "permission" for wineries to post information on their web sites and social media about special occasion events. The draft regulation says the restrictions are based on the requirements of RCW 66.28.310, but RCW 66.28.310 contains no restrictions. Rather RCW 66.28.310 is a list of examples of promotions that do not violate the three tier system or money's worth and therefore are not prohibited by the statute. These examples were included by the legislature when it enacted tied house reform to make clear that no existing exceptions to tied house and money's worth were eliminated. They were not intended as limitations. As the statute says, "nothing ... prohibits" these activities.

The proposed regulations fail to "permit" any other advertising of special occasion events by wineries. Presumably, therefore, under the LCB's unwritten "whatever is not expressly permitted is prohibited" policy, all other forms of advertising will be illegal. For instance, wineries are not expressly permitted to advertise special occasion events in newspapers or magazines. They can't use the telephone or texting either as these methods are not listed in the proposed regulations. The LCB identifies no compelling reason for these restrictions and they will make it more difficult for wineries and charities to promote successful events. No legitimate public purpose is served by this proposal and it should be dropped.

314-05-035(2) is where the LCB proposes to bring the entire weight of the three tier system onto nonprofits trying to raise money for their good causes. As discussed above, the LCB does not have to do this. Charities are different than typical retailers and should be treated differently as intended by the legislature.

The LCB does not provide any explanation for why it thinks it is a good idea to limit a winery's ability to give money to a charity or promote the charities fundraising events. The LCB similarly does not identify any problems that the proposed regulations will solve. The LCB provides no evidence of "undue influence" between charities and wineries or vice versa. There is also no evidence of an epidemic of evil "exclusive agreements" or "money advances" between wineries and charities or vice versa. There are no wrongs to be corrected. There is no harm being caused. The regulations therefore violate the United

States Supreme Court decision in *Midcal*, which requires a showing of actual harm for tied house violations.

314-05-035(3) is an example of a misguided LCB regulation that is impossible to enforce in practice because there is an obvious work around. The draft regulation proposes to prohibit wineries from providing money to charities for advertising or promoting events. But the LCB cannot legally prevent wineries from providing the same amount of money to a charity as a donation. Thus the proposed regulation is a throwback to the distant past when Washington was a control state and wineries were forbidden to donate wine to charities. Instead, for example, if a winery wanted to donate a case of wine worth \$300 to a charity back then, they wrote a check to the charity for a \$300 donation and the charity wrote a \$300 check back to the winery to pay for the wine. Complete and utter paperwork nonsense, but that's what the LCB's proposal will resurrect.

Buried in 314-05-035(3)(c) is one of the most damaging restrictions in the proposed regulations. Not only wineries are prohibited from providing money for advertising or promoting or sponsoring events, but so are "promoters," "event coordinators" and "third parties" -- terms which are not defined but which we will collectively refer to as "promoters." Of course these entities could work around these restrictions by providing matching donations to the charities, but that is not the most important reason to stop this proposal in its tracks. Here the LCB proposes to expand its reach to entities that lie outside of the tentacles of the three tier system. These entities are contractors hired by the charity. They do not have liquor licenses. There is no reason to subject them to the three tier system because they are not industry members. As the LCB has stated many times, the special occasion event licensee is responsible for the event, not the promoter.

Ironically, one of the main reasons that charities hire promoters to help them with special occasion events in the first place is because the existing regulations are too arcane, complex and difficult for many charities to navigate on their own. The proposed regulations will make it even more difficult for charities to put on special occasion events on their own, which will increase the need for promoters, not decrease it. The promoters take away money that would otherwise be used by the charity to support its good causes. This is another major reason why the proposed regulations should be withdrawn: they make putting on special events more expensive, and that hurts charities and the good causes the charities fund.

In a further sad irony, Family Wineries has heard that some event promoters are actually pleased with parts of the proposed regulations -- because they will make it more difficult for potential new promoters to enter the market and compete with them. This is yet another example of LCB regulations stifling free and fair competition without a public safety reason.

Family wineries has also heard some vague rumblings from the LCB about alleged "rogue promoters" but we have not encountered any ourselves. If promoters are really causing problems, the LCB should be simplifying the regulations so that promoters are not necessary to put on a successful special occasion event.

In 314-05-035(4) the LCB proposes to restrict wineries from working with a new entity called a "third-party organization." No definition is provided nor is it explained how a "third party organization" in 314-05-035(4) differs from a "third party" in 314-05-035(3). A third party organization is virtually any organization. The LCB does not explain why it thinks it is ok for wineries to provide money to third party organizations but not directly to charities.

In 314-05-035(5) the LCB lists advertising items that a winery may provide to special occasion licensees. The list is short and violates the First Amendment rights of wineries and charities. Under the LCB's "whatever is not expressly permitted is prohibited" illegal unwritten policy, presumably wineries cannot do anything not on the list -- which leads to absurd results. For instance, wineries are permitted to provide their name or brand name but are not permitted to provide their logos. Wineries are permitted to disseminate programs or flyer at the event but not before the event. These examples illustrate again that it's impossible for the LCB to expressly "permit" everything a winery or charity needs to do to stay in business and promote fundraising events. The list of express permissions would have to be incredibly long. The LCB should abandon its illegal unwritten policy and withdraw these regulations.

In 314-05-035(6) and (7) the LCB brings in signage restrictions that were plainly originally written and intended for brick and mortar retailers, not charities. These regulations are yet another example of the LCB providing confusion, not clarity. Can the LCB cite a single example of a charity bringing an inflatable to a special occasion licensed event and positioning it within view of a public right of way? If inflatables are not allowed inside the event, does that mean they are allowed outside the event? Oh wait, of course not, because everything not expressly permitted is prohibited, right?

314-05-035(8) is perhaps the worst restriction in this section of the proposed regulations and will prove a shock to wineries that are accustomed to giving away cork screws, coasters, stickers, etc. at special occasion events to promote their brands and please potential customers.

314-05-035(9)-(11) extend the prohibitions on branded promotional items to the special occasion licensee. They again confuse charities with typical retailers. 314-05-035(11) has been on the books for many years. In all those years, how many complaints have been filed with the Board alleging that a winery or charity exerted "undue influence or an adverse impact on public health and safety" through branded promotional items? Family Wineries is not aware of any. This regulation is yet another example of a law in search of a problem. The LCB needs to turn its attention to its core mission of protecting public safety and quit spending time fighting the phantom menace of evil charities.

Thank you for your consideration of these comments. Please let us know if you have any questions. If you would like to start working on regulations that would help bring alcohol trade regulation in Washington into the 21st century and benefit the public, we are ready to help.

Board of Directors
Family Wineries of Washington State

WSLCB response The WSLCB appreciates this comment, and the demonstration of participation in the rulemaking process.

This comment was originally received on January 8, 2020 in response to the initial CR 102 filed as WSR #19-24-046. Following the first hearing, held on January 8, 2020, WSLCB reviewed these comments. Some of the revisions offered were accepted, and resulted in the substantive changes triggering the need for a

supplemental CR 102 and a second hearing. This comment was then resubmitted on July 3, 2020 in response to the supplemental CR 102 filed as WSR #20-12-24, although its content did not change from the January 8, 2020 version.

The revisions to the special occasion license rules clarify language based on feedback from nonprofits. These rules do not increase the regulatory burden on special occasion licensees or change the existing requirements for special occasion licensees.

Was the comment reflected in the adopted rule? This comment is not reflected in the final rule.

7. Email received January 8, 2020 and July 3, 2020:

From Paul Beveridge:

More comments:

----- Forwarded message -----

From: Paul Beveridge < . . >

Date: Fri, Jul 3, 2020 at 4:04 PM

Subject: Re: Proposed Special Occasion Rules Revisions

. . .

Janette, please also include my verbal testimony from the January public hearing in the comments on the re-proposed special occasion license restrictions.

Good morning, for the record I am Paul Beveridge of Wilridge Vineyard, Winery & Distillery and the President of Family Wineries of Washington State.

Special occasion license events are critically important to the success of small wineries. My winery has participated in over one hundred special occasion events. Family Wineries has itself hosted over a dozen special occasion events. I have never witnessed a public safety incident at any event that I have attended.

The existing regulations are so complicated that it is very difficult to put on special occasion events without a promoter to help navigate the arcane LCB requirements. The new regulations will make it harder, not easier, for nonprofits to put on special occasion events. They even make it harder for a nonprofit to hire a promoter to help them.

The new regulations do not provide clarity. No one who actually reads the regulations can conclude that they promote clarity. For instance, the new proposal will double the length of the regulations. The reason the existing regulations are so difficult to understand is because they make little sense in the real world. No amount of explanation and education by the LCB will make it easier for nonprofits to put on events because charity volunteers are normal people who are shocked and confused when they encounter the LCB's arcane rules for the first time.

These rules address no real world problems. They are "necessary" only because of the LCB's illegal unwritten control state policy that "whatever is not expressly permitted by the statute or regulations is not permitted." This LCB's unwritten policy created the problem and confusion the LCB is trying to fix and should be abolished.

Most importantly for today, the LCB does not have to adopt these regulations. The Board has a choice. Contrary to some claims, these rules revisions are not required by the statute. In particular, the LCB is not required, as it now proposes, to treat charities exactly like real brick and mortar retailers. Family Wineries' written comments provide a thorough review of the statute and legislative intent that I do not have time to outline here. But it is clear from our review that the legislature did not require nor intend for the LCB to define charities as retailers. For instance, charities are exempt from the prohibition on the donation of alcohol that applies to retailers. Nonprofits are simply different from retailers. They are charities seeking to raise funds by hosting events featuring fine Washington State manufactured agricultural products. They are not evil "dealers in alcohol" seeking to disrupt the "orderly market" and that need to be controlled by aggressive enforcement at taxpayer expense. These fundamental differences should be considered in the regulations. The LCB should be encouraging special occasion events to raise money for charities, not discouraging them.

I am going to drive in rain and traffic for at least seven hours today to speak to you for less than five minutes. Why am I doing this? Is it because the LCB continues to refuse to modernize its regulations despite clear direction from the legislature and from the citizens in Initiative 1183? Is it because the LCB won't repeal its illegal unwritten "whatever is not permitted is prohibited" policy? Is it because the Ninth Circuit Court of Appeals called rules like these "pernicious" and "lacking in redeeming virtue"? Is it because the LCB cannot find a single law professor or economist not paid for by the corporate distributor lobby that will say these sorts of rules are in the public interest? No, I drove this far because if the LCB is willing to adopt these regulations against charities trying to raise money for good causes, I cannot imagine what the LCB will propose against craft producers who actually "traffic in alcohol" on a regular basis. The current regulatory initiative process by the LCB needs to be stopped in its tracks and redirected today before it gets any worse. Family Wineries has met with each of you recently and we know that the current proposal did not come from the top. The regulatory development process should be changed by this Board today from resurrecting control state era requirements to creating a regulatory climate where all producers willing to compete on a free and fair basis may flourish while having no negative impact on public safety.

We can do this. Washington can have the best craft beverages in the nation, raise more money than any other state, and have the best public safety record in the country -- but not without the Liquor Board's help. Please do not adopt these regulations.

Paul Beveridge
President
Family Wineries of Washington State

WSLCB response: The WSLCB appreciates this comment, and the demonstration of participation in the rulemaking process.

This comment was originally received on January 8, 2020 in response to the initial CR 102 filed as WSR #19-24-046. Following the first hearing, held on January 8,

2020, WSLCB reviewed these comments. Some of the revisions offered were accepted, and resulted in the substantive changes triggering the need for a supplemental CR 102 and a second hearing. This comment was then resubmitted on July 3, 2020 in response to the supplemental CR 102 filed as WSR #20-12-024, although its content did not change from the January 8, 2020 version.

The revisions to the special occasion license rules clarify language based on feedback from nonprofits. These rules do not increase the regulatory burden on special occasion licensees or change the existing requirements for special occasion licensees.

Was the comment reflected in the adopted rule? This comment is not reflected in the final rule.

8. Email received July 7, 2020:

From Andrea McNeely:

July 7, 2020
Rules Coordinator
Liquor and Cannabis Board
PO Box43098
Olympia WA 98504
Email: rules@lcb.gov

RE: Comments re CR 102, Special Occasion Rule WAC 314-05

Dear Ms. Vasek:

I am writing on behalf of Association of Wine and Spirits Distributors regarding the proposed rule changes for the Special Occasion Rules in WAC 314-05. The proposed change to WAC 314-05-030, section 4(c), provides that an "accredited representative of a distiller, manufacturer, importer, or distributor of spiritous liquor" may donate spirits in the special events setting, consistent with the RCW 66.28.040 and the remaining provisions of WAC 314-05-030. I am writing to request that the phrase "or distributor" be removed from this provision. Elsewhere in the rule, only in-state manufacturers or certificate of approval holders for wine and beer, i.e. producers-not distributors of wine and beer-may donate product under this rule.

Removing the rule's authority for a spirits distributor to make such donations would make this provision consistent for all distributors, whether they distribute beer, wine, or spirits. This would avoid the potential confusion and market pressures that could result from allowing only one type of product distributor to make these types of product donations for special occasion events.

It is also worth noting that the term "accredited representative" is not defined elsewhere that I am aware of and may cause additional confusion.

I would be happy to discuss this comment at your convenience. My direct line is < . . .>.

Very truly yours,

Andrea H. McNeely
Executive Director Association of Washington
Spirits and Wine Distributors

WSLCB response: The WSLCB appreciates this comment, and the demonstration of meaningful, collaborative participation in the rulemaking process.

The revisions to the special occasion license rules clarify language based on feedback from nonprofits. These rules do not increase the regulatory burden on special occasion licensees or change the existing license requirements or privileges. Accordingly, the revisions suggested in this comment were not contemplated as part of this rulemaking project.

Was the comment reflected in the adopted rule? This comment was not reflected in the final rule.

Public Hearing, July 8, 2020:

No comments were offered at the public hearing.

Changes from Proposed Rules (CR-102) to the Rules as Adopted:
There were no changes to the proposed rules.