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**INDEPENDENT REGULATORY REVIEW COMMISSION
COMMONWEALTH OF PENNSYLVANIA
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February 19, 2004

Honorable Jeffrey B. Miller, Commissioner
Pennsylvania State Police
3rd Floor, Department Headquarters
1800 Elmerton Avenue
Harrisburg, PA 17110

Re: Regulation #17-64 (IRRC #2372)
Pennsylvania State Police
Administration of the Bureau of Liquor Control Enforcement; Age
Compliance Check Program

Dear Commissioner Miller:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulation review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director
wbg
Enclosure

cc: Honorable Joe Conti, Chairman, Senate Law and Justice Committee
Honorable Sean F. Logan, Minority Chairman, Senate Law and Justice Committee
Honorable Dennis M. O'Brien, Majority Chairman, House Judiciary Committee
Honorable Kevin Blaum, Democratic Chairman, House Judiciary Committee

Comments of the Independent Regulatory Review Commission

on

Pennsylvania State Police Regulation No. 17-64

Administration of the Bureau of Liquor Control Enforcement; Age Compliance Check Program

February 19, 2004

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Pennsylvania State Police (State Police) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on January 20, 2004. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

1. Comments from the House Judiciary Committee. - Protection of public health; Consistency with the statute; Reasonableness; Implementation procedure; Clarity.

During our review of this regulation, we identified issues that raised questions related to the criteria of the Regulatory Review Act. Many of these issues were also raised in the comments submitted to the State Police by Representatives Dennis M. O'Brien, Majority Chairman, and Kevin Blaum, Democratic Chairman, House Judiciary Committee (House Committee), on January 27, 2004. Comments and concerns raised by the House Committee are included in the Commission's comments.

2. Section 23.1. Definitions. - Consistency with statute; Clarity.

Compliance

The definition should include references to the statutes with which the licensee would be in compliance, such as 47 P.S. § 4-493(1) relating to unlawful acts relative to liquor, malt and brewed beverages and licensees.

Sale or sell

The proposed regulation includes a definition of "sale or sell." The definition is no different than the commonly understood meaning of the terms. Therefore, is this definition needed in this regulation?

3. Section 23.21. Required training. - Reasonableness; Implementation procedures; Clarity.

This section requires both bureau officers and underage buyers to complete training before participating in an age compliance check. However, the section does not specify how the State Police will determine if a bureau officer or an underage buyer has successfully completed the required training. Will they be required to undergo some form of examination or demonstration of competence? If so, this requirement should be included in the final-form regulation.

4. Section 23.22. Age compliance checks. - Consistency with the statute; Reasonableness; Implementation procedure; Clarity.

Age compliance check procedures and requirements

Subsection (a) requires an age compliance check to be performed with “at least one bureau officer and one underage buyer.” In what situations would there be a ratio that is not one-to-one?

Notice procedures and requirements

Subsection (j) addresses notification requirements after an age compliance check has been completed. We have three concerns with this subsection.

First, Subsections (a) through (i) address how age compliance checks will be implemented. Subsection (j) addresses notification requirements after an age compliance check has been completed. We recommend that Subsection (j) be separated from Section 23.22 and assigned its own section since it describes the notice process that occurs after the compliance check.

Second, Subsection (j) states that the bureau officer “shall be responsible for insuring notification is made of the results of the age compliance check to the **licensed premises.**” (Emphasis added.) In contrast, 18 Pa.C.S. §§ 6308(e)(3)(ii) and 6310(c)(3)(ii) state:

A **person licensed** to sell liquor or malt or brewed beverages that is found to be in compliance with this section during a compliance check shall be notified in writing of the compliance check and the determination of compliance. (Emphasis added.)

The final-form regulation should be consistent with the statute and should direct the bureau officer to give written notice to an individual such as a manager or person in charge of the premises appointed or designated pursuant to 40 Pa. Code §§ 5.16, 5.17 or 5.23.

Finally, a commentator suggested that the written notification required under this subsection include specific information such as date, time and the name of the server who refused or granted the sale. We agree and suggest that the final-form regulation specify date, time and any other information, if available, that would assist the licensee and its employees in complying with the law.

5. General and Miscellaneous Clarity Issues. - Consistency with statute; Reasonableness; Clarity.

Expiration date

Act 141 of 2002 includes an expiration date of December 31, 2007, for the provisions that allow underage State Police employees to participate in this program. The preamble of the proposed regulation states “no sunset date has been assigned to the regulation.” To be consistent with the statute, the final-form regulation should include an expiration date of December 31, 2007.

Section 23.21(b)(1) - Applicable provisions of the Liquor Code and Crimes Code

The regulation as published in the *Pennsylvania Bulletin* includes references to the “[a]pplicable provisions of the Liquor Code (43 P.S.) and 18 Pa.C.S. (relating to the Crimes Code).” There are two concerns. First, the reference to the Liquor Code should be Title 47 P.S., not Title 43 P.S. Second, the final-form regulation should include references to the specific sections or chapters of Title 47 P.S. and Title 18 Pa.C.S. that are applicable.

Facsimile Cover Sheet

Kristine M. Shomper
Administrative Officer



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Date: February 19, 2004
Pages: 4

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Comments: We are submitting the Independent Regulatory Review Commission's comments on the Pennsylvania State Police's regulation #17-64 (IRRC #2372). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Col. Jeff B. Miller **Date:** 02-19-04