

Regulatory Analysis Form

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IRRC

Independent Regulatory Review Commission

2009 OCT 29 AM 11:05

INDEPENDENT REGULATORY
REVIEW COMMISSION

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SECTION I: PROFILE

(1) Agency:

Pennsylvania Liquor Control Board

(2) Agency Number: 054

Identification Number: 63

IRRC Number: **2613**

(3) Short Title: License Application and Management Contracts

(4) PA Code Cite:

40 Pa. Code

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: James F. Maher (717) 783-9454
Pennsylvania Liquor Control Board
401 Northwest Office Building
Harrisburg, Pennsylvania 17124
FAX: (717) 787-8820
Email: ra-lblegal@state.pa.us

Secondary Contact: Christopher L. Herrington (717) 783-9454
(Same Contact Information)

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
 - Certification by the Governor
 - Certification by the Attorney General

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(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

These changes clarify that the reputation of a corporate applicant for a license is the same as the reputation of its principals. It explains how a "pecuniary interest" of a non-licensee in a license is determined. Standards are set for review of management contracts. The regulations require that merchants selling products to the Board must comply with the Commonwealth's Contractor Responsibility Program. New rules, reflecting new technology, are set for cleaning draft beer systems. Product tastings in wine and spirits stores are simplified. The rulemaking amends hearing procedures related to issuance of subpoenas and the time for filing protests.

(9) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments: 8-20-2007
- B. The date or dates on which public meetings or hearings will be held: None Held
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: 10-29-2009
- D. The expected effective date of the final-form regulation: November, 2009
- E. The date by which compliance with the final-form regulation will be required: Immediately
- F. The date by which required permits, licenses or other approvals must be obtained: _____

(10) Provide the schedule for continual review of the regulation.

Review of the regulations is ongoing and any changes to the regulation will be through the rulemaking process.

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SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

Pennsylvania Liquor Code, section 207(i) [47 P.S. § 2-207(i)].

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The regulations are not mandated by any federal or state law or court order or federal regulation.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Overall, the Board believes that the changes presented in these regulations will improve the Board's efficiency and benefit the regulated community by a clearer understanding of the Board's established administrative practices and procedures.

Several of the changes to the Board's Regulations that are being pursued pertain to the use of management companies by licensees and to the level of interest in the licensed business that such management companies may have. The Board has found with increasing frequency that holders of hotel licenses, and to a somewhat lesser degree, holders of restaurant and eating place malt beverage licenses, are using management companies to carry out day-to-day activities. While Act 10 of 2002 amended the Liquor Code to acknowledge and regulate this process, the Liquor Code still requires that the licensee itself be the only party that is "pecuniarily interested" in the license. [47 P.S. §§ 4-404, 436(f)].

Unfortunately, the term "pecuniarily interested" is not defined in the Liquor Code and the case law is somewhat scant. This presents a problem to the industry as it tries to draft agreements that would allow them to avail themselves of the opportunity to use a management company in a manner that does not violate the Liquor Code. When analyzing a management agreement, the Board has been guided by the Commonwealth Court decision in Appeal of: E-J Westside Inn Corp., 449 A.2d 93 (Pa. Cmwlth. 1981). In that case, the Commonwealth Court held that a party has a pecuniary interest in a license when it participates in the profits of the licensed business and exercises substantial control over the business.

Thus, the purpose of this part of the Regulation is to let the licensed community know how the Board interprets the Commonwealth Court's decision and the factors that the Board will consider when reviewing an arrangement between the licensee and a third party. The proposed definition of "pecuniary

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interest" incorporates the factors specified in the E-J Westside decision: participation in the profits of the licensed business and exercising *substantially* all right to control the business. Further, the Regulations codify the Board's use of a ten percent (10%) threshold in participation in the proceeds of the business as its trigger for further review of a management contract. This has been the administrative standard utilized by the Board for at least the last two (2) decades.

Sections 404 and 436 of the Liquor Code mandate that the Board be satisfied upon receipt of the application and proper fees for issuance of a liquor license that the applicant is the only person pecuniarily interested in the license to be issued and that the applicant is a responsible person of good reputation. [47 P.S. §§ 4-404, 4-436]. The regulations clarify that the same standards the Board applies to licensees also apply to the management companies they utilize. In other words, management companies are subject to sections 404 and 436 of the Liquor Code, requiring that the contractual arrangement does not give the management company (a non-licensee) a pecuniary interest and the license, and that the management company is also a responsible person or entity of good reputation.

The final-form regulations specify that the Board may refuse such an interest based upon the factors provided in section 470(a.1): reputation, criminal history, and current or prior involvement in other licenses. [47 P.S. § 4-470(a.1)]. As provided above, the proposed regulations clarify that the same standards the Board applies to licensees also apply to the management companies they utilize. In other words, management companies are subject to the Liquor Code's requirement that the entity be a responsible person or entity of good reputation. Put another way, the purpose of the proposed regulation is to clarify that the Board has the authority to examine the reputation of a management company in the same manner that it can examine the reputation of the licensee which employs the management company.

In addition, the final-form regulations are amended to notify the licensed community of the process that must be followed in order to notify the Board that a management company is being used. The Board is required to notify the applicant or licensee, in writing, of the Board's decision to either approve or refuse the involvement of a person providing services as a management company. The final-form regulations do not set forth a specific time frame for the Board to notify an applicant or licensee of the Board's decision regarding approval of a management contract. The Board believes that setting a specific time frame would be impracticable, as the management contracts it reviews are highly variable in their scope, complexity and number of parties involved. Additionally, the approval or rejection of a management contract represents an after-the-fact event (i.e., the licensee has already engaged the services of the management company) and therefore does not adversely affect the operation of the licensed business, as the licensee can continue to utilize the management company pending Board approval.

The regulations establish a fee of three hundred fifty dollars (\$350.00) for the Board's review of a management contract. In certain circumstances, such a fee can be waived by the Board if the intent of the applicant is to simply advise of a minor change or correction to a previously approved management contract. For example, there would be no fee assessed where an applicant is fixing a typographical error as to name of a party or an address, where an applicant is providing an exhibit that was referenced in the approved agreement but was inadvertently not provided originally, where an applicant is providing a missing page to an already approved contract or exhibit, where an applicant is reporting a name change as to one of the parties, or where an applicant is reporting a change in the mailing address or a change in

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contact information. However, a fee will be required by the Board if an applicant is reporting that one of the owners of the management company has changed, or if an applicant is reporting that the agreement is being assigned.

Another area of change to the Board's Regulations involves the procedures for cleaning and maintaining systems for serving draft beer. This change reflects the fact that changes in technology allow for cleaning methods that do not require weekly cleanings and will encourage licensees to adopt these more modern methods. There has been uncertainty in the licensed community because the improved technology has been available for several years, but the ability for a licensee to use this technology under the existing regulations has not been clear. It is anticipated that the licensed community will realize a savings if the draft beer systems do not have to be completely emptied and cleaned every week. The enforcement officers of the Bureau of Liquor Control Enforcement, Pennsylvania State Police also have been uncertain about the permissibility of this advanced technology. Resolving these uncertainties should help make enforcement more efficient, predictable and cost-effective.

A further area of change to the Board's Regulations pertains to tastings that are conducted at state stores. Such tastings were first authorized by Act 15 of 2003. In response, the Board drafted Regulations to govern such tastings. Having now conducted several years of tastings, the Board feels that changes to those Regulations will make the tastings more efficient and more consumer-friendly. The specific changes allow sponsors of in-store tastings to import those products to be tasted into Pennsylvania, rather than requiring sponsors to purchase such products from the Board. It also allows partially-consumed bottles being used for tastings to be stored at wine and spirits stores, rather than requiring that they be discarded.

Another area of change to the Board's Regulations pertains to the information the Board considers when assessing an applicant's reputation. The regulations are being amended to reflect the fact that the Liquor Code contemplates a review of the reputation of the individuals associated with the licensee in addition to the licensee itself. Good reputation is a characteristic required by the Liquor Code in determining eligibility for a license. The regulation makes it clear that the reputation of the officers, directors, shareholders, members and partners of an applicant entity will be considered in determining eligibility for a license. Improved clarity and predictability will make the application process more efficient and thus more economical for the applicant for a license.

Administrative changes have been included in Chapter 17, "Special Rules of Practice and Procedure for Matters Before the Board." These changes allow pre-hearing submission of proposed exhibits to the Board's Hearing Examiner and encourage the parties to exchange documents before a hearing. All participants in hearings should benefit from this process to clarify the issues before a hearing begins. Other changes benefit hearing participants by clarifying the time within which a protest to an application must be received. The Board's authority to issue its own subpoenas is also clarified, and thus the administrative process is simplified.

The remaining regulations in this package address administrative changes that will facilitate and improve the Board's administration of the Liquor Code. Each of these changes as presented responds to the public interest in an efficiently regulated alcohol beverage industry in Pennsylvania while keeping pace with

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changes in the dynamic marketplace for alcohol beverages.

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

The validity of technical claims for the ability of the BLM 2000 Beer Dispense Line Cleaning System to retard microbial growth was validated in a paper by A.C. Price titled "An Evaluation of the Efficacy of the BLM 2000 Device for Maintaining Beer Dispense Line Cleanliness." This paper was assessed and found persuasive by M. Jeffery Shoemaker, Ph.D, Director, Division of Chemistry and Toxicology, Bureau of Laboratories, Pennsylvania Department of Health in a letter dated March 18, 2005. A copy of this letter is submitted with the regulations.

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

The Commonwealth may lose revenue on purchases of samples for in-store tastings in an unlikely, but in a worst-case scenario, if sponsors of in-store tastings universally choose not to purchase their products from the Board, as permitted by these regulations, the estimated loss of gross revenue would be around \$200,000 annually. Licensees that decide to use management companies will be adversely affected by having to pay the contract review fee of three hundred fifty dollars (\$350.00).

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

Compliance will be required of licensees using management companies and those upgrading their draft beer systems. Other changes will make minor modifications in how licensees are regulated.

SECTION III: COST AND IMPACT ANALYSIS

(17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

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With respect to those regulatory changes pertaining to management contracts (i.e., the definition of pecuniary interest in section 1.1, the definition of a management contract in section 3.1, section 3.141, section 3.142, and section 3.144), members of the regulated community (e.g., applicants and licensees) who utilize a management company will be required to pay a three hundred fifty dollar (\$350.00) processing fee under section 3.412(c). No other additional costs are expected to be borne by the regulated community, except for the above-mentioned three hundred fifty dollar (\$350.00) fees, as the regulatory changes merely codify existing Board practices in reviewing such management contracts.

There are no expected costs or savings expected for the regulated community regarding the proposed modification to section 1.5 related to evaluating the reputation of licensees. Further, the Board does not expect that the proposed change will result in any costs or savings for either the Commonwealth or local governments.

With respect to the regulatory changes pertaining to beer line cleaning, it is possible that the regulated community may realize potential costs and/or savings depending on their utilization of any newly approved beer line cleaning systems. Such costs and/or savings would be speculative and outside the Board's control.

With respect to the regulatory changes in sections 13.201 and 13.211, pertaining to the amount of alcoholic beverages which may be provided at tasting events conducted by certain licensees of the Board, there are no expected costs or savings expected for the regulated community regarding the proposed modifications.

With respect to the regulatory changes in sections 13.223 and 13.228, pertaining to in-store tasting events, members of the regulated community which provide such in-store tastings may realize savings as a result of being able to provide and transport the wine and spirits from their own stock, as opposed to having to purchase such products from the Board. Further, savings may be realized in that the final-form regulations would allow such members of the regulated community to re-seal bottles used at such in-store tasting events and transport them for additional tasting events, thereby reducing the number of bottles needed for such tasting events. If members of the regulated community sponsoring such in-store tasting events all chose not to purchase their products from the Board, as permitted by these regulations, the Board has estimated that the its loss of tax revenue would be approximately two hundred thousand dollars (\$200,000.00) per year, based upon the Board's experience with conducting tasting events. It should be noted that the estimated loss of two hundred thousand dollars (\$200,000.00) per year would be realized in savings by the regulated community.

With respect to the changes to administrative hearing procedures in these regulations, there are no expected costs or savings expected for the regulated community. Further, the Board does not expect that the proposed changes will result in any costs or savings for either the Commonwealth or local governments.

With respect to the remaining administrative changes represented by the final-form regulations, there are no expected costs or savings expected for the regulated community. Further, the Board does not expect that the proposed changes will result in any costs or savings for either the Commonwealth or local

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governments.

(18) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Local governments are not expected to incur new costs or realize new savings.

(19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

Savings: The fees to be charged for review of management contracts assessed on applicants and licensees utilizing management companies would be retained by the Board, resulting in an overall increase to the Board's revenues, which can be utilized to defray the current administrative costs associated with processing the contracts. The Board's Bureau of Licensing estimates that since June 2005, there are a total of four hundred eighty-six (486) management companies on file with the Board. Further, during 2009 so far, the Board has received sixty-four (64) applications for management companies, which included a copy of the management contract. Accordingly, if the Board would receive a total of eighty-five (85) management contracts through the end of 2009, the Board would receive approximately thirty thousand dollars (\$30,000.00) in fees.

Costs: If members of the regulated community sponsoring in-store tasting events all chose not to purchase their products from the Board, as permitted by these regulations, the Board has estimated that the its loss of tax revenue would be approximately two hundred thousand dollars (\$200,000.00) per year, based upon the Board's experience with conducting tasting events. It should be noted that the estimated loss of two hundred thousand dollars (\$200,000.00) per year would be realized in savings by the regulated community.

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

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	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	Approx. \$200,000	Approx. \$200,000	Approx. \$200,000	Approx. \$200,000	Approx. \$200,000	Approx. \$200,000
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Savings	Approx. \$200,000	Approx. \$200,000	Approx. \$200,000	Approx. \$200,000	Approx. \$200,000	Approx. \$200,000
COSTS:						
Regulated Community	Approx. \$30,000	Approx. \$30,000	Approx. \$30,000	Approx. \$30,000	Approx. \$30,000	Approx. \$30,000
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Costs	Approx. \$30,000	Approx. \$30,000	Approx. \$30,000	Approx. \$30,000	Approx. \$30,000	Approx. \$30,000
REVENUE LOSSES:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	Approx. \$200,000	Approx. \$200,000	Approx. \$200,000	Approx. \$200,000	Approx. \$200,000	Approx. \$200,000
Total Revenue Losses	Approx. \$200,000	Approx. \$200,000	Approx. \$200,000	Approx. \$200,000	Approx. \$200,000	Approx. \$200,000

(20a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
	N/A	N/A	N/A	N/A

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(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

It is believed that the lost revenues for tasting samples not purchased in Pennsylvania will be offset by increased sales of more profitable, high-end products.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

Input has been received from representatives of services that clean draft beer dispensing systems, and from those who supply and install maintenance systems for such systems. Those providing input include Larry Zajdel, Robert Stosic, Robert Kerrigan and Donald Seelinger.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

After promulgation of the proposed regulations, the Board decided to withdraw certain proposed regulations, or proposed changes to existing regulations. First, proposed regulations relating to requiring vendor tax clearance have been completely withdrawn. These proposals were found in sections 1.1, 3.8(a), 3.142(a)(2) and 11.144. The originally proposed regulations were intended to place merchants on notice that the Commonwealth's Contractor Responsibility Program applied to business entities that sell liquor and liquor accessories to the Board. Such sales of liquor and liquor accessories are not subject to the Commonwealth's Procurement Code. The proposed regulation would have required that such merchants of the Board provide documentation demonstrating that they had necessary tax clearances from the Pennsylvania Department of Revenue and the Department of Labor and Industry. During the pendency of the proposed regulations, however, the Commonwealth revised its administrative procedures regarding the payment of Commonwealth vendors. Under the new procedures, merchants selling liquor and liquor accessories to the Board are currently ineligible to receive payment of their invoices if they do not have tax clearance from the Departments of Labor and Industry and Revenue. As the implementation of these new Commonwealth procedures resolved the issues to be addressed by the proposed regulations, the regulations have been withdrawn in their entirety.

Secondly, the Board has withdrawn proposed changes to section 3.8(a) and (b) ("Certificate of Completion; certificate of approval; letter of authority"), as the Board is currently uncertain as to how it

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wishes to proceed regarding the policy changes reflected in the regulations. Accordingly, it was decided to withdraw the proposed regulations and re-submit them to IRRC, in a subsequent regulatory package, after the Board further reflects on how to proceed.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

None of the provisions contained in these regulations are more stringent than federal standards.

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

The Pennsylvania system of liquor regulation is unique. Meaningful comparison to other states is not possible. These regulatory changes will not place Pennsylvania at a competitive disadvantage with other states.

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No effect on the existing or promulgated regulations of the Board is anticipated. These regulations should not affect the regulations of other agencies.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The Board's forms on disclosure of management agreements may be changed. No other paperwork requirements will be significantly affected.

(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No special provisions have been developed to meet the needs of minorities, the elderly, small businesses and farmers.

DEPARTMENT OF HEALTH

Date: March 18, 2005

Subject: BLM 2000 Beer Dispense Line Cleaning System

To: Rodrigo Diaz
Deputy Chief Counsel
Liquor Control Board

From: M. Jeffery Shoemaker, Ph.D.
Director, Division of Chemistry and Toxicology
Bureau of Laboratories
Department of Health
610-280-3464, ext. 3229

We have reviewed the information which you submitted relative to the BLM 2000 Beer Line Cleaning System. The paper by A.C. Price titled "An Evaluation of the Efficacy of the BLM 2000 Device for Maintaining Beer Dispense Line Cleanliness" which was published in the Technical Quarterly of the Master Brewers Association of the Americas (Vol. 39, No. 3, pp. 133-137, 2002) provides evidence that the device effectively inhibits microbial growth. The fact that this information was published in a peer-reviewed journal provides further assurance of the validity of the statements contained in the paper. Further evidence of the adequacy of this system for cleaning beer dispenser lines is provided by the documentation that this device is being successfully employed in other states and by a major beer producer (Coors).

Although we are not experts in the matter at hand, it appears that there is merit to Mr. Donald Seelinger's claim that significant microbial growth will not occur in beer lines when the BLM 2000 device is used if a longer cleaning cycle is permitted than is currently allowed under existing regulations.

Thank you for your inquiry.

cc: Dr. Warren
Ken Brody

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OFFICE OF CHIEF COUNSEL

FACE SHEET
FOR FILING DOCUMENTS
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<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY _____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>Pennsylvania Liquor Control Board</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. 054- 063</p> <p>DATE OF ADOPTION: <u>October 29, 2009</u></p> <p>BY: <u>[Signature]</u></p> <p>TITLE: <u>Chairman</u> (Executive Officer, Chairman or Secretary)</p>	<p>INDEPENDENT REGULATORY REVIEW COMMISSION</p> <p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies:</p> <p>BY: <u>[Signature]</u></p> <p><u>October 29, 2009</u> DATE OF APPROVAL</p> <p>(Chief Counsel, Independent Agency)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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TITLE 40—LIQUOR

CHAPTER 1. GENERAL PROVISIONS

The following sections were amended:

§ 1.1 Definitions.

§ 1.5 Reputation: Use of criminal and citation history.

CHAPTER 3. LICENSE APPLICATIONS

The following sections were amended:

3.1 Definitions

Amendments to the following section were withdrawn:

§ 3.8. Certificate of completion; certificate of approval; letter of authority.

The following Subchapter and sections (underlined) were added:

Subchapter M. MANAGEMENT CONTRACTS

§ 3.141. Management Contracts.

§ 3.142. Reporting.

§ 3.143. Board approval and licensee responsibility.

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

The following sections were amended:

§ 5.23. Appointment of managers.

The following sections were amended and a section (underlined) was added:

§ 5.50. Definition.

§ 5.51. Cleaning of [coils, tap rods and connections] malt or brewed beverage dispensing systems.

§ 5.52. Certificate or record required.

§ 5.53. Pressure maintenance.

§ 5.54. Responsibility for condition of equipment.

CHAPTER 7. TRANSFER, EXTENSION, SURRENDER, EXCHANGE AND SUSPENSION OF LICENSES

The following section was amended:

§ 7.2. Transfers of ownership.

The following proposed new section was withdrawn:

CHAPTER 11. PURCHASES AND SALES

~~§ 11.143. Merchant tax responsibility.~~

CHAPTER 13. PROMOTION

The following sections were amended:

§ 13.43 Interior display.

§ 13.51 General prohibition

§13.201. Definitions

§13.211 Tasting events

§13.223. Procurement of wine or spirits, or both.

§13.228. Disposal and storage of partially-used liquor and empty containers.

CHAPTER 17. SPECIAL RULES OF PRACTICE AND PROCEDURE FOR MATTERS BEFORE
THE BOARD

The following sections were amended:

§17.5. Subpoenas.

§17.7. Exhibits.

§17.13 Protests/intervention procedure

Title 40 -- Liquor

The Pennsylvania Liquor Control Board (Board), under the authority of Section 207(i) of the Pennsylvania Liquor Code [47 P.S. § 2-207(i)], proposes to amend 40 Pa. Code, Chapters 1, 3, 5, 7, 11, 13 and 17.

Purpose:

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on May 17, 2007, the Pennsylvania Liquor Control Board submitted a copy of the notice of proposed rulemaking, published at 37 Pa.B. 3418, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on May 17, 2007 and Senate Committee on May 17, 2007 for review and comment.

Several of the changes to the Board's Regulations that are being pursued pertain to the use of management companies by licensees and to the level of interest in the licensed business that such management companies may have. The Board has found with increasing frequency that holders of hotel licenses, and to a somewhat lesser degree, holders of restaurant and eating place malt beverage licenses, are using management companies to carry out day-to-day activities. While Act 10 of 2002 amended the Liquor Code to acknowledge and regulate this process, the Liquor Code still requires that the licensee itself be the only party that is "pecuniarily interested" in the license. [47 P.S. §§ 4-404, 436(f)].

Unfortunately, the term "pecuniarily interested" is not defined in the Liquor Code and the case law is somewhat scant. This presents a problem to the industry as it tries to draft agreements that would allow them to avail themselves of the opportunity to use a management company in a manner that does not violate the Liquor Code. When analyzing a management agreement, the Board has been guided by the Commonwealth Court decision in Appeal of: E-J Westside Inn Corp., 449 A.2d 93 (Pa. Cmwlth. 1981). In that case, the Commonwealth Court held that a party has a pecuniary interest in a license when it participates in the profits of the licensed business and exercises substantial control over the business.

Thus, the purpose of this part of the Regulation is to let the licensed community know how the Board interprets the Commonwealth Court's decision and the factors that the Board will consider when reviewing an arrangement between the licensee and a third party. The proposed definition of "pecuniary interest" incorporates the factors specified in the E-J Westside decision: participation in the profits of the licensed business and exercising *substantially* all right to control the business. Further, the Regulations codify the Board's use of a ten percent (10%) threshold in participation in the proceeds of the business as its trigger for further review of a management contract. This has been the administrative standard utilized by the Board for at least the last two (2) decades.

Sections 404 and 436 of the Liquor Code mandate that the Board be satisfied upon receipt of the application and proper fees for issuance of a liquor license that the applicant is the only person pecuniarily interested in the license to be issued and that the applicant is a responsible person of good reputation. [47 P.S. §§ 4-404, 4-436]. The regulations clarify that the same standards the Board applies when determining the fitness of licensees will also be applied to the management companies they utilize. In other words, management companies are subject to sections 404 and 436 of the Liquor Code, requiring that the contractual arrangement does not give the management company (a non-licensee) a pecuniary interest and the license, and that the management company is also a responsible person or entity of good reputation.

The final-form regulations specify that the Board may refuse such an interest based upon the factors provided in section 470(a.1): reputation, criminal history, and current or prior involvement in other licenses. [47 P.S. § 4-470(a.1)]. The final-form regulations clarify that management companies are subject to the Liquor Code's requirement that the entity be a responsible person or entity of good reputation. Put another way, the purpose of the proposed regulation is to clarify that the Board has the authority to examine the reputation of a management company in the same manner that it can examine the reputation of the licensee which employs the management company.

In addition, the Regulations are amended to notify the licensed community of the process that must be followed in order to notify the Board that a management company is being used. The Board is required to notify the applicant or licensee, in writing, of the Board's decision to either approve or refuse the involvement of a person providing services as a management company. The final-form regulations do not set forth a specific time frame for the Board to notify an applicant or licensee of the Board's decision regarding approval of a management contract. The Board believes that setting a specific time frame would be impracticable, as the management contracts it reviews are highly variable in their scope, complexity and number of parties involved. Additionally, the approval or rejection of a management contract represents an after-the-fact event (i.e., the licensee has already engaged the services of the management company) and therefore does not adversely affect the operation of the licensed business, as the licensee can continue to utilize the management company pending Board approval.

The Regulations establish a fee of three hundred fifty dollars (\$350.00) for the Board's review of a management contract. In certain circumstances, such a fee can be waived by the Board if the intent of the applicant is to simply advise of a minor change or correction to a previously approved management contract. For example, there would be no fee assessed where an applicant is fixing a typographical error as to name of a party or an address, where an applicant is providing an exhibit that was referenced in the approved agreement but was inadvertently not provided originally, where an applicant is providing a missing page to an already approved contract or exhibit, where an applicant is reporting a name change as to one of the parties, or where an applicant is reporting a change in the mailing address or a change in contact information. However, a fee will be required by the Board if an applicant is reporting that one of the owners of the

management company has changed, or if an applicant is reporting that the agreement is being assigned.

Another area of change to the Board's Regulations involves the procedures for cleaning and maintaining systems for serving draft beer. This change reflects the fact that changes in technology allow for cleaning methods that do not require weekly cleanings and will encourage licensees to adopt these more modern methods. There has been uncertainty in the licensed community because the improved technology has been available for several years, but the ability for a licensee to use this technology under the existing regulations has not been clear. It is anticipated that the licensed community will realize a savings if the draft beer systems do not have to be completely emptied and cleaned every week. The enforcement officers of the Bureau of Liquor Control Enforcement, Pennsylvania State Police also have been uncertain about the permissibility of this advanced technology. Resolving these uncertainties should help make enforcement more efficient, predictable and cost-effective.

A further area of change to the Board's Regulations pertains to tastings that are conducted at state stores. Such tastings were first authorized by Act 15 of 2003. In response, the Board drafted Regulations to govern such tastings. Having now conducted several years of tastings, the Board feels that changes to those Regulations will make the tastings more efficient and more consumer-friendly. The specific changes allow sponsors of in-store tastings to import those products to be tasted into Pennsylvania, rather than requiring sponsors to purchase such products from the Board. It also allows partially-consumed bottles being used for tastings to be stored at wine and spirits stores, rather than requiring that they be discarded.

Another area of change to the Board's Regulations pertains to the information the Board considers when assessing an applicant's reputation. The regulations are being amended to reflect the fact that the Liquor Code contemplates a review of the reputation of the individuals associated with the licensee in addition to the licensee itself. Good reputation is a characteristic required by the Liquor Code in determining eligibility for a license. The regulation makes it clear that the reputation of the officers, directors, shareholders, members and partners of an applicant entity will be considered in determining eligibility for a license. Improved clarity and predictability will make the application process more efficient and thus more economical for the applicant for a license.

Administrative changes have been included in Chapter 17, "Special Rules of Practice and Procedure for Matters Before the Board." These changes allow pre-hearing submission of proposed exhibits to the Board's Hearing Examiner and encourage the parties to exchange documents before a hearing. All participants in hearings should benefit from this process to clarify the issues before a hearing begins. Other changes benefit hearing participants by clarifying the time within which a protest to an application must be received. The Board's authority to issue its own subpoenas is also clarified, and thus the administrative process is simplified.

The remaining regulations in this package address administrative changes that will facilitate and improve the Board's administration of the Liquor Code. Each of these changes as presented responds to the public interest in an efficiently regulated alcohol beverage industry in Pennsylvania while keeping pace with changes in the dynamic marketplace for alcohol beverages.

Proposed regulations relating to requiring vendor tax clearance have been completely withdrawn. These proposals were found in sections 1.1, 3.8(a), 3.142(a)(2) and 11.144. The originally proposed regulations were intended to place merchants on notice that the Commonwealth's Contractor Responsibility Program applied to business entities that sell liquor and liquor accessories to the Board. Such sales of liquor and liquor accessories are not subject to the Commonwealth's Procurement Code. The proposed regulation would have required that such merchants of the Board provide documentation demonstrating that they had necessary tax clearances from the Pennsylvania Department of Revenue and the Department of Labor and Industry. During the pendency of the proposed regulations, however, the Commonwealth revised its administrative procedures regarding the payment of Commonwealth vendors. Under the new procedures, merchants selling liquor and liquor accessories to the Board are currently ineligible to receive payment of their invoices if they do not have tax clearance from the Departments of Labor and Industry and Revenue. As the implementation of these new Commonwealth procedures resolved the issues to be addressed by the proposed regulations, the regulations have been withdrawn in their entirety.

Moreover, the Board has withdrawn proposed changes to section 3.8(a) and (b) ("Certificate of Completion; certificate of approval; letter of authority"), as the Board is currently uncertain as to how it wishes to proceed regarding the policy changes reflected in the regulations. Accordingly, it was decided to withdraw the proposed regulations and re-submit them to IRRC, in a subsequent regulatory package, after the Board further reflects on how to proceed.

Summary of Amendments:

The regulatory amendments add three (3) new definitions, establish regulations for management agreements, revise procedures for wine and spirits tastings in stores and revise rules of hearing procedure. Obsolete regulations about cleaning draft beer systems are updated. The following are summaries of the regulatory changes:

- The rulemaking defines the term "pecuniary interest."
- It clarifies that the reputation of stockholders, directors, officers and members of corporate or other business entity licensees will be considered in assessing the reputation of the licensee.
- It establishes rules and procedures for approval of management agreements and sets a fee for review of such agreements.
- It recognizes that licensees are using new technology to assure that malt or brewed beverage dispensing systems are clean.

- It codifies the Board's established practice that the purchase price for transfers of licenses that involve changes in ownership must be placed into escrow.
- It amends regulations on "tasting events" to clarify the amount of alcoholic beverages that may be given. It also allows sponsors of in-store tastings to import into Pennsylvania, products to be tasted rather than making them buy the products from the Board. It also allows partially-consumed bottles being used for tasting to be stored at wine and spirits stores, rather than requiring that they be discarded.
- The rulemaking amends hearing procedures related to issuance of subpoenas and the time for filing protests.

Affected Parties:

The regulations will affect licensees and applicants for licenses issued by the Board. It will affect anyone participating in a hearing before the Board.

Paperwork Requirements:

The regulatory amendments will not significantly increase paperwork for the agency or most of the regulated community.

Fiscal Impact:

With respect to those regulatory changes pertaining to management contracts, members of the regulated community who utilize a management company will be required to pay the three hundred fifty dollar (\$350.00) processing fee under section 3.412(c). No other additional costs, except for the above-mentioned three hundred fifty dollar (\$350.00) fees, are expected to be borne by the regulated community, as the regulatory changes merely codify existing Board practices in reviewing such management contracts. Such fees assessed on applicants and licensees utilizing management companies would be retained by the Board, resulting in an overall increase to the Board's revenues, which can be utilized to defray the current administrative costs associated with processing the contracts. The records of the Pennsylvania Liquor Control Board's ("Board") Bureau of Licensing estimates that since June 2005, there are a total of four hundred eighty-six (486) management companies on file with the Board. Further, since the start of 2009, the Board has received sixty-four (64) applications for management companies, which included a copy of the management contract. Accordingly, if the Board would receive a total of eighty-five (85) management contracts through the end of 2009, the Board would receive approximately thirty thousand dollars (\$30,000.00) in fees.

There are no expected costs or savings expected for the regulated community regarding the proposed modification to section 1.5 related to evaluating the reputation of

licensees. Further, the Board does not expect that the proposed change will result in any costs or savings for the either the Commonwealth or local governments.

With respect to the regulatory changes pertaining to beer line cleaning, it is possible that the regulated community may realize potential costs and/or savings depending on their utilization of any newly approved beer line cleaning systems. Such costs and/or savings would be speculative and outside the Board's control. The Board does not expect that the proposed change will result in any costs or savings for either the Commonwealth or local governments.

With respect to the regulatory changes in sections 13.201 and 13.211, pertaining to the amount of alcoholic beverages which may be provided at tasting events conducted by certain licensees of the Board, there are no expected costs or savings expected for the regulated community regarding the proposed modifications. Further, the Board does not expect that the proposed changes will result in any costs or savings for the either the Commonwealth or local governments.

With respect to the regulatory changes in sections 13.223 and 13.228, pertaining to in-store tasting events, members of the regulated community which provide such in-store tastings may realize savings as a result of being able to provide and transport the wine and spirits from their own stock, as opposed to having to purchase such products from the Board. Further, savings may be realized in that the final-form regulations would allow such members of the regulated community to re-seal bottles used at such in-store tasting events and transport them for additional tasting events, thereby reducing the number of bottles needed for such tasting events. If members of the regulated community sponsoring such in-store tasting events all chose not to purchase their products from the Board, as permitted by these regulations, the Board has estimated that the its loss of tax revenue would be approximately two hundred thousand dollars (\$200,000.00) per year, based upon the Board's experience with conducting tasting events. It should be noted that the estimated loss of two hundred thousand dollars (\$200,000.00) per year would be realized in savings by the regulated community.

With respect to the changes to administrative hearing procedures in these regulations, there are no expected costs or savings expected for the regulated community. Further, the Board does not expect that the proposed changes will result in any costs or savings for either the Commonwealth or local governments.

With respect to the remaining administrative changes represented by the final-form regulations, there are no expected costs or savings expected for the regulated community. Further, the Board does not expect that the proposed changes will result in any costs or savings for either the Commonwealth or local governments.

Effective Date:

This regulation will become effective upon its publication in final form in the *Pennsylvania Bulletin*.

Public Comment/Contact Person:

Comments and questions should be addressed to James F. Maher, Assistant Counsel, Office of Chief Counsel, Pennsylvania Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

Regulatory Review:

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing these final-form regulations, the Board has considered all comments from IRRC, the Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act, on (blank) , these final-form regulations were (deemed) approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on (blank) and approved the final-form regulations.

P. J. Stapleton III
Chairman

ANNEX A
TITLE 40. LIQUOR
PART I. LIQUOR CONTROL BOARD
CHAPTER 1. GENERAL PROVISIONS

§ 1.1. Definitions.

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

* * *

~~Merchant — an importer, winery, limited winery brewery, distillery or vendor desiring to sell spirits or wine to the Board, or any seller of products the Board is permitted to sell in its stores under section 305 of the Liquor Code. [47 P.S. § 3-305].~~

* * *

~~Pecuniary interest — the capability of a person to control the business of the licensee AN INTEREST THAT SOUNDS IN THE ATTRIBUTES OF PROPRIETORSHIP. There is a rebuttable presumption of a pecuniary interest where a person controls a substantial portion of the proceeds RECEIVES TEN PERCENT (10%) OR MORE OF THE PROCEEDS of the licensed business or where control is exercised by~~

- (a) ~~Employing a majority of the employees of the licensee;~~
- (b) ~~Independently making day-to-day decisions about the operation of the business, or~~

(c) Having final authority to decide how the licensed business is conducted.

§ 1.5. Reputation: Use of criminal and citation history.

(a) When considering whether a person is reputable or the repute of a person under any section of the Liquor Code or this title, the Board may consider whether that person has been convicted of any crimes including misdemeanors and felonies, the person's history regarding licenses issued by the Board, including the citation history of the licenses, and any other factor the Board deems appropriate.

(b) When considering the reputation of a corporation, partnership, limited liability company or other business entity, the Board may WILL consider the reputation of its stockholders, directors, officers, managers or members.

CHAPTER 3. LICENSE APPLICATIONS

SUBCHAPTER A. GENERAL PROVISIONS

§ 3.1. Definitions.

* * *

MANAGEMENT CONTRACT - A MANAGEMENT CONTRACT IS AN AGREEMENT BETWEEN A LICENSEE AND A MANAGEMENT COMPANY

TO OPERATE, MANAGE OR SUPERVISE ALL OR PART OF THE
OPERATION OF THE LICENSED PREMISES.

* * *

§ 3.8. Certificate of completion; {certificate of approval;} letter of authority.

(a) Upon Board approval of an application for new license, transfer of a license or extension of premises, the Board will issue a {certificate of approval} **letter of operating authority** to the applicant. {The Board will also issue a letter of authority which shall authorize the applicant to operate the licensed premises for no more than 30 days.} ~~The letter of operating authority confers upon the applicant the immediate right to operate the licensed premises and the immediate responsibility as a licensee. The letter of operating authority may list conditions the applicant shall complete before a license is issued.~~ {If the application is for an extension of premises, the letter of authority shall be effective immediately. If the application is for a new license, the letter of authority shall be effective when the applicant acquires the right to occupy the premises. If the application is for the transfer of a license, the letter of authority shall be effective upon completion of the underlying financial transaction. Within 15 days of completion of transactions necessary to complete the process,}

~~(b) Within the time specified by the Board in the letter of operating authority,~~ the applicant shall submit a certificate of completion to the Board, indicating that the financial arrangements were completed as reported or modified. The certification shall be on forms provided by the Board. {If the application is a transfer application, then the certificate of completion must be signed by the transferor and the transferee. Failure to

submit a properly executed certificate of completion may void the approval.}]

{(b)} ~~(e)~~ If the certificate of completion ~~is not submitted or~~ discloses modified arrangements, the Board may request additional information or documentation, as it deems necessary.

{(c)} If the certified modifications are such that the eligibility of the applicant or premises would not be affected, the Board will take no action against the applicant.}]

~~(d) If the certificate of completion is not submitted, or additional information the Board has requested is not provided, or if such additional information indicates that the application does not conform to the Liquor Code or the Board's Regulations, the Board may rescind its approval, order divestiture of individuals, or take other remedial action as it deems necessary.~~

Subchapter M. MANAGEMENT CONTRACTS

§ 3.141. Management contracts.

- (a) A licensee may contract with another person to manage its licensed premises.
- (b) Management contracts shall reserve to the licensee the capability to direct its own business.
- (c) Management contracts shall be in writing, and a copy shall be maintained on the licensed premises where it shall be available for inspection by the Board.

(d) Management contracts may not give a pecuniary interest to a management company.

§ 3.142. Reporting.

(a) CURRENT Licensees or applicants for licenses that have management contracts shall file WITH THE BOARD'S BUREAU OF LICENSING ('LICENSING'), the following:

~~(i) On forms supplied by the Board LICENSING, the identity of all persons who are parties to the management contracts.~~

~~(ii) On forms approved by the Departments of Revenue and Labor and Industry, tax certification and clearance statements for the person providing management services (47 P.S. § 4-477(a)(6)).~~

(b) CURRENT Licensees or applicants for licenses that enter into, modify or terminate management contracts shall, within 30 days, file a written notice with the Board that this has occurred. The changes shall be reported on forms which will be furnished upon request by the Board.

(c) Licensees filing notice of the establishment or modification of a management contract shall pay a fee of \$350.00. No fee is payable when a licensee gives notice to the Board that a management contract has been terminated. LIKEWISE, NO FEE IS REQUIRED WHEN A LICENSEE IS NOTIFYING THE BOARD OF A NON-SUBSTANTIVE CHANGE TO AN EXISTING MANAGEMENT CONTRACT, SUCH AS THE CORRECTION OF A

TYPOGRAPHICAL ERROR, THE PROVIDING OF A PAGE OR DOCUMENT INADVERTENTLY OMITTED FROM AN EARLIER SUBMISSION, OR A NAME, ADDRESS OR CONTACT INFORMATION CHANGE AS TO ONE OF THE PARTIES.

§ 3.143. Board approval and licensee responsibility.

(A) THE BOARD SHALL NOTIFY THE CURRENT LICENSEE OR APPLICANT, IN WRITING, OF THE BOARD'S DECISION TO EITHER APPROVE OR REFUSE THE INVOLVEMENT OF A PERSON PROVIDING SERVICES AS A MANAGEMENT COMPANY.

(aB) The Board may refuse the involvement of a person providing management services AS A MANAGEMENT COMPANY. The Board's refusal may be based upon:

- I. The creation by the management contract of a pecuniary interest in the license;
- II. Facts upon which the Board could refuse a person's involvement in the license WHICH MAY INCLUDE REASONS SPECIFIED IN SECTION 470 (A.1) OF THE LIQUOR CODE, SUCH AS REPUTATION, CRIMINAL HISTORY, AND CURRENT OR PRIOR INVOLVEMENT IN OTHER LICENSES.

(BC) The licensee's use of a management company will not affect the licensee's responsibility for violations of the Liquor Code or the Board's regulations.

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

SUBCHAPTER B. EMPLOYES OF LICENSEES
EMPLOYMENT OF OTHERS

§ 5.23. Appointment of managers.

* * *

(i) If approved by the Board, management contracts may permit the manager for the licensed premises to be employed by the management company; however, licensee shall have unfettered discretion in all aspects of management of the licensed business, including the employment of the manager and sales of food, alcoholic and nonalcoholic beverages. Licensee's discretion includes control of the manager's hiring, firing, discipline, salary and duties. The manager is an agent of the licensee.

* * *

SUBCHAPTER D. SANITARY CONDITIONS AND LIGHTING AND CLEANING
OF [COILS] MALT OR BREWED BEVERAGE DISPENSING SYSTEMS

* * *

CLEANING OF [COILS] MALT OR BREWED BEVERAGE DISPENSING
SYSTEMS

§ 5.50. DEFINITION.

MALT OR BREWED BEVERAGE DISPENSING SYSTEM - A MALT OR BREWED BEVERAGE DISPENSING SYSTEM SHALL MEAN A KEG OR OTHER CONTAINER OF MALT OR BREWED BEVERAGES TOGETHER WITH ALL COMPONENTS USED TO SERVE SUCH BEVERAGES ON DRAFT.

§ 5.51. Cleaning of [coils, tap rods and connections] malt or brewed beverage dispensing systems.

(a) [Coils, tap rods and connections, used in drawing malt or brewed beverages in licensed establishments, shall be thoroughly cleaned at least once every 7 days at the sole expense of the licensee dispensing the beverages on draft. The cleaning of coils, tap rods and connections by one licensee for another licensee is prohibited.] **A licensee that uses a malt or brewed beverage dispensing system in its licensed premises must clean the system at its sole expense. One licensee may not clean a malt or brewed beverage dispensing system for another licensee.**

(b) [The following methods of cleaning coils, tap rods and connections have been approved by the Board:

- (1) Live steam.
- (2) Hot water and soda solution, followed by thorough rinsing with hot water.
- (3) Another method which thoroughly cleans the coils, tap rods and

connections, and leaves them in a sanitary condition.] **The method of cleaning will leave the entire malt or brewed beverage dispensing system in a clean and sanitary**

condition. The cleaning method used will include cleaning the entire system with a chemical cleaning solution or other cleaning method approved by the Board. The following alternative cleaning methods have Board approval:

(1) Live steam.

(2) Hot water and soda solution, followed by thorough rinsing with hot water.

(c) The frequency of cleaning for the malt or brewed beverage dispensing system shall be as follows:

(1) Once every seven days for the valves, joints, faucets, couplers, hose fittings, washers, o-rings, empty beer detectors (known as "FOBs") and draft foam control units.

(2) Once every seven days for the dispensing lines, VALVES, JOINTS, COUPLERS, HOSE FITTINGS, WASHERS, O-RINGS, EMPTY BEER DETECTORS (KNOWN AS "FOBS") AND DRAFT FOAM CONTROL UNITS, except if the licensee has an operating ultrasonic, electromagnetic or other system that retards the growth of yeast and bacteria in the dispensing lines. If such a system is installed and operating, licensee must follow the cleaning frequency and cleaning method guidelines of the system's manufacturer.

(3) The Board may approve different cleaning frequencies.

§ 5.52. Certificate or record required.

(a) [Coils, tap rods and connections] **The malt or brewed beverage dispensing system** may be cleaned for the licensee by a person, other than another licensee, thoroughly equipped to do so by a method enumerated in § 5.51 [(relating to cleaning of coils, tap rods and connections)]. The licensee [should] **shall** obtain from the cleaner a certificate showing the date cleaned, the name of the person by whom cleaned and the method utilized. The certificate shall be kept on file **at the licensed premises** at all times for inspection by the Board.

(b) [Coils, tap rods and connections] **The malt or brewed beverage dispensing system** may be cleaned by the licensee [himself by a method enumerated in § 5.51]. The licensee shall maintain and keep a record of the date of each cleaning and the method utilized. This record shall also be kept on file at all times for inspection by the Board.

§ 5.53. Pressure maintenance.

[Where an airline pump is used for pressure, the intake shall be from outside the building and an air filter or satisfactory air cleansing device shall be provided. The use of carbon dioxide is recommended in lieu of air, as this is conducive to the maintenance of normal flavor in that it is much less susceptible than air to the growth of organisms and chemical changes which may impair flavor.] **If a compressed gas or other pressurizing system is used in the malt or brewed beverage dispensing system, it shall be designed to preserve the normal flavor of the malt or brewed beverage and not introduce contaminants SUCH AS DUST, WATER OR OIL, into the system.**

§ 5.54. Responsibility for condition of equipment.

The licensee has the sole responsibility of maintaining equipment used in dispensing malt or brewed beverages on draft in a clean and sanitary condition. The mere fact that records of licensees [indicating] indicate that [coils, tap rods and connections have] **the malt or brewed beverage dispensing system has** been cleaned [are] **is** no defense to [disciplinary] **enforcement** action under the law and the provisions of this subchapter if the [coils, tap rods or connections are] **malt or brewed beverage dispensing system is** at any time found to be in an [insanitary] **unsanitary** condition.

CHAPTER 7. TRANSFER, EXTENSION, SURRENDER, EXCHANGE AND
SUSPENSION OF LICENSES

Subchapter A. TRANSFER OF LICENSES

§ 7.2. Transfers of ownership. Where an application is filed for transfer of a license from one person to another [at the same address], a bill of sale of the business or fixtures shall be executed by the licensee and shall be exhibited to the Board or its representative. The purchase price of the business, either in the form of cash or legal obligation as security for the purchase price, shall be placed in escrow with an attorney or financial institution, to be paid to the original licensee upon the approval of the transfer by the Board. The actual transfer of ownership of the business may not pass until approval of the transfer of license has been given. The transferee shall exhibit a deed or lease for the

premises, or bill of sale, or both, as the case may be. The license may not change hands until the license transfer has been approved by the Board and the original licensee may continue the operation of the business and may sell liquor or malt or brewed beverages until formal approval of the transfer is given. If the original licensee does not continue operation of the business under the license, no liquor or malt or brewed beverages may be sold and the license shall be surrendered to the Board until the transfer is approved.

~~CHAPTER 11. PURCHASES AND SALES~~

~~Subchapter F. SALE OF LIQUOR TO THE BOARD~~

* * *

~~§ 11.143. Merchant tax responsibility.~~

~~[(a) A merchant not already licensed by the Board shall provide to the Board, upon forms approved by the Pennsylvania Departments of Revenue and Labor and Industry, the following:~~

~~(1) the merchant's personal income tax identification number;~~

~~(2) the merchant's sales tax number;~~

~~(3) the merchant's corporation tax number;~~

~~(4) the merchant's employer withholding tax number; and~~

~~(5) the merchant's unemployment compensation account number;~~

~~(b) A merchant, at the time of annual renewal and issuance of its license or permit shall, by the filing of an application, waive any confidentiality with respect to tax information regarding said merchant in the possession of the Department of Revenue, the Office of Attorney General or the Department of Labor and Industry, regardless of the source of that information and shall consent to the providing of that information to the Board by the Department of Revenue, the Office of Attorney General or the Department of Labor and Industry.~~

~~(c) Upon receipt of any application for the grant, renewal or validation of any merchant's license or permit, the Board shall review the tax status of the applicant. The Board shall request tax information regarding the applicant from the Department of Revenue, the Office of Attorney General and the Department of Labor and Industry and said information shall be provided.~~

~~(d) The Board shall not approve any application for the grant, renewal or validation of any merchant's license or permit issued pursuant to this article where the applicant has failed to:~~

~~(1) provide any of the information required by subsection (a);~~

~~(2) file required tax reports; or~~

~~(3) pay any taxes not subject to a timely administrative or judicial appeal or subject to a duly authorized deferred payment plan.~~

~~(e) Upon the required submission of the annual fee or upon renewal, validation or issuance of any merchant's license or permit, if the Department of Revenue or the Department of Labor and Industry notifies the Board of noncompliance with the aforementioned provisions, the Board shall not renew, issue or validate the merchant's license or permit. Any appeal of the Board's action shall not act as a supersedeas.~~

CHAPTER 13. PROMOTION

SUBCHAPTER A. ADVERTISING

ADVERTISING OF BRAND NAMES

§ 13.43. Interior display.

(a) A licensee may [not] install or permit to be installed electrically operated signs or devices, lithographs, framed pictures, cardboard displays, statuettes, plaques, placards, streamers or similar items advertising brand names and intended for interior display on the licensed premises.

SUBCHAPTER A. ADVERTISING

GIVING AND ACCEPTING THINGS OF VALUE

§ 13.51. General prohibition.

(a) Except as provided **herein** [in subsections (b), (c)] and **in** § 13.52 (relating to advertising novelties), no in-State or out-of-State manufacturer, licensee or group of licensees, their servants, agents or employes, may directly or indirectly, in person, individually or through a trade organization, contribute to or accept from another licensee or group of licensees of a different class, their servants, agents or employes or a trade organization of licensees of a different class, anything of value by means of advertisements, contributions, purchase, sale of tickets, donations or by any device, for any purpose.

* * *

(e) The sponsorship of a tasting upon a licensed premises shall not be considered giving or accepting a thing of value.

Subchapter D. TASTING EVENTS

§ 13.201. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Sponsor--A sponsor of a tasting event may be any licensed **vendor, importer, distributor, importing distributor or manufacturer** [broker, holder of a limited winery or winery license, or a manufacturer of liquor] or its agent **or employee who is 21** years of age or older.

* * *

Standard size alcoholic beverage--A standard size alcoholic beverage is 12 fluid ounces of a malt or brewed beverage, 4 fluid ounces of wine (including fortified wine) or 1 1/2 fluid ounces of **spirits** [liquor].

* * *

TASTING EVENTS

§ 13.211. Tasting events.

(a) Tastings may be conducted by **sponsors** [licensed brokers vendors, importers, distributors, importing distributors and manufacturers or their agents] upon licensed or unlicensed premises.

(b) **Sponsors** [Licensed brokers, distributors, importing distributors and manufacturers or their agents] conducting a tasting event shall adhere to the following requirements:

(1) Products used shall be legally procured and properly registered and taxes on the products shall be paid.

(2) Purchase requirements may not be associated with the tasting.

(3) Products offered will not exceed a standard size alcoholic beverage for that product. For example, if wine is offered, each glass of each wine offered to a participant will not exceed four ounces in volume. A tasting event comparing a brand of Chardonnay from California to a brand of Chardonnay from France would allow the participant to receive one four-ounce glass of each Chardonnay.

[No more than one standard size alcoholic beverage of each product shall be provided to each tasting participant.]

IN-STORE TASTING EVENTS

§ 13.223. Procurement of wine or spirits, or both.

(a) Wine or spirits used during the in-store tasting events must be procured by the sponsor in accordance with the sampling process as specified in § 13.81 (relating to samples of liquor) [or], by [legal] purchase from the Board or the sponsor may provide and transport the wine and spirits from its own stock.

§ 13.228. Disposal and storage of partially-used liquor [unused alcohol] and empty containers.

(a) At the conclusion of the in-store tasting event, sponsors shall either discard unused portions of opened liquor containers at the State Liquor Store or may re-seal the partially-consumed liquor containers. The resealed partially-used containers shall be placed in storage at the store for use at a subsequent store tasting or may be

removed from the premises. No partially-consumed liquor containers will be placed in storage at a store for more than 15 days. After 15 days, partially-used containers of liquor may be discarded by the Board.

(b) Sponsors shall dispose of all empty liquor containers in accordance with section 491(5) of the Liquor Code (47 P. S. § 4-491(5))

(c) **Resealed partially-used** [Unused product, bottles or] containers may not be furnished to employees of the Board **or any other person and may only be used for a subsequent in-store tasting.**

CHAPTER 17. SPECIAL RULES OF PRACTICE AND PROCEDURE FOR MATTERS BEFORE THE BOARD

Subchapter A. GENERAL

§ 17.5. Subpoenas. (a) Issuance. [Issuance] **Except for subpoenas issued upon the Board's own motion, issuance** of subpoenas [shall] **will** be as follows:

(1) Subpoenas for the attendance of witnesses or for the production of documents will be issued only upon written application to the Board, with a copy of the application to the opposing party.

§ 17.7. Exhibits. (a) Exhibits to be presented in connection with a hearing shall be

submitted in five copies each at the time of the hearing unless otherwise directed by the Board.

(b) Subsection (a) supersedes 1 Pa. Code § 33.15 (relating to number of copies).

(c) Documents that the Board, a party, petitioner or intervener expects to offer as exhibits may be presented to the Board's Hearing Examiner and all other parties of record in advance of a hearing. Such documents are not evidence unless admitted into the record by the Hearing Examiner at the hearing. Presentation of documents to the other parties before a hearing is encouraged.

* * *

Subchapter B. LICENSE APPLICATIONS

§ 17.13. Protests/intervention procedure.

* * *

(b) Time. A **protest or** petition to intervene shall be filed with the Board within 30 days of the posting of notice of application as required by Chapter 3 Subchapter B (relating to notice posting). The Board may accept an untimely filed protest or petition to intervene, but only upon good cause shown.



IN THE PUBLIC INTEREST

PENNSYLVANIA LIQUOR CONTROL BOARD

Harrisburg, Pennsylvania 17124-0001

October 29, 2009

Telephone: (717) 783-9454

FAX: (717) 787-8820

Kim Kaufman
 Executive Director
 Independent Regulatory Review Commission
 333 Market Street, 14th Floor
 Harrisburg, PA 17101

**RE: Regulation #54-63 (IRRC #2613)
 License Application and Management Contracts**

Dear Director Kaufman:

By its letter to the Pennsylvania Liquor Control Board's ("Board") Chairman, Patrick J. Stapleton, III, dated September 22, 2009, you noted that the Independent Regulatory Review Commission ("IRRC") has suggested revisions to the final-form Regulation No. 54-63, referenced above, which was submitted for review on August 20, 2009. These suggestions were discussed between representatives of IRRC and this office on September 17, 2009. Based upon the suggested changes to the final-form regulations, the Board requested that the time for review of the regulations be tolled in accordance with section 5.1(g) of the Regulatory Review Act [71 P.S. § 745.5a(g)].


By your letter dated September 29, 2009, the Board was advised that IRRC did not object to tolling these final-form regulations.

Transmitted herewith are the following, as amended in accordance with IRRC's suggestions:

- CDL-1
- Preamble
- Annex A
- Regulatory Analysis Form

Should you have any questions, please contact Executive Deputy Chief Counsel Rodrigo Diaz or Deputy Chief Counsel Christopher Herrington at (717) 783-9454.

Very truly yours,



FAITH S. DIEHL
CHIEF COUNSEL

- cc: Honorable John Pippy, Chairman, Senate Committee on Law and Justice
Honorable Sean Logan, Democratic Chairman, Senate Committee on Law
and Justice
Honorable Robert Donatucci, Chairman, House Committee on Liquor
Control
Honorable John Taylor, Republican Chairman, House Committee on Liquor
Control
Robert A. Mulle, Chief Deputy Attorney General
Mr. Greg Mahon, Senate Committee on Law and Justice
Mr. Ken Varhola, Senate Committee on Law and Justice
Ms. Marcia Lampman, Executive Director (R), House Committee on Liquor
Control
Ms. Lynn Benka-Davies, Executive Director (D), House Committee on
Liquor Control
Ms. Danielle Guyer, Governor's Office of the Budget
Barbara Adams, Governor's Office of General Counsel
Ms. Donna Cooper, Governor's Office
Major John P. Lutz, Pennsylvania State Police, Bureau of Liquor Control
Enforcement

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT
TO THE
REGULATORY REVIEW ACT**

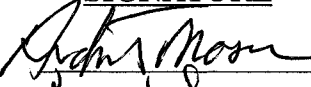


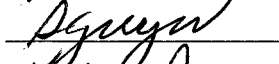
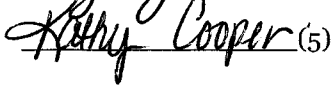
I.D. NUMBER: 54-63 (IRRC #2613)
SUBJECT: License Application and Management Contracts
AGENCY: Liquor Control Board

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation - Tolled
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor

RECEIVED
 2009 OCT 29 AM 11:06
 INDEPENDENT REGULATORY
 REVIEW COMMISSION

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
10/27/09	 (1)	HOUSE COMMITTEE ON LIQUOR CONTROL (<i>Democrat</i>)
10/29/09	 (2)	(<i>Republican</i>)
10/29/09	 (3)	SENATE COMMITTEE ON LAW & JUSTICE (<i>Republican</i>)
10/29/09	 (4)	(<i>Democrat</i>)
10/29/09	 (5)	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____ (6)	ATTORNEY GENERAL
_____	_____ (7)	LEGISLATIVE REFERENCE BUREAU