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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

March 26, 2008

Patrick J. Stapleton, III, Chairman
Pennsylvania Liquor Control Board
502 Northwest Office Building
Harrisburg, PA 17124

Re: Regulation #54-60 (IRRC #2660)
Pennsylvania Liquor Control Board
Responsible Alcohol Management Program

Dear Chairman Stapleton:

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 regulatory 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 me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

cc: Honorable John C. Rafferty, Jr., Chairman, Senate Law and Justice Committee
Honorable Sean F. Logan, Minority Chairman, Senate Law and Justice Committee
Honorable Robert C. Donatucci, Majority Chairman, House Liquor Control Committee
Honorable Ron Raymond, Minority Chairman, House Liquor Control Committee

Comments of the Independent Regulatory Review Commission

on

Pennsylvania Liquor Control Board Regulation #54-60 (IRRC #2660)

Responsible Alcohol Management Program

March 26, 2008

We submit for your consideration the following comments on the proposed rulemaking published in the January 26, 2008 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) (RRA). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the Pennsylvania Liquor Control Board (Board) to respond to all comments received from us or any other source.

1. Determining whether the regulation is in the public interest.

Section 5.2 of the RRA (71 P.S. § 745.5b) directs this Commission to determine whether a regulation is in the public interest. When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. The Commission must analyze the text of the proposed rulemaking and the reasons for the new or amended language. The Commission also considers the information a promulgating agency is required to provide under §745.5(a) of the RRA in the Regulatory Analysis Form (RAF).

We raise three issues that relate to determining whether the regulation is in the public interest.

First, the Preamble states that the proposed rulemaking implements Section 471.1 of the Liquor Code (47 P.S. § 4-471.1). However, the explanation of the regulation in the Preamble is not sufficient to allow this Commission to determine if the program, as contemplated by this regulation, is in the public interest. The "Summary" of the regulation contained in the Preamble contains four bullet points that do not offer a complete explanation of the Responsible Alcohol Management Program (RAMP). In the Preamble submitted with the final-form rulemaking, the Board should provide more detailed information required under the RRA.

Second, both the Liquor Code and the RAF indicate that participation in RAMP can be voluntary or compulsory, as a result of violations of the Liquor Code or as pursuant to the terms of a conditional licensing agreement. However, the regulation does not provide further details on program participation. The final-form regulation should specify the different categories of participants, as well as the consequences each one would face for failure to comply.

Finally, the RAF indicates that the Liquor Code establishes incentives for licensees to receive responsible alcohol management training and train their servers. RAF #13 states that: "[l]icensees will...benefit if they take advantage of the program by potentially receiving a mitigation of sanctions by an Administrative Law Judge in the case of an employee who serves a

minor or a visibly intoxicated person. The benefit for licensees is that this training has the potential of reducing fines for such violations from a range of \$1000-\$5000 to \$50-\$1000.” The proposed regulation does not mention such incentives. In order to improve clarity, the final-form regulation should include a cross-reference to the appropriate section of the Liquor Code that offers this incentive.

2. Section 5.202. Definitions. - Clarity.

The first line of this section indicates that words and phrases, when used in the subchapter shall have the following meanings, “**unless the context clearly indicates otherwise.**” (Emphasis added.) This phrase is vague, as one person’s interpretation of what “clearly indicates otherwise” may be different from that of another person, and it should be deleted from the final-form regulation.

Certify

This definition discusses “approval” in writing. What is being approved? The final-form regulation should further define this term.

Instructor

This definition discusses instructing “students” in responsible server practice. What kind of students? The final-form regulation should further define this term.

RAMP

This definition refers to the “program,” but the regulation never defines what the “program” is. Furthermore, Section 1.7 (e) of the *PA Bulletin Style Manual* states that the term being defined may not be included as part of the definition. We recommend that the final-form regulation cross-reference the statutory definition for RAMP.

3. Section 5.211. Course of study for alcohol service personnel. - Clarity.

Paragraph (6) requires that the course demonstrate “proper incident documentation.” The final-form regulation should describe the specific documents this paragraph refers to and how it is determined what documents are “proper.”

4. Section 5.221. Provider certification. - Implementation procedures; Clarity.

Subsection (b)

Subsection (b) mentions the “minimum requirements” for provider certification. Based on the provisions in this subsection, it is unclear whether these “minimum requirements” refer to the list of information a provider must submit to the Board, as contained in Subsection (a)(1)-(5), or to some other listing contained in the regulation. The final-form regulation should clarify the location in the regulation of these minimum requirements.

Subsection (c)

This subsection describes what is necessary for providers to renew their certification, and states that: “[t]he same forms, provided by the Board, shall be used for renewals as for initial certification.” To improve clarity, this phrase should be modified in the final-form regulation to state that: “the same forms, provided by the Board, shall be used for renewal as for initial certification, *and will identify any updated information required for renewal.*”

5. Section 5.231. Instructor certification. - Implementation procedures; Clarity.

This section describes the requirements necessary for instructor certification. We raise five issues.

First, the opening paragraph states that: “[R]AMP will have a procedure to confirm a candidate’s competency to begin and continue working as an instructor.” Are the paragraphs following this sentence the “procedure”? The final-form regulation should clarify this issue.

Second, within the first sentence of the section, who is a “candidate”? The term is used but is not defined. Paragraph (3) uses the term “applicant.” If these terms have the same meaning, one term should be consistently used throughout the regulation. However, if these terms have different meanings, they should be defined separately.

Third, who will “observe” the instructor’s training sessions mentioned in the second sentence?

Fourth, paragraph (3) states: “[i]f the applicant meets the minimum requirements for certification, **it will issue...**” (Emphasis added.) The final-form regulation should clarify whether “it” refers to the Board or the Bureau of Alcohol Education.

Finally, in paragraph (4), to improve clarity, instead of providing that: “[t]he same fee will be submitted with the renewal application....,” the Board should simply state that: “a \$100 fee must accompany an application for renewal.”

6. Section 5.232. Instructor responsibilities. - Implementation procedures; Clarity.

This section describes the responsibilities of a RAMP instructor. We have four concerns.

First, paragraph (1) states that instructors shall have the responsibility to: “[p]rovide students with current and accurate information.” The final-form regulation should identify the subject matter of the “information” that the Board requires instructors to provide.

Second, paragraphs (3) and (4) both discuss minimums for sessions conducted and students trained, with sentences that end with “unless the Board approves a lower...minimum.” The final-form regulation should specify under what circumstances the Board would approve a lower minimum number of training sessions and students.

Third, Paragraph (5) requires instructors to: “[p]rovide accurate records of attendance and course completion to RAMP....” What is the deadline for when these records must be submitted? Section 5.233(c) covers timeframes for sending attendance records and pass/fail test scores to the Board. To improve clarity, the Board should cross-reference section 5.233(c).

Finally, Paragraph (6) refers to instructor meetings. The final-form regulation should provide information on who offers these meetings, for example whether they will be offered by providers, or by the Board itself.

7. Section 5.233. Minimum standards of training. – Implementation procedures.

Subsection (e) discusses the test scores students must receive in order to complete the RAMP program training sessions. According to this subsection: “[a] student who does not pass may, at the first opportunity, schedule training and take the test again.” The Board should include a maximum amount of times a student can take the test before a failed score would impact a licensee, in particular if its participation in RAMP is compulsory.

8. Section 5.241. Manager/owner training. - Implementation procedures; Clarity.

Subsection (b)

Subsection (b) describes what aspects should be included in manager/owner training. Subsection (b)(1) requires instruction on how to “monitor” employees. The final-form regulation should clearly state the particular areas in which the manager/owner would be specifically monitoring the employees.

Subsection (c)

Subsection (c) states that the Board will: “[m]aintain records establishing the names of individuals who have successfully undergone manager/owner training.” The final-form regulation should provide a timeframe for how long the Board will keep these records, and state whether these records are subject to the applicable state open records law.

9. Section 5.242. New employee orientation. - Clarity.

The term “licensee” is used in this section but it is not defined. It should be noted that the term is also used throughout this proposed regulation. The final-form rulemaking should define this term or, if it is defined elsewhere, include a cross-reference.

Subsections (a)(2) and (3) mention “acceptable forms of identification” and “practices for checking identification,” and while it is understood, neither mention the actual purpose in reviewing identification. This should be clearly defined in the regulation. To improve clarity, the Board also should cross-reference Section 495(a) of the Liquor Code (47 P.S. §4-495 (a)), which provides the acceptable methods of identification.

Finally, the regulation does not detail what type of “criminal activity” new employees would learn about, as mentioned in Subsection (a)(6). The final-form regulation should include this information.

10. Section 5.251. Prohibited conduct. - Clarity.

Subsection (a)(9) refers to an instructor or provider receiving, as a result of class observations conducted by RAMP, an “unsatisfactory evaluation” regarding the presentation of the course of study. The final-form regulation should include examples of circumstances that would warrant an “unsatisfactory evaluation.”

For purposes of clarity, can subsections (b) and (c) be combined into one subsection?

11. Section 5.271. Premises certification. - Clarity.

Subsection (a) indicates that a licensee may request that the Board certify that it complies with Section 471.1 of the Liquor Code (47 P.S. § 4-471.1), and that: “[t]his request may be made by personal contact, telephone or written communication to RAMP.” The final-form regulation should explain what types of “written communication” are appropriate (i.e., US mail, e-mail, etc.).

Facsimile Cover Sheet



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Date: March 26, 2008
Pages: 7

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OFFICE OF CHIEF COUNSEL

RECEIVED
P.L.C.B.

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Liquor Control Board's regulation #54-60 (IRRC #2660). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. You have made arrangements to pick up the original instead of mailing through interdepartmental mail. Thank you.

Accepted by: _____

Date: _____

3/26/08