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## INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

October 22, 2008

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

Re: Regulation #54-65 (IRRC #2714)  
Pennsylvania Liquor Control Board  
Promotion of Sale of Liquor by Vendors

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](http://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



## Pennsylvania Liquor Control Board Regulation #54-65 (IRRC #2714)

### Promotion of Sale of Liquor by Vendors

October 22, 2008

We submit for your consideration the following comments on the proposed rulemaking published in the August 23, 2008 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (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. General Comments. - Implementation procedures; Clarity.

##### *The type of product to which the regulation applies*

The Preamble states that the purpose of this proposed regulation is to facilitate the Board's access to **fine wines** that a vendor might otherwise reserve for special orders only. However, the regulation applies to "**liquor**," which includes wine but is a substantially broader category. The Board should clarify the category to which the regulation applies: fine wines, liquor, or both.

##### *The process for sale and purchase of luxury items*

While the proposed regulation defines "luxury items," it does not explain the process for their sale. For example, in the Preamble, the Board says that individual consumers will benefit from being able to purchase luxury items from a state store. However, Chapter 13, Subchapter B applies to "promotion of sale **by vendors**." (Emphasis added.) Section 13.73 (d) allows vendors to "obtain" orders of luxury goods from licensees and "other persons," but it does not specify how private citizens will be able to access luxury items. Section 13.79 (e) states that "licensed vendors and their agents shall place luxury item orders for liquor at State Liquor Stores." How does this sentence reflect the statement in the Preamble that vendors can process orders from **both the Board and from licensees or other persons**? (Emphasis added.)

A public commentator even questioned whether luxury items can still be ordered and shipped directly from the vendor/agent or whether they must be ordered at the state store.

Given these clarity concerns, the final-form regulation needs to clearly specify who is permitted to sell and buy luxury items and the sale and purchase process.

## **2. Section 13.71. Definitions. - Clarity.**

### *Stock merchandise*

The proposed regulation defines this term as liquors available from a liquor store without placing a special liquor orders (SLO) **“and which have not been designated as luxury items.”** (Emphasis added.) Are SLOs and luxury items two completely different things or are luxury items a sub-category of SLOs? Can a luxury item also be stock merchandise? If a luxury item can be stock merchandise as well as a sub-category of SLOs, then how does this reflect the existing language in Section 13.76 (a) which states that “[i]t is the intent of this section that vendors shall not compete on special order with items sold to the Board as stock merchandise?”

The final-form regulation should clarify the difference between stock merchandise, SLOs and luxury items.

## **3. Section 13.73. Privileges of vendors’ agents. - Clarity.**

Subsection (d) refers to “other persons” from whom agents may solicit orders. While the term “other persons” is used throughout the existing regulation, it is not defined. To improve clarity, the final-form regulation should include a definition for this term.

## **4. Section 13.79. Special orders and luxury item orders; restrictions. - Implementation procedures.**

Subsection (g) refers to the release of “liquor sold to licensees.” However, this subsection does not mention how liquor sold to “other persons,” as mentioned in Section 13.73(d), would be released. The final-form regulation should clarify this issue.

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To: Jim Maher  
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Pages: 4

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OFFICE OF CHIEF COUNSEL

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Liquor Control Board's regulation #54-65 (IRRC #2714). 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: Juan M. Mayo Date: 10/22/08

Fax