

## Comments of the Independent Regulatory Review Commission



### Pennsylvania Liquor Control Board Regulation #54-73 (IRRC #2999)

#### Sale by Licensed Limited Distilleries and Distilleries

June 12, 2013

We submit for your consideration the following comments on the proposed rulemaking published in the April 13, 2013 *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. Whether the regulation is consistent with the intent of the General Assembly; Implementation procedures; Need; Clarity.**

Act 113 of 2011 (Act 113) made numerous amendments to the Liquor Code. 47 P.S. §§ 1-101, *et. seq.* Included in the amendments were changes to Section 505.4 (47 P.S. § 5-505.4), related to distilleries. The Board states that although Section 505.4 of the Liquor Code does not explicitly address the issues addressed by the rulemaking, legislative staff members have confirmed the intent of Act 113 was to enable distilleries to have the same privileges enjoyed by limited wineries. The intent of this rulemaking is to permit licensed limited distilleries and distilleries (distilleries) to deliver their products directly to consumers, retail licensees or the Board, similar to limited wineries. We have reviewed the sections of the Liquor Code and the Board's regulations that address limited wineries (47 P.S. § 5-505.2 and 40 Pa. Code § 11.111) and raise the following concerns.

One of the purposes of a regulation is to expand upon the statutory framework provided by the General Assembly in their enactment of a piece of legislation. This proposal provides little guidance beyond what already exists in statute and the Board's other regulations. As written, we question the need for this rulemaking. We note that the Board's limited wineries regulations include more detailed information that provides meaningful direction to the regulated community. If the intent of Act 113 is to enable distilleries to have the same privileges enjoyed by limited wineries, we suggest that this proposal more closely follow the regulatory framework found under the limited wineries regulations at § 11.111. In order to make the rulemaking consistent with intent of the General Assembly, we ask the Board to consider adding provisions related to the sale of food, liquor by the glass, tasting samples and the hours in which these activities can occur. We believe a more detailed regulation will assist with the implementation of the rulemaking and improve its overall clarity.

## **2. Determining whether the regulation is in the public interest.**

Section 5.2 of the Regulatory Review Act directs this Commission to determine whether a regulation is in the public interest. 71 P.S. § 745.5b. When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. To make that determination, 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 Section 5 of the Regulatory Review Act in the Regulatory Analysis Form (RAF). 71 P.S. § 745.5(a).

The Board's response to Section 12 of the RAF is not sufficient to allow this Commission to determine if the regulation is in the public interest. In the RAF submitted with the final-form rulemaking, the Board should provide information comparing this regulation to the regulation of licensed limited distilleries and distilleries in other states.

## **3. Section 11.221. Sale by licensed limited distilleries and distilleries. - Protection of the public health, safety and welfare; Implementation procedures; Clarity.**

Subsection (d) states the following:

Mail, Internet and telephone orders may be accepted. Delivery of products must be accomplished through the use of vehicles properly registered by the licensed limited distillery or distillery or through properly licensed transporters. It is the responsibility of the licensed limited distillery or distillery licensee to ensure that liquor is not delivered to minors and that proper invoices and records are maintained.

We raise the following concerns. First, Section 505.4 of the Liquor Code limits the sale of liquor to the hours of 9 a.m. to 11 p.m. Will the acceptance of mail, Internet and telephone orders be limited to the hours specified in the Liquor Code? We ask the Board to explain how it will administer this provision. Second, we question how the Board will monitor the sale of liquor sold by mail, Internet or phone to minors. What procedures are in place to ensure that liquor is not received by those that are not of legal age? Third, what are the standards for properly registered vehicles and transporters? Where can the standards be found? We suggest that the standards, or a reference to where the standards can be found, be added to the rulemaking. Fourth, the limited wineries regulation includes a citation to the Board's record-keeping requirements found at § 5.103. To clarify the requirements that distilleries maintain "proper invoices and records," we suggest that this proposal reference § 5.104.

## **4. Miscellaneous clarity.**

Act 113 expanded the scope of distilleries allowed to operate in the Commonwealth by adding licensed limited distilleries to the Liquor Code. The Board's existing regulations only reference licensed distilleries of historical significance. We ask the Board to review its entire body of regulations to ensure consistency with the Act 113 amendments and make the necessary changes relating to the new type of license added by Act 113.