



January 18, 2022

Fiona E. Cormack
Independence Regulatory Review Commission
333 Market Street
13th Floor
Harrisburg, PA 17101

Re: Proposed Regulation 54-95
Pennsylvania Liquor Control Board
Limited Wineries

Dear Ms. Cormack,

I am writing on behalf of my client, Wine Pennsylvania (WPA), which provides legislative representation in Harrisburg for the benefit of the over 300 wineries in Pennsylvania.

WPA is supportive of the language contained in the proposed regulations, as they mirror the current language of the Liquor Code. WPA would like to take this opportunity, however, to address some historical issues that are negatively affecting the Pennsylvania wine industry, which it believes should be addressed within the proposed regulations currently under review.

In 2005, the United States Supreme Court held in *Granholm v. Heald*, state laws treating in-state wineries differently from out-of-state wineries violated the dormant commerce clause of the United States Constitution. After that decision, attorneys involved in the *Granholm* case sued the Commonwealth in *Cutner v. Newman*. The U.S. District Court held that Pennsylvania's statutory and regulatory language prohibited out-of-state wineries from selling and shipping directly to consumers, while allowing in-state wineries to do the same, and thus created unconstitutional disparate treatment.

Due to this holding, the Chief Counsel of the Pennsylvania Liquor Control Board (PLCB) and the Office of the Attorney General decided the best solution to immediately come into compliance with the rulings was to grant out-of-state wineries the same shipping rights granted to in-state wineries. **At that time, the only means available through the Liquor Code was to issue limited winery licenses to out-of-state wineries.**

An out-of-state winery holding a Pennsylvania Limited Winery license may directly ship to consumers and retailers, while every other out-of-state winery must adhere to the three-tier system to sell and retail wine through the PLCB. An out-of-state winery holding a PLCB-issued limited winery license does not produce any wine within the Commonwealth, and as such does not fall in the Agricultural Commodities Marketing Act's definition of a producer. Due to this, they are not subject to the \$.20/gallon producer charge which funds the Pennsylvania Wine Marketing

and Research Program. Furthermore, an out-of-state holder of a Limited Winery license may avail themselves of many other rights and privileges, such as attending Wine Festivals and having a stall at a local Farmer's Market, all without being subject to inspection or regulation by the Pennsylvania Department of Agriculture, the Liquor Control Board, and the Pennsylvania State Police Bureau of Liquor Control Enforcement, which enforces the Liquor Code.

Act 39 of 2016 created a Direct Wine Shippers License. This license permits a manufacturer of wine to ship directly to consumers in Pennsylvania, which was the crux of the issue presented in the *Granholm* case before the Supreme Court, and further argued in *Cutner*. The creation of the Direct Wine Shippers License permits out-of-state wineries to avail themselves of the same rights and privileges granted to in-state wineries regarding directly selling and shipping products to consumers. With the *Granholm* and *Cutner* issue of shipping wine to consumers thereby addressed, the PLCB no longer has reason to issue a Pennsylvania Limited Winery License to an out-of-state winery.

WPA would respectfully request, IRRC and the PLCB consider adoption of the following language within the definition of "Limited winery" contained in 5.401:

"Limited Winery" shall mean a winery that produces at least 200 gallons per year but not more than 200,000 gallons per year of winery products for each full calendar year that the limited winery holds an active limited winery license from the Commonwealth of Pennsylvania. **A limited winery shall not mean a winery which produces winery products at a principal place of business outside Pennsylvania.**

By adopting this provision as part of the proposed regulation, an emergency change in PLCB procedure made under the threat of Federal sanctions will be addressed, while also giving the Legislature an opportunity to legislatively address the current imbalance existing between out-of-state and in-state wineries. The Legislature is in the best position to cure the defects existing in the Liquor Code by ensuring our laws do not violate the holding and intent of *Granholm* and *Cutner*, while also ensuring a major industry of the Commonwealth is no longer suffering from unintended inequities.

We are happy to set up a time to meet with you and discuss these issues at your convenience.

Thank you for your time and consideration.

Very truly yours,



Shauna Boscaccy
MAVERICK STRATEGIES
On Behalf of Wine Pennsylvania