



Governor JB Pritzker  
Cynthia Berg, Chair  
Chimaobi Enyia, Executive Director

100 West Randolph Street, Suite 7-801, Chicago, IL 60601  
300 West Jefferson Street, Suite 300, Springfield, IL 62702

---

Illinois General Assembly  
Joint Committee on Administrative Rules  
Room 700, Stratton Office Building  
Springfield, Illinois 62701  
[jcar@ilga.gov](mailto:jcar@ilga.gov)

June 3, 2020

Attention: Vicki Thomas - Director

RE: 11 Ill. Adm. Code 100.500, "Of Value" Provisions – General Applicability

Dear Director Thomas:

I have enclosed the Second Notice Filing for the above-referenced rulemaking.

In addition to the usual documents and attachments required to submit a Rule proposal for Second Notice, I am advising you and the JCAR Members that the Commission and Commission staff began this rulemaking over one year ago having thoroughly researched the issue and offered interested parties the opportunity to comment in writing and in person on multiple occasions. The Commission and Commission staff reviewed all comments and research to reach the point of submitting the attached Rule. The timeline of the comments and research is as follows:

- In February 2019, the Illinois Liquor Control Commission initially sought to avoid amending Rule 100.500 by requesting public comment on an ILCC interpretation of the existing "quantity discount" rule.
- Between March and June of 2019, the Commission accepted and reviewed written comments from 10 industry members.
- On June 26, 2019 and July 31, 2019, the Commission held public meetings and heard public comments from 10 industry members and their representatives. At the conclusion of the public meetings, the Commission voted to direct Commission staff to amend Rule 100.500 to allow liquor licensed retailers to purchase alcoholic liquor from wholesalers through "cooperative buying groups."
- Commission staff reviewed the comments of all interested parties and the laws of eleven different states, including neighboring states, related to quantity discounting and

cooperative buying groups. Many of these opinions and concepts were incorporated into the First Notice Rule draft (12/20/2019 Illinois Register; Volume 43, Issue 51).

- Five interested parties submitted comments on the Rule draft after First Notice.
  - Many of the issues raised by interested parties at the beginning of the process were incorporated into the First Notice draft and, thus, were not raised as comments to the First Notice draft.
  - The primary issues to be resolved relate to cooperative purchasing groups.
  - The attached Rule has incorporated some changes recommended by all interested parties.
  - Some recommended changes either cannot be incorporated into the procedures of the Commission or such recommended changes would undermine the central purpose of the Rule mandated by the July 2019 Commission decision.

The attached Rule represents the Commission's best efforts for over a year to incorporate thorough research and the recommendations of the interested parties without altering the intent of the Commission to allow retailers to purchase alcoholic liquor in cooperative buying groups.

If you have any questions related to the above cited timeline and efforts or to this version of the Rule draft, please do not hesitate to contact me.

Very truly yours,

Pamela Paziotopoulos  
General Counsel  
Illinois Liquor Control Commission  
Email: Pamela.Paziotopoulos@Illinois.Gov  
Phone: 312-814-1804 (o); 312-350-0437 (c)

Enc.

## SECOND NOTICE OF PROPOSED RULEMAKING

- 1) Agency: The Illinois Liquor Control Commission
- 2) Title and Ill. Adm. Code Citation of Proposed Rulemaking: The Illinois Liquor Control Commission, 11 Ill. Adm. Code 100.500
- 3) Date, Issue, and page number of the Illinois Register in which the First Notice was published: December 20, 2019, Volume 43, Issue 51; 43 Ill. Reg. 14571
- 4) Text and Location of any Changes Made to the Proposed Rulemaking During the First Notice Period: See Attachment A.
- 5) Final Regulatory Flexibility Analysis:
  - A. Summary of the issues raised by affected small businesses during the First Notice Period: This rule proposal is intended to provide small, independent retail liquor license holders with the option to purchase in bulk through cooperative purchasing groups in order to obtain quantity discounts from alcohol beverage distributors.
  - B. Description of actions taken on any alternatives to the proposed rule suggested by small businesses during the First Notice Period, including reasons for rejecting alternatives not utilized: The primary goal of the rule is to assist small retail businesses by allowing them to compete with larger retailers on the basis of quantity price discounts. The rule proposal authorizes small businesses to form cooperative buying groups in order to obtain price discounts. The Commission, however, rejected some proposals offered by a small business trade organization (FAIR). All explanations for the acceptance, rejection and partial acceptance/rejection of small businesses alternatives were thoroughly examined and explained in Attachment C – Agency Evaluations of Specific Criticisms and Suggestions spreadsheet related to the “FAIR/IRMA” comments.
- 6) Analysis of the Economic and Budgetary Effects of the Proposed Rulemaking: None requested.
- 7) Response to Recommendations Made by the Administrative Code Division for Changes in the Rule to Make It Comply with the Codification Scheme: No

changes requested by the Administrative Code Division.

- 8) Evaluation of the comments received by the agency from interested persons during the first notice period (but not including any questions raised by the Joint Committee in a preliminary review) including:
- A. Date of any public hearing held during the first notice period. Name of the person or group requesting a hearing: No public hearings were requested during the First Notice Period. However, public hearings were held on June 26, 2019, and July 31, 2019 prior to submitting the amendments for First Notice.
  - B. The names and addresses of all individuals or groups making comments or requesting the opportunity to make comments:
    - a. Distilled Spirits Council of the United States (DISCUS), 1250 Eye Street NW, Suite 400, Washington, DC 20005
    - b. Federated Alliance of Illinois Independent Retailers (FAIR), 101 W. 22<sup>nd</sup> St., Suite 202, Lombard, Illinois, 60148
    - c. Illinois Retail Merchants Association (IRMA), 216 W. Jackson Blvd., Suite 916, Chicago, IL 60606
    - d. Wine Institute, 136 E. 36<sup>th</sup> St., Suite 5D, New York, New York, 10016
    - e. Wine and Spirits Distributors of Illinois (WSDI), 27 East Monroe St., Suite 800, Chicago, Illinois, 60603
  - C. A list of all specific criticisms and suggestions raised in the comments:  
See Attachment B.
  - D. The agency's evaluation of each of the specific criticisms and suggestions:  
See Attachment C.
  - E. A statement that the agency has considered all comments received during the first notice period: The Commission has reviewed and considered all comments received during the first notice period.
- 9) An analysis of the expected effects of the proposed rulemaking, including:
- A. Impact on the public: These rules may have the indirect effect of lowering the prices of alcoholic beverages offered to the public.
  - B. Changes in the agency's programs or structure resulting from implementation of the rulemaking: None of significant impact
  - C. Impact of proposed rule on small businesses. Methods used by Agency to comply with 5 ILCS 100/5-30, including reasons for rejecting any

methods not utilized: The Commission used methods referenced in 5 ILCS 100/5-30(b)(3-5) to ensure that the small business trade group representing small retail liquor license holders was given the opportunity to offer comments on the proposed rule prior to the First Notice Period. Specifically, the Commission directly notified interested small businesses (through its trade organization) of multiple public hearings on the rule submission before First Notice. The small business trade organization was given the opportunity to submit written and oral comments which were considered prior to First Notice. The Commission accepted many of the comments of small businesses by authorizing a rule that created cooperative purchasing groups as recommended by small businesses. Additionally, the Commission gave interested parties the opportunity to submit written and oral comments to the issue prior to First Notice. At that time, both the small business trade group as well as individual small business owners made comments.

- 10) A justification and rationale for the proposed rulemaking, including:
- A. Any changes in statutory language requiring the proposed rulemaking: None.
  - B. Any changes in agency policy, procedures, or structure requiring the proposed rulemaking: The rulemaking will result in a clearer understanding by licensees as to the permissible methods of quantity discounting including cooperative purchasing by groups of licensees.
  - C. Relationship to other rulemaking activities of the agency including anticipated rulemaking activities: None.
  - D. Relationship to any relevant federal rules, regulations, or funding requirements: None.
  - E. Court orders or rulings which are related to the rulemaking: None.
- 11) Does this rulemaking include an incorporation by reference pursuant to Section 5-75 of the Illinois Administrative Procedure Act? No.

Agency Personnel Who Will Respond to Joint Committee Questions Regarding the Proposed Rulemaking:

Pamela Paziotopoulos  
General Counsel

Second Notice of Proposed Rulemaking

Page 4

11 Ill. Adm. Code 100.500

Illinois Liquor Control Commission  
100 W. Randolph St., Suite 7-801  
Chicago, IL 60601  
Email: Pamela.Paziotopoulos@Illinois.Gov  
Phone: 312-814-1804 (o); 312-350-0437 (c)



Governor JB Pritzker  
Cynthia Berg, Chair  
Chimaobi Enyia, Executive Director

100 West Randolph Street, Suite 7-801, Chicago, IL 60601  
300 West Jefferson Street, Suite 300, Springfield, IL 62702

---

## ATTACHMENT A

### FIRST NOTICE CHANGES

Agency: The Illinois Liquor Control Commission

Rulemaking: 11 Ill. Adm. Code 100.500

Changes:

1. Entire Section of 100.500

Change “distributor or a manufacturer with the privilege of self-distribution”

To “industry member”

2. In Section (d)(5)(A)(i)

Change: Quantity Discounting: A quantity discount is a legitimate sales programming between a distributor, or a manufacturer with the privilege of self-distribution, and a retailer or retailers in which the primary purpose of the programming is to increase product sales and merchandising to retailers and is not a subterfuge to provide prohibited "of value" inducements to a retailer. Specifically, a distributor or a manufacturer with the privilege of self-distribution offers a retailer or retailers a discount based upon an agreement by which the retailer will purchase a predetermined number of products in return for receiving a discount on the goods purchased.

To: Quantity Discounting: A quantity discount is a legitimate sales programming between an industry member ~~a distributor, or a manufacturer with the privilege of self-distribution,~~ and a retailer or retailers in which the primary purpose of the programming is to increase product sales ~~and merchandising~~ to retailers and is not a subterfuge to provide prohibited "of value" inducements to a retailer. Specifically, an industry member ~~a distributor or a manufacturer with the privilege of self-distribution~~ offers a retailer or retailers a discount based upon an agreement by which the retailer ~~will~~ may purchase a predetermined number of products in return for receiving a discount on the goods purchased.

3. In Section (d)(5)(A)(ii),

Change: A retailer is further defined as any license holder purchasing product for the legal sale to consumers and not for resale to another retailer.

To: A retailer is further defined as any license holder purchasing ~~product~~ alcoholic liquor from an industry member with distribution privileges except that a retailer does not include “manufacturers” as listed in 235 ILCS 5/5-1(a). ~~for the legal sale to consumers and not for resale to another retailer.~~

4. In Section (d)(5)(A)(iii),

Change: Common Ownership: Common ownership, for purposes of this subsection (d)(5), is defined as two or more retail license holders who are owned by the same individual or individuals, partnership, corporation, limited liability company, or limited partnership.

To: Common Ownership: Common ownership, ~~for purposes of this subsection (d)(5), is defined as two or more retail license holders who are owned by the same individual or individuals, partnership, corporation, limited liability company, or limited partnership.~~ shall be any ownership interest of more than 5% of the total ownership interests of two or more retailers.

5. In Section (d)(5)(A)(iv) bullet point 4,

Change: The agreement shall contain procedures to ensure that parties to the agreement do not violate the 30- day merchandising credit requirement and remain subject to the enforcement mechanism found in Section 6-5 of the Act;

To: ~~The agreement shall contain procedures to ensure that parties to the agreement do not violate the 30- day merchandising credit requirement and remain subject to the enforcement mechanism found in Section 6-5 of the Act;~~

If any retailer party to the cooperative purchasing agreement is not compliant with the 30-day merchandising credit requirement [235 ILCS 5/6-5], an industry member shall not sell wine and spirits to the non-compliant retailer’s cooperative purchasing agreement group until the non-compliant retailer party to the agreement becomes compliant with the 30-day merchandising credit requirement or the cooperative purchasing agreement is amended to remove the non-compliant retailer party.

If any retailer party to the cooperative purchasing agreement is not compliant with the 30-day merchandising credit requirement and remains a party to the cooperative purchasing agreement, all other parties to the cooperative purchasing agreement may continue to purchase wine and spirits in their individual capacities.

6. In Section (d)(5)(A)(iv) bullet point 6,

Change: However, the agents may be compensated for actual costs incurred on behalf of the parties to the agreement.

To: However, the agents may be compensated for actual costs directly attributable to the function and performance of the duties incurred on behalf of the parties to the agreement.

7. In Section (d)(5)(A)(iv) bullet point 10

Change: A copy of the executed agreement, deletions or additions shall be given to any distributor or manufacturer with a privilege of self-distribution, prior to making any purchases under the agreement;

To: A copy of the executed agreement, deletions or additions shall be ~~given~~ delivered to the relevant any distributor or manufacturer with a privilege of self-distribution industry member and to the Illinois Liquor Control Commission, prior to making any purchases under the agreement;

8. In Section (d)(5)(A)(iv) bullet point 12,

Change: Failure to comply with the terms and conditions of this subsection (d)(5) will render the agreement void and any party availing itself of a quantity discount as a party to the agreement shall be deemed in violation of Section 6-5 of the Act.

To: Failure to comply with the terms and conditions of this subsection (d)(5) ~~will~~ shall render the agreement void and any party availing itself of a quantity discount as a party to the agreement ~~shall~~ may be deemed in violation of Section 6-5 of the Act.

9. In Section (d)(5)(B) (ii-v),

Change:

- ii) Sales incentives are temporary and designed and implemented to produce product volume growth with retailers;
- iii) The sales incentives to retailers are based on volume and discounted pricing, including discounts in the form of cash, credits, rebates, alcoholic liquor products, and product displays;
- iv) The sales incentives are documented on related sales or credit memoranda; and
- v) The sales incentives are offered to all similarly situated retailers.

To:

- ii) ~~Sales incentives~~ Quantity discounts are temporary and designed and implemented to produce product volume growth with retailers;
- iii) The ~~sales incentives~~ quantity discounts to retailers are based on volume purchased, and discounted pricing; Discounts can include including discounts in the form of price reductions, cash, credits, and rebates. No charge alcoholic liquor products may be given in lieu of discounts, and product displays;
- iv) The ~~sales incentives~~ quantity discounts are documented on related sales or credit memoranda; and
- v) The ~~sales incentives~~ quantity discounts are offered to all similarly situated retailers within the same geographic area.

10. In Section (d)(5)(G)(i),

Change: A distributor or a manufacturer with the privilege of self-distribution who makes quantity discount sales to retailers with a common ownership interest or who have executed a cooperative purchasing agreement shall issue a master invoice to the designated agent and each participating licensee.

~~To: A distributor or a manufacturer with the privilege of self-distribution~~ An industry member who makes quantity discount sales to retailers with a common ownership interest or to retailers who have executed a cooperative purchasing agreement shall issue a master invoice document to the designated agent ~~and of~~ each participating licensee identifying the allocation of alcoholic liquor to each participating licensee. The industry member shall also issue customary invoices to each participating retailer itemizing alcoholic liquor sold and delivered to each participating retailer.

11. In Section (d)(5)(H)(i) bullet point 1,

Change: “the rebate/credit program is made pursuant to a written agreement;”

To: “the rebate/credit program is made pursuant to a written agreement established at or prior to the sale. Industry member and retailer shall maintain record of the written agreement per record keeping requirements.”

12. In Section (e), delete entire Section.

e) ~~Unless otherwise stated, for the purposes of this Section, the following definitions apply:~~

- 1) ~~Manufacturer: The holder of a license in the State of Illinois as defined in Section 5-1 of the Act as a Distiller, Rectifier, Brewer, Class 1 Brewer, Class 2 Brewer, First Class Wine Manufacturer, Second Class Wine Manufacturer, First Class Winemaker, Second Class Winemaker, Limited Wine Manufacturer, Craft Distiller, Class 1 Craft Distiller, Class 2 Craft Distiller, Non-resident Dealer, or Winery Shipper.~~
- 2) ~~Distributor: The holder of a license in the State of Illinois as defined in Section 5-1 of the Act as a Distributor, Importing Distributor, or Foreign Importing Distributor.~~
- 3) ~~Retailer: The holder of a license in the State of Illinois as defined in Section 5-1 of the Act as a Retailer, Special Event Retailer (Not for Profit), Railroad, Boat, Wine Maker's Premises, Airplane, Brew Pub, Distiller Pub, Auction, Caterer Retailer, Special Use Permit, and any manufacturer purchasing alcoholic beverages from a distributor or manufacturer with the privileges of self-distribution for resale directly to consumers pursuant to Section 6-4 of Act.~~



Governor JB Pritzker  
Cynthia Berg, Chair  
Chimaobi Enyia, Executive Director

100 West Randolph Street, Suite 7-801, Chicago, IL 60601  
300 West Jefferson Street, Suite 300, Springfield, IL 62702

## ATTACHMENT B

A LIST OF ALL SPECIFIC CRITICISMS AND SUGGESTIONS RAISED IN THE COMMENTS.

Agency: The Illinois Liquor Control Commission

Rulemaking: 11 Ill. Adm. Code 100.500

See attached letters.



February 3, 2020

Ms. Pamela Paziotopoulos  
General Counsel  
Illinois Liquor Control Commission  
100 West Randolph Street, Suite 7-801  
Chicago, IL 60601

**Re: Illinois Liquor Control Commission: Notice of Proposed Amendment/11 Ill. Admin. Code 100 – Section 100.500 “Of Value” Provisions – General Applicability (43 Ill. Reg. 14571 (Dec. 20, 2019))**

Dear Ms. Paziotopoulos:

On behalf of the Distilled Spirits Council of the United States, Inc. (DISCUS), a national trade association representing producers and marketers of distilled spirits and importers of wines sold in the United States, we welcome the opportunity to provide our views in response to the ILCC’s proposed amendments to the “Of-Value” rule provisions (11 Ill. Admin. Code 100.500).

We commend the ILCC for the direction taken during the last several years in converting its Trade Practice Policies into Commission rules and modernizing its trade practice scheme, utilizing as guidance the federal trade practice rules and regulatory schemes of other states.

We, however, oppose those Commission proposals in the instant rulemaking that exclude many, if not most, members of the manufacturing tier from engaging in longstanding, legitimate trade practice activities with retailers. We also suggest several revisions to the current provisions in 11 Ill. Admin. Code 100.500.

These recommended changes, if adopted, would bring the “Of Value” rule more in sync with today’s marketplace and the regulatory schemes of other states, thus enhancing brand competition and ensuring a wider selection of products to the benefit of the Illinois consumer.

**Distilled Spirits Council of the United States (DISCUS)**  
1250 Eye Street NW, Suite 400  
Washington, DC 20005

We also request that the Commission, prior to taking any further action regarding the proposed changes to the quantity discount rule, provide an explanation of the reasoning underlying these proposals and an opportunity for Commission/industry dialogue. We believe this is warranted because these changes could have far-reaching implications in the marketplace.

**1. Retain current rules allowing all industry members to furnish samples and stock, rotate and reset product on an equal basis**

Currently, all industry members (i.e., manufacturer and wholesaler tiers) may engage in all trade practice activities permitted under 11 Ill. Admin. Code 100.500. The Commission's proposal would no longer permit manufacturers that are not allowed to self-distribute from furnishing samples to retailers and stocking, rotating and resetting product at retail premises. (Proposed Rule Section 100.500(6) and (17).) We urge the Commission to retain the current rule provisions allowing all members of both upper tiers to continue to engage in these activities on the same terms.

As provided in the federal rules and by other states, all industry members should be afforded an equal opportunity to engage in legitimate marketing activities at the retail level. No justification exists to deprive many, if not most, members of the manufacturer tier, the ability to promote and support their respective brands on an equal basis with other manufacturers, as well as wholesalers. Clearly, no tied-house concerns exist since certain manufacturers (i.e., those allowed to self-distribute) and all wholesalers would be permitted to continue engaging in those trade practice activities.

**2. Request for information and Commission/industry stakeholder discussion regarding proposed revisions to quantity discount rule**

We question the rationale for the Commission's proposal to allow retailers to enter into cooperative purchasing agreements for the purpose of purchasing alcohol beverages and qualifying for a quantity discount. (Proposed Rule Section 100.500(5).) This proposal, if adopted, potentially would be a fundamental change in the marketplace, affecting all tiers of industry.

The Commission did not provide any explanation for this proposal and we are unaware of any industry stakeholder meeting or other opportunity for discussion between the Commission and industry regarding such a potentially significant revision to the rules. Consistent with its past practices, we urge the Commission to take these steps prior to proceeding with its quantity discount proposals.

**3. Adopt additional changes to the currently permitted trade practice activities**

To better reflect today's marketplace and to enhance consistency with practices allowed in other states, we also urge the Commission to revise the terms under which certain trade practices currently are allowed under 11 Ill. Admin. Code 100.500.

**A. Samples (Section 100.500(6))**

As permitted in the federal rule (27 C.F. R. § 6.91), an industry member should be allowed to furnish a retailer with the next larger available size if a particular size is unavailable within the quantity limits of the rule. Further, an industry member that has acquired a brand within the last 12 months should be able to furnish a sample of that brand to a retailer notwithstanding the time constraints in the rule.

**B. Social Media Advertising (Section 100.500(7))**

We urge the Commission to eliminate subsection (E) (prohibiting industry members from offering social media advertising to a specific retailer to the exclusion of other, similarly situated retailers) because it is contrary to State liquor law (235 ILCS 5/6-5), which allows furnishing social media advertising to a retailer if, in part, in compliance with TTB regulation. (Compliance with TTB regulation also is required by Section 100.500(7)(D).) Subsection (E) is contrary to TTB regulation because 27 C.F.R. § 6.98 allows industry members to advertise retailers irrespective of any consideration of exclusion.

In addition to the expressly permitted retailer information, an industry member should be allowed to include in its social media advertisement the retailer's phone number, email and website addresses, its other electronic media, and a photograph or depiction of the retail premise (e.g., showing a mixologist preparing a promoted drink or a prepared drink at the bar), if the retailer information is relatively inconspicuous in relation to the advertisement as a whole and there are no laudatory references to the retailer.

**C. Promotional Events at Retailer Locations (Section 100.500(8))**

Consistent with our proposal regarding social media advertising, we recommend expressly permitting industry member promotional event advertising to include (in addition to retailer name and address) the retailer's phone number, email and website addresses, its other electronic media (including reposting social media), a photograph or depiction of the retail premise (e.g., showing a mixologist preparing a promoted drink or a prepared drink at the bar), if the retailer information is relatively inconspicuous in relation to the advertisement as a whole and there are no laudatory references to the retailer.

We also urge the Commission not to require promotions to be available to all similarly situated retailers. We are unaware of any other state that imposes such a requirement, which is impractical in many, if not most, circumstances.

Ms. Pamela Paziotopoulos

February 3, 2020

Page 4

**D. Consumer Advertising Specialties (Section 100.500(9))**

Industry members should be allowed to furnish these items directly to consumers at retail premises, particularly at industry members' tastings and other promotional events. Further, an industry member furnishing these specialties to retailers should not be held responsible if the retailer decides not to give all these items to consumers.

**E. Stocking and Rotation (Section 100.500(17))**

Consistent with the federal rule ( 27 C.F. R. § 6.99) and the rules in other states, stocking and rotating should not be limited to sales calls and/or deliveries, but should be allowed at the time of delivery or any later date during the hours that a retail store is open to the public, and rotating should not be limited to moving newer, fresher product. As already prohibited for stocking, industry members rotating their product at a retail establishment should be prohibited from moving, altering or disturbing any other industry member's product.

Once again, thank you for the opportunity to share our views in this rulemaking proceeding and, if you have any questions about our comment and/or otherwise, please do not hesitate to call.

Sincerely,



Dale Szyndrowski  
Vice President, Central Region



**FAIIR**

FEDERATED ALLIANCE OF  
ILLINOIS INDEPENDENT RETAILERS

Board Members

**Manish Patel**  
President  
Liquor n Wine

**Jean Angelopoulos**  
Vice President  
Armanetti Wooddale

**Vincent Trunzo**  
Treasurer  
Affiliated Marketing

**Ness Isa**  
Secretary  
United Liquor Marts

**Stan Ciesla**  
Stadium Wine & liquors

**Mike Dixon**  
Kenwood Liquors

**Mike Feeney**  
Feeney Package Liquor

**Chris Fotopoulos**  
Prestige Liquors Countryside

**Dave Garfield**  
Garfield's Beverage Warehouse

**Adam Kosh**  
Antioch Liquors

**Rob Malloy**  
Malloy's Finest

**Jayesh Patel**  
Foremost Villa Park

**Dean Tomaras**  
Archer Liquors

January 31, 2020

Ms. Pamela Paziotopoulos  
General Counsel  
Illinois Liquor Control Commission  
100 W. Randolph St., Suite 7-801  
Chicago, IL 60601

Re: ILCC Amendment to Rule 100.500  
Illinois Register pages 14571- 14595

Dear Ms. Paziotopoulos,

We are writing on behalf of the 250 members of the Federated Alliance of Illinois Independent Retailers ("FAIIR") regarding the Amendment to Rule 100.500 that was posted in the Illinois Register on December 20, 2019, by the Illinois Liquor Control Commission ("ILCC"). FAIIR is a not-for-profit trade association of independent liquor retailers whose mission is to support, advance, advocate and protect the business interests of independent alcohol beverage retailers. The main issues addressed by the Amendment, Cooperative Purchasing Agreements, as well as other language are extremely important and impactful to the members of FAIIR, as well as the approximately 8,000 to 10,000 retail liquor stores in the State of Illinois.

The actions of two Illinois distributors, who control roughly 90 percent of the wholesale wine and spirits market, caused the members of FAIIR to begin to organize in June 2019, due to a decision made concerning Cooperative Purchase Agreements. FAIIR submitted a request to the ILCC to draft and adopt an Amendment to Rule 100.500 formally allowing independent retailers to join cooperatively to make purchases from Illinois distributors. The need for formal authorization is evident to all and is necessary for Illinois to continue to have an orderly market where all sectors of the alcohol beverage industry can compete on a level

playing field. While some of the language of the Amendment to Rule 100.500 would assist in achieving this goal other sections of the Amended Rule conflict with this goal. As such, the Amended Rule needs to be redrafted.

### **Cooperative Purchasing Agreements are Necessary to Ensure Competitive Balance in the Illinois Alcohol Beverage Market**

For more than forty years, alcohol beverage retailers in Illinois have been able to form cooperative buying groups. A cooperative buying group is a group of retailers, commonly or not commonly owned, who join together to use their buying power to be able to obtain better wholesale prices for beer, wine, and spirits. Illinois has a three-tier alcohol beverage system, whereby retailers may only buy alcoholic beverages from a licensed Illinois distributor. The distributors set the price for the product and these prices are often contingent on the amount of cases purchased through an order. The more cases purchased, the lower the case price becomes. Small independent retailers are at an inherent disadvantage to large retailers because retailers may only warehouse product on the licensed premises. Retailers are not allowed to have off-site warehouse facilities. This creates a natural limitation on the amount of product any one retailer can purchase—the limitation being the result of the size of a retail premises. Cooperative buying has allowed retailers to submit an order for product that is large for the group, but the right amount for the individual retailer. For example, a distributor may offer a \$10.00 per case discount on the purchase of 1,000 cases of a certain vodka. For retailers that do not have the capacity to purchase 1,000 cases the lower price is lost, and they must pay the higher price on a smaller order. However, under a cooperative purchasing group, twenty stores could jointly purchase the 1,000 cases and each receive a pro rata share of the total cases purchased. By becoming members of a cooperative purchasing group, retailers by the virtue of these groups, compete in the marketplace.

Approximately twenty-five years ago, the ILCC decided to formally organize many opinions and directives it had issued into one organized format. The result of this effort was the Trade Practice Policies (“TPP”). Each TPP addressed a particular practice within the Illinois alcohol beverage industry and whether the practice complied with the Illinois Liquor Control Act. TPP-6 addressed the issue of Cooperative Purchasing Agreements. The stated Policy of the TPP was, *“It is the policy of this Commission to allow unrelated retailers to enter into cooperative purchasing agreements.”* See Appendix Exhibit A. The TPP listed eleven specific guidelines to be followed by retailers in creating cooperative purchasing agreements. See Appendix Exhibit A. All sectors of the industry, including retailers and distributors, complied with the guidelines after TPP-6 was adopted and published by the ILCC. There were no objections to the codification of the long-standing practice of retailer Cooperative Purchase Agreements. For the ensuing twenty-five plus years, TPP-6 and its guidelines were judiciously followed by retailers and distributors resulting in an orderly, balanced and competitive alcohol beverage market in Illinois.

A few years ago, an industry group submitted and lobbied for the passage of an amendment to the Illinois Liquor Control Act (“Act”) regarding the TPP. The language of the Amendment, which passed the legislature and was signed by the Governor, abolished the Trade Practice Policies. Specifically, the language states “[T]he State Commission may not enforce any trade practice policy or other rule that was not adopted in accordance with the Illinois Administrative Procedure

Act.” 235 ILCS 5/1-2. As a result, the Trade Practice Policies no longer need to be followed by the industry and the ILCC cannot use the Trade Practice Policies for enforcement purposes. The impact of the repeal of TPP-6 on the retail sector was not immediately felt as the distributors initially continued to acknowledge and work with retailers who were part of a cooperative purchase agreement. However, this would soon change.

Toward late spring and early summer of 2019, the two largest and most dominant distributors in Illinois announced unilaterally that they would no longer recognize cooperative purchase groups formed by retailers that were not commonly owned. No reason as to this change was announced or given by the distributors. This action caused immediate concern and hardship on independent retailers. (Independent retailers are generally considered to be small businesses that are not part of a large chain of commonly owned stores.) For decades, independent retailers have relied on the ability to make cooperative purchases to survive and compete in the marketplace. The decision of the two largest distributors (which control an estimated 90 percent of the wholesale market for wine and spirits in Illinois) terminated the ability of independent alcohol beverage retailers to participate in Quantity Discounting programs.<sup>1</sup>

A group of retailers decided to seek the intervention of the ILCC by forming FAIR and presenting the issue to the ILCC. In August 2019, at a monthly meeting of the ILCC, retailers affected by the decision of the distributors to end the acknowledgment of cooperative purchase agreements presented the impact to the ILCC. The transcripts of the July 2019 and August 2019 ILCC meetings, which include these statements are included in the Appendix as Exhibits B and C respectively. The totality of the presentations is that unless the ILCC reinstated and formally adopted a rule or amendment to a rule reinstating the right of retailers to make cooperative purchases, the economic impact would be devastating. Many of the retailers speaking related how they would be unable to compete as the large commonly owned chains were still able to get quantity discounts for large volume purchases from the distributors. In particular, retailers whose locations are near a large chain are being undercut. The abolition of cooperative purchase groups had an immediate negative impact and is continuing to create disorder in the marketplace.

At the August 2019 ILCC monthly meeting, nine retailers involved with the founding of FAIR presented statements to the ILCC detailing the dramatic and negative impact that abolishing cooperative purchasing agreements was having on their small business. A summary of the comments is set out below.

Dean Tomaras has owned Archer Liquors, a family owned and family run business in Chicago, for twenty-seven years. He is confident that without a buying group, the independent stores in the market will be eradicated over the next five to ten years. Eliminating cooperative purchasing would not only hurt his business—it would hurt his family too—he isn’t just worried about competing with Jewel Osco, he is worried about paying his rent, his bills, and his employees. See Appendix Exhibit C, pages 42-49.

---

<sup>1</sup>Beer distributors did not follow the actions of the two wine and spirits distributors regarding the cancellation of cooperative purchase agreements. Generally since retailers must pay cash for beer upon delivery the beer industry handles purchases by cooperative purchase agreement members differently than wine and spirits distributors.

Adam Kosh's father opened their business, Antioch Fine Wine and Liquors in 1966. His eighty-year-old father still comes in to take care of the day-to-day operations of the store. Their business has been part of cooperative purchasing groups since it started. Further, their whole business model has operated around it, and it is the only way they have been able to compete with the larger chains. See Appendix Exhibit C, pages 49-52.

Jean Angelopoulos opened Armanetti Beverage Mart in Wood Dale sixteen years ago believing that failure was not an option, and that mentors or a group of mentors would be the key to success. Being a part of a cooperative buying group not only allowed her to compete with the "big guys" by leveling out the playing field, it also gave her a support system among other independent retailers. Angelopoulos's customers have felt frustrated with the price increases—and they do not see what is going on behind the scenes, they just see higher prices than what larger state-wide chains charge. See Appendix Exhibit C, pages 53-55.

Lastly, third generation owner of Family Beer and Liquor in East Dubuque, Tim Althaus has been working at his family's store since he was able to. He attributes the success of his store to cooperative purchasing, which allowed his store to survive in a competitive market. In the summer of 2019, Althaus had to start raising his prices because distributors did not want to recognize cooperative purchasing groups. He has had multiple long-term customers say, "Tim, you're forcing me to buy in Iowa." Hearing his customers say this felt "like the rug was pull(ed) out from under" them. See Appendix Exhibit C, pages 60-63.

These retailers are just a small sample of the Illinois retailers impacted by the decision of two Illinois distributors. In addition to the presentation by these and other retailers, over 120 petitions signed by other retailers were submitted to the ILCC. These petitions urged the adoption of a rule to allow for cooperative purchasing agreements. See Appendix Exhibit D for a sample of the petitions submitted. Finally, as stated, there are approximately 8,000-10,000 off premise alcohol beverage retailers in Illinois, and all have been similarly impacted by this issue.

The ILCC listened to the concerns of these small businesses and directed the ILCC staff to prepare an amendment to Rule 100.500 regarding cooperative purchase agreements. FAIR submitted draft language to the ILCC on behalf of the retailers to be used as an amendment to Rule 100.500. See Appendix Exhibit E. The purpose of the draft amendment is to return the marketplace to the status quo which existed prior to the Trade Practice Policies being abolished. The draft submitted includes the majority of the guidelines from TPP-6 while adding additional conditions that benefit all parties. The ILCC took the draft under advisement and ultimately drafted the amendment to Rule 100.500 that has been submitted and posted by the Joint Committee on Administrative Rules for consideration and possible adoption. The ILCC, in issuing the Amendment to Rule 100.500, correctly recognized that the issue of cooperative purchase agreements had to be addressed and that independent retailers could not survive without the revival of a formal practice that had existed in the Illinois alcohol beverage retail market for at least forty years. This proposed Amendment must now be discussed within a legal and this historical perspective.

## **Legal Analysis**

The ILCC has been empowered by the Illinois Liquor Control Act to promulgate rules as a means to ensure that the letter and spirit of the Act is followed by the alcohol beverage industry. The general authority to promulgate rules along with provisions of the Illinois Liquor Control Act is very important in the discussion of the proposed Amendment to Rule 100.500, particularly as it relates to the Independent Retailer's need for the rule. The Amendment is necessary to return order to a very disordered Illinois alcohol beverage market. This disorder has been caused by a unilateral decision of two Illinois wine and spirits distributors whose only goal can be said to be assertion of more control over independent Illinois retailers. This has disrupted an orderly market that for the last forty years has operated within the guidelines for cooperative purchase agreements set out by the ILCC by general policy first, and then later by TPP-6. The Amendment to the rule must be issued pursuant to a valid exercise of the statutory authority granted to the ILCC by the Illinois Liquor Control Act. As discussed below, the Amendment to the rule not only meets specific policies and statutory language enumerated in the Illinois Liquor Control Act, but also meets very fundamental constitutional regulatory goals set out by the U.S. Supreme Court. Finally, the facts as presented in the previous section require the promulgation of the Amendment regarding Cooperative Purchase Agreements because not doing so would cause severe economic harm to thousands of Illinois alcohol beverage retailers. The ILCC through the Amendment to Rule 100.500 is fulfilling its fundamental duty as the regulatory agency overseeing the Illinois alcohol beverage market.

The Illinois Liquor Control Act grants the ILCC express authority to create and adopt rules and regulations. Section 5/3-12(a)(2) states as follows:

*(a) The State Commission shall have the following powers, functions and duties:*

*(2) To adopt such rules and regulations consistent with the provisions of this Act which shall be necessary to carry on its functions and duties to the end that the health safety and welfare of the People of the State of Illinois shall be protected and temperance in the consumption of alcoholic liquors shall be fostered and promoted and to distribute copies of such rules and regulations to all licensees affected thereby. 235 ILCS 5/3-12(a)(2).*

Since its inception, the ILCC has used this authority to adopt numerous Administrative Rules covering a wide range of regulatory topics. Additional general authority is set out in various other sections within the Illinois Liquor Control Act that reference the need to maintain orderly markets. See 235 ILCS 5/3-12(a)(17)(H); 235 ILCS 5/3-12(a)(18)(G). Fundamentally the ILCC is required by the Illinois Liquor Control Act to issue rules governing activities within the alcohol beverage market.

In addition to the general authority stated in the Illinois Liquor Control Act, there is another specific provision that supports the issuance of the Amendment to Rule 100.500. Section 5/6-17-1 of the Act states as follows:

## 5/6-17-1 Distributors-Sales to Retailers

*The General Assembly hereby finds and declares that for the purposes of ensuring that all retail licensees have the opportunity to receive alcoholic liquor, reducing the amount of spoiled and over aged alcoholic liquor sold to customers, and maintaining the distribution system and the State's ability to regulate against illegal importation of alcoholic liquor, it is necessary to prevent discrimination among retail licensees as provided in this Section.*

*A distributor or importing distributor designated as a distributor or importer for alcoholic liquor within a designated geographic area or areas under Section 6-9 of this Act shall use its best efforts to make available for sale to retail licensees, in its designated geographic area or areas, each brand of alcoholic liquor which the distributor or the importing distributor has been authorized to distribute. Nothing in this Section prohibits a distributor or importing distributor from establishing purchase requirements unless the requirements have the effect of excluding a majority of the retail licensees in the designated geographic area or areas from purchasing the alcoholic liquor. 235 ILCS 5/6-17-1 [emphasis added].*

The emphasized sentence is of particular importance because the legislature clearly states that no distributor can institute pricing structures and policies that exclude or discriminate against the majority of the retail licensees within its authorized geographic area. Since the largest distributors in the state are granted sales authority for their alcohol beverage products for the entire state of Illinois, then no pricing policy may be instituted that would discriminate against the majority of the independent alcohol beverage retailers in Illinois. By abolishing TTP-6 and refusing to work with cooperative purchase groups, the distributors are in direct violation of this statutory provision. The main effect of refusing to acknowledge the existence of cooperative purchasing groups results in the exclusion of independent retailers from making purchases similar to the large chain retailers who are the chosen few of the distributors. The chosen few get the best pricing for the distributors products while the independent retailers have been shut out of these pricing arrangements thereby resulting in their exclusion from "purchasing the alcoholic liquor".

The authority to promulgate rules is critical in the discussion of the proposed Amendment to Rule 100.500, particularly as it relates to the need for the rule. The Amendment will prevent discriminatory exclusion and return order to a disordered Illinois alcohol beverage market. An orderly market has continued for over forty years with guidelines for cooperative purchase agreements set by the ILCC in general policy, and then TTP-6. This policy has prevented the exclusion and discrimination of independent retailers. A policy which has prevented the

distributors from excluding or discriminating against Independent retailers. In order for the Amendment to the rule to be effective it must be issued pursuant to a valid exercise of the statutory authority granted to the ILCC by the Illinois Liquor Control Act.

In addition to the express statutory authority, Illinois courts have consistently ruled that agencies have implied authority to create rules that are incidental to achieving the objectives of the agency and the agency's enabling statute. *Peoples Gas Light and Coke Co. v. Ill. Commerce Com'n*, 165 Ill. App. 3d 235, 246-47 (1987). Authority stems from either the express language of the enabling statute, or may devolve by "fair implication and intention" from an express provision, incident to achieving the objectives of the agency. *Id.* Agencies "enjoy wide discretion" to determine the public interest, and what is required to meet those needs. *Id.* Agencies must only not act unreasonably, arbitrarily, capriciously, and may not directly contravene expressed statutory provisions. *People v. Kueper*, 111 Ill. App. 2d 42, 46 (1969); *Ill. Dept. of Rev. v. Ill. Civil Service Com'n*, 357 Ill. App. 3d 352 (2005). Agency rules are presumed valid, and rules that are consistent with the spirit of the statute and further its purpose will be sustained. *Brown v. Sexner*, 85 Ill. App. 3d 139, 152 (1980); *Rivera v. Illinois Dept. of Public Aid* 132 Ill. App. 3d 213, 217 (1985) citing *Stofer v. Motor Vehicle Casualty Co.*, 68 Ill. 2d 361 (1977) in that it is in administrator's task to "extrapolate from the broad language of his enabling statute" and "deal with problems which the legislature sought to address." Illinois Courts have granted clear broad discretion to agencies such as the ILCC to issue rules the agency believes are necessary to achieve its statutory obligations and goals.

There is additional authority from the United States Supreme Court. The U.S. Supreme Court has consistently held that the twenty-first amendment enables a state to regulate alcohol beverages. The Court analyzes any statute or regulation within the framework of three core concerns: (1) temperance; (2) to ensure orderly markets; and (3) to generate revenue. *North Dakota v. US*, 495 U.S. 423, 425 (1986); *Granholm v. Heald*, 544 U.S. 460 (2005); *Tennessee Wine and Spirits Retailers Association v. Thomas*, 139 S. Ct. 2449 (2019). In other words, if a statute or regulation fulfills one of these main core concerns of the twenty-first amendment then it is a constitutional regulation. Taking the above, it is clear that state regulators must analyze any proposed statutory provision or administrative rule within the context of these three core concerns.

In determining if a Rule should be adopted, the ILCC can basically use a three-pronged analysis: (1) does the regulatory agency have the statutory authority to issue a rule, (2) do any provisions of the Illinois Liquor Control Act and (3) does the rule meet the obligations of one of the three core concerns of the twenty-first amendment to the U.S. Constitution and the purposes of the state alcoholic beverage statute. Applying this to the proposed amendment to Rule 100.500 regarding Cooperative Purchasing Agreements, it is clear that the ILCC has the legal authority to adopt the Amendment. The plain reading of the powers and duties section of the Illinois Liquor Control Act, specific statutory sections combined with the clear direction from Illinois courts, grants the ILCC the authority to adopt the Amendment. Also, the Amendment meets a core concern of the twenty-first Amendment, namely ensuring orderly markets, as well as the Liquor Control Act language regarding of-value issues. We need only look at the factual history of the topic for support.

As has been presented to the ILCC at public meetings, Cooperative Purchase Agreements have been in existence and used in Illinois for 40 years. The agreements allow independent

retailers to combine purchasing power to obtain better pricing for alcoholic products from distributors. The presentations from numerous independent retailers and from FAIR describe an alcoholic beverage market that has thrived due to the use of cooperative purchasing agreements. These agreements have created an orderly alcoholic beverage market with balanced competition for all members of the retail sector. The agreements have also been recognized as a legitimate and lawful activity by the ILCC for at least the last forty years. First through administrative fiat, and then through TPP-6, the ILCC acknowledged and authorized the use of Cooperative Purchase Agreements. By allowing the Agreements, the ILCC has used its legitimate statutory authority to ensure an orderly market.

The ILCC has adopted and issued Rule 100.500. Rule 100.500 addresses the important issue of the relationship between retailers, suppliers, and distributors. Specifically based on the important "of-value" principal contained in Sections 6-4, 6-5, and 6-6 of the Liquor Control Act the rule contains Section D, which is devoted to exceptions to the general of-value tenet. This tenet is mentioned, as are the cited sections of the Liquor Control Act, within the now repealed TPP-6 as the basis for the approval and allowance of the Cooperative Purchasing Agreement. Cooperative Purchasing Agreements prevent distributors from exclusively granting favorable quantity discounts pricing to chain retailers which the ILCC has approved as an exception to the of-value prohibition. The ILCC in allowing Quantity Discount Pricing to be used by distributors must ensure that that this pricing tool is available to all retailers, not just a chosen few. Cooperative Purchasing Agreements are necessary to ensure fair play. Other specific items in Section D of Rule 100.500 likewise were originally contained in various trade practice policies that addressed different issues and exceptions to the of-value tenet. Since the ILCC has historically addressed and analyzed Cooperative Purchasing Agreements as being an of-value issue, it is logical that the ILCC continues to address the issue in the same manner by amending Rule 100.500. Amending Rule 100.500 is not only the correct path legally, but the only statutorily authorized avenue for the ILCC to continue its policy of allowing Cooperative Purchasing Agreements.

In conclusion, the ILCC has the legal authority under the Illinois Liquor Control Act, Illinois Court case law, and the U.S. Supreme Court cases to issue an amendment to Rule 100.500. Additionally, based on the factual record presented regarding the history of and impact of Cooperative Purchasing Agreements, the ILCC needs to adopt an amendment in order to preserve and continue to ensure orderly markets exist within the Illinois alcohol beverage market- place. To do otherwise would risk the degradation and economic collapse of a large sector of the Illinois industry, Independent Liquor Retailers.

### **The Amendment**

The specific amendment to rule 100.500 submitted by the ILCC is a good start to returning greater order and stability within the Illinois alcoholic beverage market. The proposed Amendment also has numerous deficiencies and inaccuracies that must be corrected and changed. FAIR greatly appreciates the stated ILCC policy that cooperative purchase agreements are good for the

market and are a legal vehicle for retailers to obtain fair pricing and compete in the marketplace. Change or progress is never easy and this section of our submission is designed to move the discussion in a positive direction even further toward the adoption of a strong and fair rule.

FAIIR has comments and changes to suggest to the Amendment to Rule 100.500. These changes and comments are detailed below and are divided by the individual sections of the Amendment. If a section of the Amendment is not included, then FAIIR accepts the language in the Amendment as proposed. The original Amendment language is in blue while FAIIR's proposed changes are in red.

### Section 5(A)(i-iv)

The definition of Quantity Discount, as drafted, is incomplete. The definition does not contain all of the elements of a Quantity Discount Program. Below, FAIIR has suggested additional language to clarify some issues and to make the definition complete. A complete definition is very important to the ultimate application of the Rule to the business practices of the affected members of the alcohol beverage industry.

#### 5) Quantity Discounting-

A) For the purpose of this subsection (d)(5), the following definitions shall apply:

- i) Quantity Discounting: A quantity discount is a legitimate sales programming offered by between a distributor, or a manufacturer with the privilege of self-distribution, to a retailer, ~~or~~ retailers, or retailers pursuant to a cooperative purchase agreement in which the primary purpose of the programming is to increase product sales and merchandising to retailers and is not a subterfuge to provide prohibited "of value" inducements to a retailer. Specifically, a distributor or a manufacturer with the privilege of self-distribution offers a retailer, ~~or~~ retailers, or retailers pursuant to a cooperative purchase agreement a price for its products discount based upon an agreement by which the retailer, ~~retailers or retailers pursuant to a cooperative purchase agreement~~ will purchase a predetermined number of products in return for receiving a discounted price on the goods purchased. The purchase of the predetermined number of products can also be accomplished by an accumulation of purchases over time or via a group purchase that divides the purchase on a pro rata basis between members of a cooperative

ii)

purchase agreement. The discount may be applied either as a price reduction at the time of sale or as a rebate/credit following the sale, subject to the conditions found in this subsection (d)(5).

#### **Section 5(A)(IV) Bullet Point 4**

The following language is from bullet point number 4, (the bullet point number does not appear in the Amendment and has been added for easier reference) in Section 5(A) (iv) and needs to be deleted. This language references a section of the Liquor Control Act commonly referred to as the delinquency list. There is no need for this language as all licensed retailers are required to comply with the language of this section whether they are making a purchase through a cooperative agreement or making a direct purchase from a distributor. All retailers are familiar with the ramifications of not paying for purchases on time. To require a cooperative purchase agreement to have unique or special language regarding the delinquency list is superfluous. The language also would place an undue administrative burden on the cooperative purchase group. All retailers are familiar with the terms and conditions imposed upon them by the delinquency list.

~~The agreement shall contain procedures to ensure that parties to the agreement do not violate the 30-day merchandising credit requirement and remain subject to the enforcement mechanism found in Section 6-5 of the Act;~~

#### **Section 5(A)(iv) Bullet Point 6**

This section is from bullet point number 6 in Section 5(A)(iv) and imposes a restriction on retailers participating in a cooperative purchase group that is onerous and will most likely lead to the failure of the groups. This language requires that only employees of a member of a cooperative purchase agreement can be the designated agent of the group. There is no language in the Liquor Control Act that supports the imposition of such a restriction. In the past, retailers that are part of a cooperative purchase group have been able to retain and compensate whomever the best person is to negotiate purchase deals with the distributors. The agent(s) may be an employee or a non-employee who operates under a contract with the cooperative purchase agreement members. Historically individual(s) with the most expertise in this area are not employees of a retailer, but rather operate as consultants and advisors to many retailers. To take this expertise, which retailers have relied upon for forty years, away from retailers in a cooperative purchase agreement defeats one of the main purposes of the cooperative purchase agreements: leveling the playing field. The changes we propose below would maintain the historical, status quo of the operations of cooperative purchase agreement.

~~The designated agent or group of agents cannot be compensated directly or indirectly for making purchases on behalf of the parties to the agreement. The members of the cooperative purchase agreement shall have the authority to determine the compensation of its agent(s) However, the agents may be compensated for actual costs incurred on behalf of the~~

~~parties to the agreement. The agent may be compensated as a regular employee of one of the parties to the agreement.~~

#### **Section 5(A)(iv) Bullet Point 7**

This section is bullet point number 7 in Section 5(A)(iv)(7) and is too broad in scope because it does not specifically define “interest.” There may be consultants who provide non-sales related services to a distributor or manufacturer. Additionally, there may be a non-management employee who is assisting retailers with non-sales related management issues. Tied house laws do not create a blanket veto on every employee of licensees from having other jobs with different licensees. The changes we are suggesting would clarify when an agent would be prohibited from having an interest in a manufacturer or distributor.

The designated agent cannot have any ownership, management or operational control interest in a manufacturer or distributor

#### **Section 5(A)(iv) Bullet Point 8**

This section is bullet point 8 in Section 5(A)(iv)(8) and is related to the bullet point 7, discussed above. As with number 7, the language is too broad and overstates its purpose. There are consultants in the alcohol beverage market who may provide services other than pricing assistance, such as marketing, to both retailers and distributors and manufacturers and it should be noted have provided such services for forty years. This activity is not a violation of the Liquor Control Act unless it results in a manufacturer or distributor gaining influence or control over an individual retailer. Our suggested changes to this section narrow its scope and impact on cooperative purchase agreements.

The designated agent cannot be compensated directly or indirectly by a manufacturer or distributor for services provided to retailers subject to a cooperative purchasing agreement regarding purchases from a distributor or manufacturer with self-distribution privileges;

#### **Section 5(B)(i-v)**

The next section is Section 5(B)(i-v). Our principle concern with this section is the use of the phrase “similarly situated retailers in the same geographic area.” First, there has never been any direction from the ILCC, an interpretation, or guideline for this language. The distributors

have always had the discretion to determine and define similarly situated retailers in the same geographic area. This has resulted in an unfair advantage given to large chain retailers at the detriment of independent, small retailers. For example, grocery store chains are classified separately from independent retailers simply because they carry grocery and food items. Additionally, commonly owned independent retailers are treated and classified differently than non-commonly owned independent retailers although there is no logical basis for this classification. Furthermore, distributors often classify large chains as *not* being similarly situated with independent retailers that may be only two blocks away. Certainly, two retailers located within two blocks of each other, who sell many of the same products, should be considered within the same geographic area.

The language contained in Section 5(B)(i) would allow this disparity to continue. The ILCC needs to determine a standard the industry can use to avoid disparities and violation of this well recognized standard. Otherwise nothing will improve in the marketplace. As with the other sections, FAIR has suggested some changes to Section B below.

- B) Quantity discounting is only permissible only if:
- i) A distributor or a manufacturer with the privilege of self- distribution an industry member offers the same quantity price discount to all similarly situated retailers in the same geographic area. ~~Retailers and retailers who are members of a cooperative purchasing agreement are similarly situated and within the same geographic area if the alcohol beverage products carried are comparable and if they are located within the same County or within 50 miles of each other; who agree to purchase the required predetermined quantity of alcoholic liquor of the same brand. A "quantity discount" is when an industry member offers a retailer a discount at the time of sale based upon an agreement by which the retailer will purchase a predetermined number of products in return for receiving a discount on the same goods purchased. However, the following activities are prohibited:~~
  - ii) Sales incentives are temporary ~~Quantity Discounts are for products at a certain price and the price is for a specific period of time and designed and implemented to produce product volume growth with retailers;~~
  - iii) The sales incentives ~~Quantity Discounts to retailers and to retailers that are subject to a Cooperative Purchase Agreement are based on volume and discounted~~

pricing, including **discounts** in the form of cash, credits, rebates, alcoholic liquor products, and product displays;

- iv) The **sales incentives** **Quantity Discounts** are documented on related sales or credit memoranda; and
- v) The Quantity Discounts are offered to all similarly situated retailers **within the same geographic area.**

### Section 5(H)

The final section to review is Section 5(H), which attempts to define aggregated or accumulated credits and their disposition by distributors. Aggregated credits are accumulated by a retailer(s) when it makes a series of purchases over a pre-determined period. Should the retailer meet the total purchase requirements to obtain the aggregated credit, then the accumulated credit can be paid via a credit to the retailer's account, or through a cash rebate to the retailer. These aggregated accumulated credits can be earned by members of a cooperative purchasing agreement. Once the amount of the credit is established, the distributor must issue the credit/rebate to each individual member of the cooperative purchase agreement, not via a one-time payment to the whole group. Allowing for a one-time payment to members of a group would require the member retailers to then subdivide the credits or payment amongst themselves. The cooperative groups will not have any joint financial accounts. Dividing any payment creates tax and other administrative issues. The distributors are in a better position organizationally to apply the credits or rebates to each member of a cooperative purchase agreement as the distributors already have sales accounts set up for the individual retailer members. We have suggested different language to alleviate this scenario.

A distributor or a manufacturer with the privilege of self- distribution may issue ~~The use of~~ product credits and rebates as an adjustment on the purchase price based on volume purchasing, such as "end of month", "end of year", "end of period", or other such temporary cumulative discounts, credits and rebates to a retailer, retailers or retailers operating as part a cooperative purchase agreement. ~~from an industry member to a retailer is an adjustment of the purchase price based on volume purchasing and, as such, is not a violation of Section 6-5 of the Act.~~ These cumulative discounts are considered to be a form of pricing arrangement and/or quantity discount programs.;

- i) A distributor or a manufacturer with the privilege of self- distribution utilizing credits/rebates shall

conform the credit/rebate program to the following conditions:

- the rebate/credit program is made ~~provided they are made~~ pursuant to a written agreement. ~~the written agreement includes but is not limited to invoices, sales memoranda and other documents that reflect the rebate/credit to a retailer;~~
- the agreement is entered into at the time of sale;
- the credit/rebate extended ~~extend~~ for a specific period of time;
- the credit/rebate is ~~are~~ calculated based solely upon the purchases made by the retailer receiving the cumulative discount; and
- the credit/rebate is ~~are~~ documented on related sales and credit memoranda.

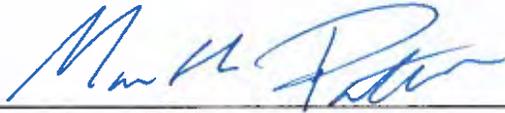
- ii) If the retailer is part of a group of retailers with common ownership, or a member of a cooperative purchasing agreement in compliance with this subsection (d)(5) ~~however~~, cumulative discounts, credits or rebates may ~~not be provided in one aggregated into a single aggregate~~ payment ~~to the cooperative purchase group. Any accumulated or aggregated discount must be paid by a credit or cash payment to each retailer that is a member of the cooperative purchase agreement on a pro rata basis, based on the individual retailer's share of the total purchase. for all retailers within the common ownership structure. If an aggregated payment is issued, in this~~ ease, the cumulative discount, credit or rebate must be calculated based upon the volume purchases of each individual retailer, with supporting documentation that

denotes the portion of the discount, credit or rebate attributable to each individual retailer.

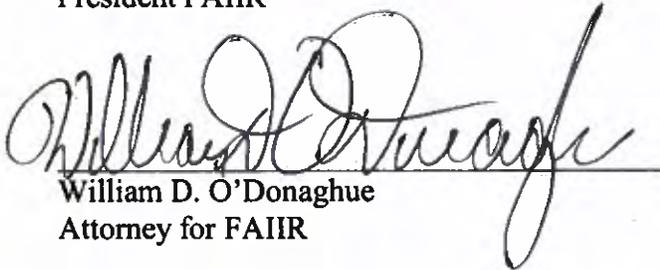
**Conclusion**

In conclusion, FAIR reiterates the need for an Amendment to Rule 100.500 allowing for Cooperative Purchase Agreements between groups of commonly owned or not commonly owned retailers. Cooperative Purchase Agreements have been a valuable asset for independent retailers for forty years. Many independent retailers have relied heavily on the ability to use cooperative purchase agreements to compete. Failing to pass an amendment to Rule 100.500 for cooperative purchase agreements would have a devastating impact on the more than 8,000 alcohol beverage retailers in Illinois. Unfortunately, the Amendment to rule 100.500 as proposed is flawed. The changes to the Amendment detailed herein would clarify a number of important issues and allow the cooperative agreements to work as they have for the last forty years. The status quo regarding cooperative purchase agreements will be maintained and improved by the Amendment to Rule 100.500 with our suggested changes. The members of FAIR and the thousands of other independent retailers in Illinois deserve the right to continue to compete successfully. Cooperative Purchase Agreements must be allowed to operate.

Sincerely,



Manish Patel  
President FAIR



William D. O'Donoghue  
Attorney for FAIR



Illinois  
Retail Merchants  
Association

216 W. Jackson Blvd, Suite 915  
Chicago, IL 60606

T: 312-726-4600  
F: 312-726-9570  
[www.irma.org](http://www.irma.org)

January 30, 2020

Ms. Pamela Paziotopoulos  
General Counsel  
Illinois Liquor Control Commission  
100 W. Randolph St., Suite 7-801  
Chicago, IL 60601

Re: ILCC Amendment to Rule 100.500 (Quantity Discounting)

Dear Ms. Paziotopoulos:

As a statewide trade association representing, in part, off-premises retailers of alcoholic products, we appreciate the opportunity to comment on the proposed rule changes regarding quantity discounting. IRMA represents independent liquor retailers, independent grocers, large chain grocers, general merchandise stores and warehouse stores that offer club memberships who all sell packaged liquor. Liquor is often a high-margin business in a thin-margin, competitive retail industry, and as you might expect, its sale is often critical to the viability of many retailers. For our liquor store members, having a fair playing field in order to compete is the difference between staying in or going out of business. So it is important to retailers, consumers and the state that we all get this quantity discounting rule right. To that end, while there are parts of the current proposal that we think strike the right chords, there are other parts that have many of our members seriously concerned about their future. Therefore, we would be opposed to the rule moving further in the rulemaking process unless the specific issues we detail in this writing are considered and, ultimately, changed.

We should start by saying that IRMA was a part of the many discussions with various parts of the liquor industry that considered whether the ILCC's Trade Practice Policies (TPP) should be abolished. We supported the measure with the understanding that the policies enforced were not necessarily all ill-conceived, but that there was no legal authority granted to have a set of rules that were conceived outside of the JCAR process. These policies were in-fact enforced as if they had the legal authority of rules issued by JCAR. We decided that the policies, if they were indeed good and lawful policies, should be submitted through the rulemaking process set forth in Illinois law.

As expected, dropping the TPPs created a space where the industry and the ILCC would take up, issue by issue, each TPP, engage in a re-write for submission to JCAR, ensure that the language clarified reflects what is already allowed in the Illinois Liquor Control Act, and move forward with modernized rules that reflect industry practices. TPP 6, which is the precursor to the current draft

on quantity discounting, and what the industry has followed for decades, was written to ensure the meaningful participation of all retailers in purchasing discounts offered by distributors. And we say “meaningful” participation of all retailers because, let’s face it, if independent liquor retailers could not band together to take advantage of buying discounts, there would be no independent liquor retailers left in Illinois save for a precious few, large independents. That would be a loss for neighborhoods, a loss for rural areas and leave a gaping hole in the entrepreneurial pursuits of the brave souls committed to weathering the storm of brick and mortar retail. The state of Illinois has a vested interest in supporting a market that allows for independent retailers, large national chain corporations and everyone else in-between.

This has probably been a long-winded way to say that the essence of what the proposed amendment to Rule 100.500 aims to do is preserve the right for independent retailers to take advantage of quantity discounts offered by manufacturers. We agree with continuing this policy. But where the submission of this rule runs contrary to its intent is what we will point out below. We stand in agreement with the provisions re-written and submitted by FAIR. We will reiterate them below with some of our own reasoning.

*\*\*\*Please note that all requested changes are included, but not highlighted. The changes are both included and highlighted in the letter from FAIR. The difference in the following sections is the addition of IRMA’s reasons that we agree with the changes requested in FAIR’s letter to the commission.*

#### **5(A)(i) Quantity Discounting**

##### 1) Quantity Discounting.

- A) For the purpose of this subsection (d)(5), the following definitions shall apply:
- i) Quantity Discounting: A quantity discount is a legitimate sales program offered by a distributor, or a manufacturer with the privilege of self-distribution, to a retailer, retailers, or retailers pursuant to a cooperative purchase agreement in which the primary purpose of the programming is to increase product sales and merchandising to retailers and is not a subterfuge to provide prohibited "of value" inducements to a retailer. Specifically, a distributor or a manufacturer with the privilege of self-distribution offers a retailer, retailers, or retailers pursuant to a cooperative purchase agreement a price for its products based upon an agreement by which the retailer, retailers or retailers pursuant to a cooperative purchase agreement will purchase a predetermined number of products in return for receiving a discounted price on the goods purchased. The purchase of the predetermined number of products can also be

accomplished by an accumulation of purchases over time and can include split case deals. The discount may be applied either as a price reduction at the time of sale, or as a rebate/credit following the sale, subject to the conditions found in this subsection (d)(5).

IRMA reasoning: Clarifies that retailers operating pursuant to a *cooperative purchasing agreement* can indeed take advantage of quantity discounts of the same type and manner as retailers that are located in the distribution area, but are not operating under such an agreement.

#### **5(A)(iv) Cooperative Purchasing Agreement (Bullet number 4)**

~~The agreement shall contain procedures to ensure parties to the agreement do not violate the 30-day merchandising credit requirement and remain subject to the enforcement mechanism found in Section 6-5 of the Act;~~

IRMA reasoning: We are painfully aware of the 30-day merchandising credit requirement and expect that the ILCC will enforce as it always does. The cooperative purchasing agreement itself should not be required to detail *how* we will follow this part of the law or how we plan to follow any other part of the law for that matter. We should just be expected to follow the law. We ask that this language be stricken.

#### **5(A)(iv) Cooperative Purchasing Agreement (Bullet numbers 6 and 8)**

(Bullet 6) The designated agent or group of agents can be compensated directly or indirectly for making purchases on behalf of the parties to the agreement. The members of the cooperative purchase agreement shall have the authority to determine the compensation of its agent(s);

(Bullet 8) The designated agent cannot be compensated directly or indirectly by a manufacturer distributor for services provided to retailers subject to a cooperative purchasing agreement regarding purchases from a distributor or manufacturer with self-distribution privileges;

IRMA reasoning: Nothing in the IL Liquor Control Act prohibits persons from being paid for making purchases on behalf of parties to an agreement. The person (or persons) negotiating a very complicated contract involving many independent retailers should be compensated for their work (including purchasing, time, negotiating efforts, etc.) if the group of retailers comprising the cooperative purchasing agreement so chooses. There is no threat to the three tier system by allowing the compensation package of a designated agent to be structured however the retail group sees fit as long as another member of the tier is not expected to pay all or a portion of the agent's salary or otherwise exerts control over the retailer.

### **5(A)(iv) Cooperative Purchasing Agreement (Bullet number 7)**

The designated agent cannot have an ownership, management or operational control interest in a manufacturer or distributor;

IRMA reasoning: Similar to the explanation offered by FAIR, consultants should be able to work for various members of the tiers if the work does not overlap and create a conflict of interest. Defining the kind of control a person can have in the tiers will ensure that persons who can add value to multiple tiers are allowed to do so without violating the interest that the ILCC has in maintaining the integrity of the three tier system.

### **5(B) Quantity Discounting:**

(B) Quantity discounting is only permissible if:

- i) A distributor or a manufacturer with the privilege of self-distribution offers the same quantity price discount to all similarly situated retailers in the same geographic area. Retailers and retailers who are members of a cooperative purchasing agreement are similarly situated and within the same geographic area if the alcoholic liquor products carried are comparable and if they are located within the same County;
- ii) Quantity Discounts are for products at a certain price and the price is for a specific period of time and designed and implemented to produce product volume growth with retailers;
- iii) The Quantity Discounts to retailers are based on volume and pricing, including in the form of cash, credits, rebates, alcoholic liquor products, and product displays;
- iv) The Quantity Discounts are documented on related sales or credit memoranda; and
- v) The Quantity Discounts are offered to all similarly situated retailers.

IRMA reasoning: Allowing the distributors to define a “similarly situated retailer” or even to define the “same geographic area” has resulted in an opaque process that the distributors have manipulated to accomplish their own objectives and create winners and losers in the marketplace. It should be the goal of the ILCC to set a clear standard so that all retailers, regardless of size and product mix, can understand how they will be categorized and to establish a truly fair playing field. The language above suggests a better way to set clear standards.

## 5(H) Credits and/or Rebates

(H) A distributor or a manufacturer with the privilege of self-distribution may issue product credits and rebates as an adjustment on the purchase price based on volume purchasing, such as "end of month", "end of year", "end of period", or other such temporary cumulative discounts, credits and rebates to a retailer, retailers or retailers operating as part of a cooperative purchase agreement. These cumulative discounts are considered to be a form of pricing arrangement and/or quantity discount programs;

i) A distributor or a manufacturer with the privilege of self-distribution utilizing credits/rebates shall conform the credit/rebate program to the following conditions;

- The rebate/credit program is made pursuant to a written agreement;
- The agreement is entered into at the time of sale;
- The credit/rebate extended for a specific period of time;
- The credit/rebate is calculated based solely upon the purchases made by the retailer receiving the cumulative discount; and
- The credit/rebate is documented on related sales and credit memoranda.

ii) If the retailer is part of a group of retailers with common ownership, or a member of a cooperative purchasing agreement in compliance with this subsection (d)(5), cumulative discounts, credits or rebates may not be aggregated into a single payment. Any accumulated or aggregated discount must be paid by a credit or cash payment to each retailer that is a member of the cooperative purchase agreement on a pro rata basis. If an aggregated payment is issued, the cumulative discount, credit or rebate must be calculated based upon the volume purchases of each individual retailer, with supporting documentation that denotes the portion of the discount, credit or rebate attributable to each individual retailer.

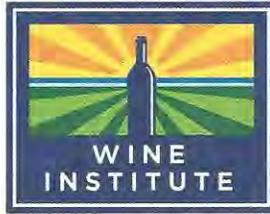
IRMA reasoning: Just as the distributors have the capability to individually invoice each retailer participating in a cooperative purchasing agreement, the distributors also have the capability to determine the pro rata share of each retailer for the purposes of distributing credits/rebates. We wish to maintain consistency for the purposes of invoices and credits to respect the integrity of each individual business to handle its financial obligations directly with the distributor, just as it is done today.

We look forward to continuing the conversation on this very important matter.

Sincerely,



Tanya Triche Dawood  
Vice President, General Counsel



Sally H. Jefferson  
Director, Great Lakes States

February 3, 2020

Ms. Pamela Paziotopoulos  
General Counsel  
Illinois Liquor Control Commission  
100 W. Randolph, Ste. 7-801  
Chicago, Illinois 60601

Dear General Counsel Paziotopoulos:

On behalf of Wine Institute, I am writing to submit the following comments on the Liquor Control Commission's (LCC) proposed "Quantity Discounting" rule. Wine Institute is a nonprofit trade association representing over 1000 California wineries and associate members. Our members produce 90% of the wine manufactured in the United States and provide a significant portion of the wine sold in licensed establishments in Illinois.

We have serious concerns about the far-reaching policy changes proposed in this rule.

First, the purpose of temporary quantity discounts is to share certain efficiencies from delivering large amounts of product at the same time to a single location and they serve as an important tool in marketing our members' products. As proposed here, cooperative purchasing agreements are not logistically or financially feasible for our wholesaler partners and thus would create a market inefficiency that would result in overall higher prices to our retailer partners and consumers.

Next, the proposed amendments remove the definition of "industry member" in order to distinguish between types of manufacturers. In doing so, the proposed rule removes an array of long-standing existing privileges from those manufacturers who do not have the privilege of self-distributing their products directly to Illinois retailers. These include removing the privilege of non-resident dealers from having the ability to offer quantity discounts under 100.500(d)(5)(A)(i)&(B). We do not understand the justification for this change. Current Illinois rules as provided under 100.500(d)(5)(D) expressly recognize that sales programming occurs between the three tiers saying: "this Section does not prohibit legitimate sales programming among or between the industry tiers in which the primary purpose of the programming is to increase product sales and merchandising to retailers and is not a subterfuge to provide prohibited "of value" inducements to a retailer." By deleting this language, we believe the proposed rules would unnecessarily insulate manufacturer tier industry members from interacting with retailers and wholesalers in support their products. The existing broad definition of "industry member" ensures that manufacturers and non-resident dealers can continue to support their wholesalers' efforts to provide quantity discounts for the ultimate benefit of consumers and allow direct interactions between nonresident dealers and retailers in educating about and merchandising in support of the manufacturers' brands. We do not believe those efforts should be threatened, narrowed or otherwise changed from the status quo— as it is working in the marketplace.

Other important privileges that nonresident dealers have enjoyed in the state for many years that the proposed amendments would eliminate include the ability to provide samples to retailers as provided under 100.500(d)(6) as well as providing rotating, stocking, resetting, and pricing services under 100.500(d)(17). It is critical that wine supplier personnel on sales calls—with or without distributors on the call—have the ability to provide a free sample of new product to a retailer and to merchandise their existing products while in the store. These are basic sales and longstanding practices. While the proposed rules continue to allow the salespersons of non-resident dealers to provide signs, advertising specialties, and displays to retailers, those same salespersons would not be allowed to touch their product to straighten up a shelf or rotate product, or to update a shelf tag. Likewise, the salesperson could provide a display piece, but would not be allowed to rotate product to build out the display. There is no justification for taking these long-standing privileges away, and it leaves non-resident dealers with incompatible privileges and restrictions, thereby putting them at a competitive disadvantage.

Next, the proposed rule makes a problematic change to the current policy regarding products displays. Under 100.500(d)(3)'s definition of product displays, the word "Reasonable" was added to the sentence, so that it now says: "Reasonable transportation and installation costs are not included in the \$300 value." Federal (27 CFR 6.83) and state regulations do not include a reasonableness standard in calculating transportation and installation costs. This new language adds ambiguity and risk since what is "reasonable" is solely left to the discretion of the regulator. We are concerned that an out-of-state supplier shipping the same item to a retailer as a local supplier may ship could be found to violate this ambiguous "reasonableness" standard simply because their freight costs are greater than the local supplier. Therefore, we have serious concerns about the state introducing a vague "reasonableness" standard into the cost calculations for product displays and urge the LCC to follow the federal standard, by excluding the transportation and installation costs of the display.

Finally, we appreciate the LCC's efforts to convert and update its trade practice policies into administrative rules and respectfully request moving forward that it do so with ample public notice and an opportunity to provide input on the proposed rule language so that all impacted industry members can be educated on and fully understand the consequences of any potential changes in advance of its adoption by the Commission.

Thank you and the Commission for considering our comments. Wine Institute welcomes and greatly appreciates the opportunity to work with the LCC on this and other future rulemakings. If you have any questions about our comments or if we can be of assistance, please contact me at [sjefferson@wineinstitute.org](mailto:sjefferson@wineinstitute.org) or 917-543-2678.

Sincerely yours,



Sally H. Jefferson

cc: Mr. Jeff Glass

February 3, 2020

**VIA EMAIL**

**[Pamela.Paziotopoulos@Illinois.Gov](mailto:Pamela.Paziotopoulos@Illinois.Gov)**

Pam Paziotopoulos, Esq.  
Illinois Liquor Control Commission  
James R. Thompson Center  
100 West Randolph Street  
Suite 7-801  
Chicago, IL 60601

**Re: Wine and Spirits Distributors of Illinois (“WSDI”) 1<sup>st</sup> Notice Comments**

On behalf of WSDI, please find our comments below on the pending amendments to 11 Ill. Adm. Code, Part 100, Sec. 100.500, published in Volume 43, Issue 51 of the *Illinois Register*.

The Illinois Liquor Control Commission (“ILCC”) has proposed a rule that would authorize: (a) independently owned retailers to enter into cooperative purchasing agreements; and (b) their cooperative agents to make binding alcoholic beverage purchases on behalf of any retail licensee desirous of joining a cooperative. The proposed rule exceeds the statutory rulemaking authority given to the ILCC by the Illinois General Assembly, and impermissibly and illegally regulates pricing in direct contravention of the Illinois Supreme Court’s ruling in *Ted Sharpenter, Inc. v. Illinois Liquor Control Commission*, 119 Ill. 2d 169, 518 N.E.2d 128 (1987). In addition, the proposed rule neither satisfies nor achieves the Policy Objectives identified by the ILCC. For each of these reasons, independently, the ILCC should withdraw the proposed rule.

**The Proposed Rules Exceed the ILCC’s Rulemaking Authority**

The ILCC may only promulgate administrative rules for the purpose of interpreting or implementing the Illinois Liquor Control Act (“ILCA”). It is uncontroverted that “administrative rules can neither limit nor extend the scope of a statute.” *Standard Oil Co. v. Department of Finance*, 383 Ill. 136 (1943). To that end, any power or authority claimed by an administrative agency must find its source within the provisions of the statute by which the agency was created or arise as an incident to the fulfillment of its statutory functions. *Schalz v. McHenry County Sheriff’s Dept. Merit Com’n*, 113 Ill.2d 198 (1986).

Sec. 3-12 of the ILCA is an enabling provision which grants the ILCC the authority to “adopt such rules and regulations...which shall be necessary to carry on its functions and duties to the end that the *health, safety, and welfare* of the [p]eople shall be protected and *temperance in the consumption of alcoholic liquors* shall be fostered and promoted...” 235 ILCS 5/3 (emphasis added). The ILCC’s proposed cooperative purchasing rule, however, promotes neither health, safety and welfare, nor temperance. Instead, it solely fosters the commercial interests of retail licensees in that it establishes new state-sanctioned purchasing ventures (“Cooperatives”) and authorizes state-sanctioned agents of these Cooperatives to make binding alcoholic beverage purchasing decisions to increase buying power and facilitate volume discounts. This proposal to form undefined joint ventures and joint venture agents, therefore, is outside the ILCC’s scope of authority. Moreover, the ILCC’s proposal also creates new classes of retail and agency licensure without any regulatory filing requirements and virtually no ILCC oversight; and is not “reasonably incident” to the ILCC’s statutory constraints of only promulgating rules to guide in the enforcement and interpretation of existing statutory mandates. The General Assembly is vested with the authority to create new classes of liquor licenses and has not delegated that authority to the ILCC. The ILCC, respectfully, has no authority to sanction cooperatives and cooperative agents.

### **The ILCC Has No Authority to Regulate Prices**

Additionally, the ILCC should withdraw the proposed rule because: (a) the ILCA does not govern the pricing of alcoholic beverages; and (b) the ILCC has no authority to regulate alcoholic beverage pricing except under the limited circumstance where it is a subterfuge for a tied-house “of-value” violation. Notwithstanding this prohibition, the ILCC’s proposed cooperative rule brings the ILCC squarely into price regulation by requiring distributors to sell at the same price to diverse cooperative members as they do to commonly owned retailers. This mandatory price regulation is well beyond the ILCC’s statutory powers.

The proposed cooperative rule also is contrary to established Illinois law, which unequivocally allows wholesalers to charge different prices based on different circumstances, such as the volume of retailer purchases and the nature of the retail operation. The Illinois Supreme Court held as such in *Ted Sharpenter, Inc. v. Illinois Liquor Control Commission*, 119 Ill. 2d 169, 518 N.E.2d 128 (1987). At issue in *Sharpenter* was a distributor’s pricing practice of offering larger discounts to off-premise retailers than it did for on-premise retailers. The ILCC claimed (as it does here) the ILCA’s prohibition of giving “anything of value” must be construed to prohibit the distributor from offering differing discounts or discriminatory pricing based upon the nature of the retail operation. The Supreme Court disagreed. According to the Illinois Supreme Court, the phrase “anything of value” in the ILCA does not include a blanket prohibition against price

discrimination. The proposed rule is in direct contravention of the Supreme Court's limitation on the ILCC's claimed authority to regulate discounts.

### **The Proposed Rules Do Not Identify Any Legitimate Regulatory Purpose**

The Statement of Statewide Policy Objective (Notice of Proposed Amendment ¶ 11) is conclusory and not justifiable. The ILCC asserts the Policy Objective is “[t]o increase cohesion and efficiency in the Illinois regulatory market, maintain the three-tier system, and prevent unfair business practices throughout the Illinois Marketplace.” However, nothing in the proposed rules accomplishes any of these objectives.

The proposed rule does not even mention three-tier policies. Nor does the proposed rule reference the purported “unfairness” of the existing ILCA and its Rules. Instead, the “unfairness” seems to be based on the inaccurate perception that commonly owned retailers and the proposed cooperatives are similarly situated. Nothing is further from the truth.

Commonly owned retailers and the proposed cooperatives are vastly different. Commonly owned retailers are State regulated business, typically order in larger quantities per store (lessening the number of deliveries and the number of delivery stops), tend to be situated closer in proximity to each other (lessening travel time between stops), and are all tied together for purposes of Illinois' 30-day credit law. The proposed cooperatives are not State regulated businesses, file absolutely no documentation or applications with the ILCC, can be loosely established joint ventures, would inevitably order smaller quantities per retailer member, and can be situated throughout the entire state of Illinois. The proposed cooperative rule takes none of these objective, fact-based business distinctions into consideration, and the proposed rule does not state how forcing wholesalers to treat these vastly different cooperative joint ventures the same as commonly owned stores will advance the policy purposes of the ILCA.

Finally, far from “increasing cohesion and efficiency in the Illinois regulatory market,” the proposed rule, if enacted, would have catastrophic regulatory ramifications. There are currently 25,286 licensed Illinois retailers and 276 licensed distributors. As generally explained below and explained fully in the attached addendum, the way the proposed rules are written, there are minimal, if any, guidelines for cooperative formation, no licensing requirements, no cooperative agreement content requirements, and no ILCC oversight. In other words, the more than 25,000 licensed wholesalers and retailers are being left to figure it out on their own and to self-regulate. This is not cohesive or efficient. Moreover, the proposed rule has no regulatory oversight in that the ILCC is not accepting any responsibility to manage the requisite terms of cooperative agreements, or even license, register, or otherwise monitor cooperatives and their agents.

Each of these reasons, independently, requires the abandonment of the proposed rule. Moreover, assuming *arguendo* the ILCC will not abandon its efforts to enact the cooperative rule,

respectfully, the rule is substantially deficient and, if enacted, will lead to chaos in interpretation and enforcement of the rules.

### **Proposed Language**

The following highlights major deficiencies of the proposed rule. Appended hereto is a line-by-line explanation why the proposed rule is deficient. In summary, the proposed rule:

- (a) fails to detail the manner in which the ILCC is to approve cooperatives, regulate cooperative membership and agency registrations, the means by which members may join and terminate their relationship with cooperatives, the timing of same, the monitoring of retailers in order to avoid dual cooperative membership, and the means by which the ILCC will advise industry members about cooperative membership, which will result in massive confusion among the States' 25,286 currently licensed retailers and 276 currently licensed distributors; and
- (b) is inequitable, as it seeks to give cooperatives the benefits of common ownership, without the obligations of common ownership, such as the legal requirement that all commonly owned retailers must abide by the credit law, or else none of the commonly owned retailers can make purchases (235 ILCS 6/5);
- (c) places no restrictions on the size of proposed cooperative membership and fails to address the economic hardships imposed upon distributors that would be created by cooperatives with unlimited memberships;
- (d) imposes an unduly burdensome and potentially cost-prohibitive "master invoice" requirement, which, if feasible, would result in costly programming and compliance upgrades for all distributors, and could, because of excessive costs, prevent distributors from offering quantity discounts; and
- (e) fundamentally misunderstands the purpose of a non-resident dealer license and literally changes the license classification established by the Legislature in the ILCA. A non-resident dealer license was created to apply to any person importing alcoholic liquors into Illinois and thus, applies to manufacturers, importers, and national distributors. The draft rules reference "manufacturers" and "distributors," but defines a non-resident dealer in the last section (e)(3) as a "manufacturer licensee," creating confusion and ambiguity, where the rule should provide guidance in understanding and implementing the ILCA.

For all of the above reasons, WSDI respectfully requests that the Commission withdrawal its proposal. Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeremy Kruidenier". The signature is fluid and cursive, with the first name "Jeremy" written in a larger, more prominent script than the last name "Kruidenier".

Jeremy Kruidenier  
Vice Executive Director and General Counsel

Attachment

## ¶ 5(A)

- i. If the proposed rule is to be enacted, “merchandising” should be removed from the first sentence of this subsection. Merchandising includes certain and limited stocking, rotation, resetting and pricing services that are incidental to the sale and delivery of alcoholic beverages to a retail premises open to the general public. The purpose of quantity discounting is to increase sales, not to increase merchandising services. Accordingly, “merchandising” should be removed from this subsection.

“**Will** purchase” in the second sentence of this subsection should be replaced with “**may** purchase.” If the proposed rule is to be enacted, a retailer should have an opportunity to purchase a specified quantity in order to receive a discount. The retailer must also be given the opportunity to purchase a lesser quantity without the quantity discount.

- ii. The second sentence of this subsection defines “retailer” broader than the intended purpose of this proposed amended rule by including within its definition “any license holder purchasing product for the legal sale to consumers.” This definition includes tap rooms (retail locations at manufacturer breweries), which are defined as having retail licensee powers pursuant to the Liquor Control Act. 235 ILCS 5/5-1(d). If the proposed rule is to be enacted, this definition of retailers should explicitly state that manufacturers are not included with the limited definition of retailers.
- iii. The proposed definition of “common ownership” is different from the Commission’s definition of “common ownership” in Rule 100.90(a), which states “[c]ommon ownership’ shall be any ownership interest of more than 5% of the total ownership interests in each retailer.” Rules are best if consistent. If the proposed rule is to be enacted, there is no reason why the proposed rule should use a different definition.
- iv. Subsection (5)(A)(iv) suffers from numerous and significant deficiencies. Of primary concern:
  1. The proposed amendments do not require the Commission to: (a) approve cooperative agreements; (b) keep track of cooperatives and their members; (c) publish cooperative membership to the industry; or (d) enforce the delinquency laws with respect to cooperatives. There are 25,286 Illinois licensed retailers and 276 Illinois licensed distributors. Cooperatives, if the proposed rule is to be enacted, are expected to number in the hundreds. The Commission cannot and should not delegate the regulatory function of approving potentially hundreds of different cooperative agreements to each of the 276 distributors. This would be contrary to the Statement of Statewide Policy Objective stated in the Notice of Proposed Amendment (“Notice”), at ¶ 11, which specifically attempts “[t]o increase cohesion and efficiency in the Illinois regulatory market.”

If the proposed rule is enacted, it should include direct registration with, and oversight by, the Commission. See for example, Indiana, 905 IAC 1-32.1-6 (“Group purchasing agreements, including any amendments, deletions, or additions thereto, shall be filed with the commission.”) District of Columbia, D.C. Code Ann. § 25-122 (“a pool buying group shall file with ABRA a copy of the agreement under which the pool buying group will operate. The ABRA shall review the agreement and, if the requirements of applicable law and rules are met, shall approve the agreement.”); Florida, Title 34, Ch 561, § 561.14(3) (“Members of a pool buying group must be approved by the Division of Alcoholic Beverages and Tobacco.”)

2. The proposed amendments do not specify the required minimum content of cooperative agreements, but instead leave open the ability of the Commission to establish substantive content requirements at a later time. This glaring omission and ambiguity will likely result in hundreds of different cooperative agreements and create havoc in interpretation of cooperative agreements. Consequently, the rule is not in accord with the authority granted to the Commission by the Administrative Review Act, which provides that “a rule is an agency statement of general applicability that implements, applies, interprets, or prescribes law or policy.” Ill. Admin. Pro. Act, 5 ILCS 100/1-70. Moreover, this provision also is not consistent with the stated Statewide Policy Objective in the Notice of “cohesion and efficiency in the Illinois regulatory market.” Notice, ¶11.

Other states specify the requisite content of cooperative agreements. See for example, Indiana, IAC 1-32.1-3 (cooperative agreements are to “be on a form approved by the commission;”); New Jersey, N.J. Administrative Code, §13:2-26.1 (a cooperative is to “registered with the Division [o]n a form prescribed by the Director); New Mexico, N.M. Stat. Ann. § 60-6B-21 (itemizing provisions of cooperative agreements, which are to be filed with the division).

3. The proposed amendments do not specify the procedures: (a) by which cooperative agreements are to be submitted to the Commission (as written, there is no requirement of submission); (b) how additions and removals of cooperative members are to be processed; and (c) the time periods in which such additions and removals of cooperative members are to be processed. As stated above, the purpose of an administrative rule is to implement, apply, interpret or prescribe policy. Ill. Admin. Pro. Act, 5 ILCS 100/1-70. These omissions fail to accomplish the purpose of the contemplated rule. Moreover, these omissions, if not corrected, would result in industry chaos and disputes, not “cohesion and efficiency.

Other states incorporate procedures in their laws and rules. See for example, Arizona’s cooperative law and associated regulation. Ariz. Rev. Stat. Ann. § 4-227 (“As required under A.R.S. § 4-222(A), a retail agent registered under R19-1-203

shall provide written notice to the Department within 10 days after a licensee with whom the registered retail agent has a cooperative-purchase agreement terminates the registered retail agent's authority."); Indiana, 905 IAC 1-32.1-6 ("Group purchasing agreements, including any amendments, deletions, or additions thereto, shall be filed with the commission.") District of Columbia, D.C. Code Ann. § 25-122 ("a pool buying group shall file with ABRA a copy of the agreement under which the pool buying group will operate. The ABRA shall review the agreement and, if the requirements of applicable law and rules are met, shall approve the agreement."); Florida, Title 34, Ch. 561, § 561.14(3) ("Members of a pool buying group must be approved by the Division of Alcoholic Beverages and Tobacco.") New Mexico, 15.11.30.8 NMAC (cooperative agreements must contain "[a] provision that, with a minimum of notice of 30 days, the cooperative may cancel the membership of any member.").

4. From a procedural standpoint, bullets (as opposed to numbered provisions) are not advisable. Bullets prevent the Commission and industry members from precisely citing to each particular provision. Each subsection should be referenced with a specific identifiable number or letter.
5. The following address the deficiencies of the proposed amendments in the bullets:

**Bullet 1:**

There is no process for the addition and removal of retailers from cooperative agreements. Retailers will join and leave cooperatives. There should be a Commission mandated master cooperative agreement, or certain specified provisions mandated by rule that must be contained within a cooperative agreement, and then a form provided by the Commission for retailers to join and be removed from cooperative agreements. This form appears contemplated by the Notice of Proposed Amendment, ¶ 13(B), which generally states that a form is to be submitted to the Commission.

**Bullet 2:**

The form referenced above should include the licensee information.

**Bullet 3:**

There is no process for determining whether a retailer is party to more than one cooperative agreement. The Commission must provide a list of cooperatives, authorized cooperative agents, and retailers that are members of each cooperative and must monitor the prohibition on dual cooperative membership.

Distributors have no technology allowing them to monitor cooperatives and cooperative members. Distributors also have no technology allowing them to cross-reference cooperative membership in order to police and enforce the proposed rule preventing retailers from participating in more than one cooperative. This technology would require extensive and expensive custom computer programming and would be far too expensive for smaller distributors to accomplish. It should not be the responsibility of each of the 276 licensed Illinois distributors to track hundreds of cooperative agreements and potentially thousands of cooperative members.

**Bullet 4:**

The requirement that a cooperative agreement “contain procedures” to ensure the cooperative members do not violate the 30-day law is ambiguous and insufficient to satisfy its purpose. The basic premise of the proposed amendments is for cooperatives to be treated as commonly owned retailers in order to obtain the benefits of operating like commonly owned retailers. It is thus axiomatic that cooperative members must be subject to the same rules imposed on commonly owned retailers, including the obligations imposed by Section 6-5 of the Act and Rule 100.90, which govern the advance of credit and retailer delinquencies in payment. This proposed provision completely fails to specifically incorporate the application of Section 6-5 and Rule 100.90, but instead leaves it up to each individual industry member to “figure it out.”

Other states specifically mandate the content of cooperative rules. See for example, Indiana, 905 IAC 1-32.1-3(a)(6) (A joint purchasing agreement must “provide for the joint and several liability of each party to the agreement in the event the total amount due on a master invoice (less credits, returns, and allowances) described in section 4(a) and 4(b) of this rule is not paid in full.”); Indiana, 905 IAC 1-32.1-4(c) (“In the event the total purchase price shown on the master invoice is not paid to the wholesaler within the time limits prescribed by IC 7.1-5-10-12 and 905 IAC 1-21-1, then all distributors shall be required to restrict or terminate their sales to all retailer and dealer permittees who received any fractional share of the alcoholic beverages described on such master invoice in accordance with the provisions of IC 7.1-5-10-12 and 905 IAC 1-21-1.”) New Jersey, N.J. Admin. Code § 13:2-26.1 (a)(6) (“All purchases on credit through or by cooperative agreement shall be reduced to writing, signed by the wholesaler and each individual participating member of the cooperative, and be consistent with the credit provisions of N.J.A.C. 13:2–24. Such credit terms shall include adequate assurances of payment by each individual participating member by either the posting of a bond by the cooperative member or a provision that each member of the cooperative shall be jointly and severally liable for payment for the purchases made through the cooperative. A copy of such written agreements shall be

maintained by the wholesaler in its marketing manual and by the registered buying cooperative.”)

Moreover, failure of the proposed amendments to apply Section 6-5 of the Act and Rule 100.90 to cooperatives would not “level the playing field” among commonly owned retailers and cooperatives, but instead would provide an unintended business advantage to cooperative members by providing them with the benefits of common ownership without the corresponding obligations. In order to avoid providing the cooperative members with an undesirable legislative business advantage, if the proposed rule was enacted, if one cooperative member is delinquent in accord with Illinois law, all retailers in the cooperative must be placed on the statutorily required delinquency list in the same manner as commonly owned retailers are placed on the delinquency list if only one of a number of commonly owned stores is delinquent.

Requiring “procedures to ensure that parties to the agreement do not violate the 30-day merchandising credit *requirement*” (emphasis added) is also a misstatement of existing law. Nothing in the law *requires* credit to be extended. The law requires distributors extending credit to report as delinquent those retailers failing to pay for sales on credit within 30 days. Section 6-5 and Rule 100.90.

Further, the proposed amendment leaves open the significant question related to the “procedures” that are satisfactory to the Commission. There is no statement or guidance in the proposed amendment as to “procedures” the Commission would find acceptable. This omission, if left unresolved, would inevitably result in numerous contentious disputes involving distributors, cooperatives, cooperative members and the Commission.

**Bullet 5:**

The designation of a cooperative agent or agents is necessary and appropriate. As stated in WSDI’s cover letter, cooperatives and co-op agents should be licensed, not just designated. The process to designate and register an agent with the Commission must be set forth. The Commission must maintain a list of agents authorized to place orders on behalf of their respective cooperatives. There must be a specified process for addition and removal of agents. Anything less would lead to a disorderly market.

Other states have procedures in place to regulate cooperatives and agents. See for example, D.C. Code Ann. § 25-122 (cooperative application to be filed with regulator); Florida, Title 34, Ch. 561, § 561.14(3) (“Members of a pool buying group

must be approved by the Division of Alcoholic Beverages and Tobacco.”); New Jersey, N.J. Admin. Code § 13:2-26.1 (“The group must be registered with the Division. Registration may be done on a Division issued form.”) Indiana, 905 IAC 1-32.1-6 (“Group purchasing agreements, including any amendments, deletions, or additions thereto, shall be filed with the commission.”) District of Columbia, D.C. Code Ann. § 25-122 (“a pool buying group shall file with ABRA a copy of the agreement under which the pool buying group will operate. The ABRA shall review the agreement and, if the requirements of applicable law and rules are met, shall approve the agreement.”); Florida, Title 34, Ch. 561, § 561.14(3) (“Members of a pool buying group must be approved by the Division of Alcoholic Beverages and Tobacco.”).

The proposed amendments if enacted must also state that orders placed by the agents are binding on the cooperative members. There should be no ability for cooperative members to deny agency and authority after the agents place orders on behalf of members. If cooperative members were allowed to refuse orders placed by their agents, thereby reducing the quantity purchased by all cooperative members, the remaining members would receive a better quantity discount, which is not the intent of the proposed amendment. The better quantity discount would result in the cooperative members receiving something of value, *e.g.*, a better price for less quantity of goods purchased than others are offered.

**Bullet 8:**

The amendment preventing cooperative “agent or group of agents” from being compensated directly or indirectly for making purchases on behalf of the parties to the cooperative agreement is necessary and appropriate. Allowing agents to be compensated for actual costs incurred on behalf of the parties to the cooperative agreement is ambiguous. Actual costs should be defined to include expenses associated with filing fees. Cooperative’s personnel salaries, rent, profits and other general expenses associated with operating a business should not be included in the definition of costs.

**Bullet 9:**

Requiring an executed copy of the cooperative agreement to be kept by each retailer raises the question of whether or not the retailer is required to have the signature pages of each retailer that joins and leaves a cooperative. For obvious practical reasons, the answer should be no. The retailer should be required to maintain its cooperative form and a copy of the master cooperative agreement (addressed above).

**Bullet 10:**

As written, a retailer or cooperative member could give the referenced documents to any distributor employee, including salespeople, drivers and merchandisers. This would create significant administrative difficulties for distributors. There is also no process in place for vetting the cooperative agreements. Moreover, the process as proposed would literally allow a retailer to hand over a copy of a cooperative agreement and then immediately place an order as a cooperative member. The distributors' computer systems, however, do not and cannot work in this way. Cooperative membership needs to be added into the computer systems at the headquarters of the distributors, and this will take time.

As explained above, the Commission must maintain the list of authorized cooperatives and agents and cooperatives must provide their agreements and retailer joining and removal forms to the Commission. As stated above, requiring the Commission to receive and approve cooperative agreements and add/remove form is consistent with the Notice that states the Commission is to receive "forms" in connection with the cooperatives. Notice, ¶13(B). This process is also consistent with the stated purpose of the amendments which includes "cohesion and efficiency in the industry." Notice, ¶11.

**Bullet 11:**

If the proposed rule is enacted, the requirements of cooperative terms and conditions must be set out in the rule. This is the point of the proposed amendments. As written, there are no content requirements, but the Commission may establish terms and conditions at a later time. This provision does nothing other than "kick the can down the road," without actually addressing and resolving the very matters these amendments should address if they are to be enacted. Terms and conditions should include, at a minimum:

- i. A maximum number of retailers authorized to participate in a cooperative, which would be consistent with other cooperative laws (See, for example, New Jersey, N.J.A.C. Title 13, Chapter 2, §13:2-26.1 ("The number of class C licensees in a cooperative may not exceed the number of plenary distribution retail licenses issued to any one person or entity in New Jersey at the time of the prior most recent annual renewal of these licenses");
- ii. The process for joining and removing membership in a cooperative, such as the form referenced above;

- iii. The types of cooperative services and fees and costs to be charged to the cooperative members for the enumerated services, which would eliminate disputes with respect to whether or not a cooperative is being paid, directly or indirectly, for cooperative purchasing services; and
- iv. Joint and several liability requirements, or a process pursuant to which bonds may be posted in order to satisfy delinquent cooperative member payments, which would give the cooperative members the benefits of group purchasing like commonly owned retailers with the related and necessary obligations.

**Bullet 12:**

A cooperative's or retailer's failure to comply with the requirements of the proposed rule should not negatively impact the distributor. Also, a cooperative's or retailer's failure to comply with the terms and conditions of its cooperative agreement would not constitute an "of value" violation under Section 6-5 of the Act (because the distributor would not be providing anything "of value"). If the proposed amendments are enacted, they should include a specific remedy if a cooperative or retailer fails to abide by the rule.

**5(B)**

- ii. "Sales incentives" is not the appropriate terminology. At issue are quantity discounts, not sales incentives.

The requirement that sales incentives be "temporary" in order to qualify is not appropriate. Even if "sales incentives" is replaced by "quantity discounts," quantity discount opportunities should always be available if desired by the distributor.

- iii. "Product displays" is ambiguous and is not a type of discount. "Product displays" should be removed from this subsection.

**¶ 5(G)**

- i. Distributors do not have the capabilities to issue "master invoices." Each and every distributor throughout the state prepares an invoice particular to the retailer purchasing and receiving the product. Even with commonly owned stores, each individual commonly owned store receives its own invoice for each shipment. No distributor provides its retailers with a detailed "master invoice" covering each and every purchase and delivery of each and every of its commonly owned, but independently licensed facilities.

The invoice requirements contemplated by the proposed amendments will require extensive and expensive programming to be conducted by all distributors (assuming they have the economic resources to reprogram computer software or purchase new software). Further, the requirement of sending a master invoice to each cooperative member will be tedious and expensive. Distributors will likely need to create new positions in order to comply with the proposed amendments, if enacted. Smaller distributors could easily be economically prevented by the proposed rules from conducting business with cooperatives. These smaller distributors therefore face negative economic ramifications – including significant loss of business -- because they cannot afford extensive computer programming and creation of new positions.

Assuming the proposed amendments are enacted with this “master invoice” requirement, the distributors will need many months (at a minimum) in order to program software capable of providing master invoices to cooperatives and each cooperative member.

### **Definitions “(e)”**

1. Paragraph 1 of subsection “e” (which does not seem to follow the proper numbering / lettering sequence) is not consistent with the definitions contained in the Liquor Control Act. For instance, subsection “e” deems non-resident dealer licensees to be manufacturers. This is inconsistent with the Act and would result in ambiguity with expressed General Assembly policy. *See*, 235 ILCS 5/6-1.5.



Governor JB Pritzker  
Cynthia Berg, Chair  
Chimaobi Enyia, Executive Director

100 West Randolph Street, Suite 7-801, Chicago, IL 60601  
300 West Jefferson Street, Suite 300, Springfield, IL 62702

---

## ATTACHMENT C

### AGENCY EVALUATION OF SPECIFIC CRITICISMS AND SUGGESTIONS

Agency: The Illinois Liquor Control Commission

Rulemaking: 11 Ill. Adm. Code 100.500

(See Attached Spreadsheet)

ATTACHMENT C  
 AGENCY EVALUATION OF SPECIFIC CRITICISMS AND SUGGESTIONS  
 AGENCY: ILLINOIS LIQUOR CONTROL COMMISSION  
 RULEMAKING: 11 III. Admin. Code 100.500

ATTACHMENT C		RULEMAKING: 11 III. Admin. Code 100.500						
AGENCY EVALUATION OF SPECIFIC CRITICISMS AND SUGGESTIONS								
AGENCY: ILLINOIS LIQUOR CONTROL COMMISSION								
RULEMAKING: 11 III. Admin. Code 100.500								
Commenter	Section of Change		Current Proposal Language		Commenter Suggested Change		Summary of Suggested Change	ILCC Comment
FAIR/IRMA	5(A)(ii)		<u>Retailer: The term retailer, as used in this subsection (d)(5), includes individual license holders as well as groups of licensees with either a common ownership interest or a cooperative purchasing agreement as defined in subsection (d)(5)(A)(iv). A retailer is further defined as any license holder purchasing product for the legal sale to consumers and not for resale to another retailer.</u>		<u>"retailer, retailers, or <b>retailers pursuant to a cooperative purchase agreement.</b>"</u>		Broadening the definition of "retailer" to "retailer, retailers, or <b>retailers pursuant to a cooperative purchase agreement.</b> "	Reject: This is unnecessary because the term "retailer" in Section in 5(A)(ii) includes cooperatives. Change suggested in Attachment A is for different reason.
FAIR/IRMA	5(A)(iv) Bullet Point 4		<u>Text: <del>The agreement shall contain procedures to ensure that parties to the agreement do not violate the 30-day merchandising credit requirement and remain subject to the enforcement mechanism found in Section 6-5 of the Act.</del></u>		<u>Text: <del>The agreement shall contain procedures to ensure that parties to the agreement do not violate the 30-day merchandising credit requirement and remain subject to the enforcement mechanism found in Section 6-5 of the Act.</del></u>		Comment removes the requirement that the Agreement contain procedures on to not violate the 30 day credit law.	Reject: ILCC Changes to this Section requirement apply 30-day credit rules to cooperatives.  Accept: ILCC changes remove references to compliance with Section 6-5 of the Act. Such compliance is expressly mandated in the Act.

ATTACHMENT C  
 AGENCY EVALUATION OF SPECIFIC CRITICISMS AND SUGGESTIONS  
 AGENCY: ILLINOIS LIQUOR CONTROL COMMISSION  
 RULEMAKING: 11 III. Admin. Code 100.500

FAIIR/IRMA	5(A)(iv) Bullet Point 6		<p><u>The designated agent or group of agents cannot be compensated directly or indirectly for making purchases on behalf of the parties to the agreement. However, the agents may be compensated for actual costs incurred on behalf of the parties to the agreement. The agent may be compensated as a regular employee of one of the parties to the agreement.</u></p>	<p>Text: The designated agent or group of agents <del>cannot</del> be compensated directly or indirectly for making purchases on behalf of the parties to the agreement. <u>The members of the cooperative purchase agreement shall have the authority to determine the compensation of its agent(s). However, the agents may be compensated for actual costs incurred on behalf of the parties to the agreement. The agent may be compensated as a regular employee of one of the parties to the agreement.</u></p>	<p>Allow the "designated agent" to be compensated for being the agent - In other words, the agent should not have to be an existing officer, owner, or employee of one of the retailers. The agent could be an independent agent representing all cooperative retailers and receiving compensation for such representation.</p>	<p>Reject: Compensation of an independent agent increases the likelihood that an independent agent would be compensated by an industry member. ILCC change relates to further definition "actual costs."</p>
------------	----------------------------	--	---	--	---	--

ATTACHMENT C  
 AGENCY EVALUATION OF SPECIFIC CRITICISMS AND SUGGESTIONS  
 AGENCY: ILLINOIS LIQUOR CONTROL COMMISSION

RULEMAKING: 11 III. Admin. Code 100.500

FAIIR/IRMA	5(A)(iv) Bullet Point 7		<u>The designated agent cannot have any interest in a manufacturer or distributor.</u>		Text: The designated agent cannot have any <u>ownership, management or operational control interest</u> in a manufacturer or distributor.	The current version of the language does not allow the cooperative designated agent to have ANY interest in a distributor or manufacturer. FAIIR agrees that the agent should not have an ownership, management or operational control interest in a manufacturer or distributor but argues that some crossover interest should be allowed. For instance, under the suggested change, the agent could be an employee of the manufacturer or distributor or could be compensated in some other way (e.g. a merchandiser) by the manufacturer or distributor.		Reject: Agents making purchasing decisions for the cooperative should not be paid a salary or receive other compensation from a manufacturer/distributor from which they are making such purchases. Agents would have a conflict of interest and encourage the placement of industry member products in the cooperatives to the exclusion of other products. Agents provide "pricing assistance" or do merchandising (set the shelves, attached shelf tags, etc.). at the retailer licensed location. Manufacturers or distributors argue that these 3rd party agents carry have too much power to determine which products will be favored on the retailer shelf. Supplier payments made to a third party agent could be interpreted as an indirect slotting fee. It is not recommended that the Agent
FAIIR/IRMA	5(A)(iv) Bullet Point 8		<u>The designated agent cannot be compensated directly or indirectly by a manufacturer or distributor.</u>		Text: The designated agent cannot be compensated directly or indirectly by a manufacturer or distributor <u>for services provided to retailers subject to a cooperative purchasing agreement regarding purchases from a distributor or manufacturer with self-distribution privileges.</u>	See above summary. The change would allow the manufacturer or distributor to give some form of compensation to the purchasing agent but could not compensate the agent for services rendered related to the cooperative purchasing agreement.		Reject: See above discussion.

ATTACHMENT C  
 AGENCY EVALUATION OF SPECIFIC CRITICISMS AND SUGGESTIONS  
 AGENCY: ILLINOIS LIQUOR CONTROL COMMISSION

RULEMAKING: 11 III. Admin. Code 100.500

FAIR/IRMA	5(B)(i)		<p>Quantity discounting is only permissible if:</p> <p>i. A distributor or a manufacturer with the privilege of self distribution offers the same quantity price discount to all similarly situated retailers in the same geographic area;</p>	<p>Text: Similar Situation        ...<u>"Retailers and retailers who are members of a cooperative purchasing agreement are similarly situated and within the same geographic area if the alcohol beverage products carried are comparable and if they are located within the same County or within 50 miles of each other; ..."</u></p>	<p>Defining "similarly situated retailers in the same geographic area as 1. retailers that sell "comparable" products and 2. are located within same County or within 50 miles of each other."</p>	<p>Reject: Defining similarly situated retailer based on the sale of "comparable" alcohol beverage products is almost as vague as the term "similarly situated." Defining geographic territory through distance (50 miles) is likely an arbitrary determination; Defining geographic locations County by County is less arbitrary but could still pose problems.</p>
FAIR/IRMA	5(B)(ii)		<p>Quantity discounting is only permissible if:</p> <p>i.....</p> <p>ii) <u>Sales incentives are temporary and designed and implemented to produce product volume growth with retailers;</u></p>	<p><del>Sales incentives are temporary.</del>  <u>Quantity Discounts are for products at a certain price and the price is for a specific period of time and designed and implemented to produce product volume growth with retailers.</u></p>	<p>Replacing the term "Sales incentives" with "Quantity Discounting" and defining "temporary"</p>	<p>Partially Accept: "Sales incentives" replaced with "Quantity Discounting" The word temporary is removed.</p>
FAIR/IRMA	5(B)(iii)		<p>Quantity discounting is only permissible if:</p> <p>i.....</p> <p>ii.....</p> <p>iii) <u>The sales incentives to retailers are based on volume and discounted pricing, including discounts in the form of cash, credits, rebates, alcoholic liquor products, and product displays;</u></p>	<p>Text: <del>The sales incentives</del>  <u>Quantity Discounts to retailers and to retailers that are subject to a Cooperative Purchase Agreement are based on volume and discounted pricing, including discounts in the form of cash, credits, rebates, alcoholic liquor products, and product displays.</u></p>	<p>Replacing the term "Sales incentives" with "Quantity Discounting" and removing references to the word "discount." Added reference to "retailers that are subject to a Cooperative Purchase Agreement."</p>	<p>Partially Accept: "Sales incentives" replaced with "Quantity Discounting" Changes further define the form of the quantity discount, however, the reference to "product display" has been removed per another comment.</p>

ATTACHMENT C  
 AGENCY EVALUATION OF SPECIFIC CRITICISMS AND SUGGESTIONS  
 AGENCY: ILLINOIS LIQUOR CONTROL COMMISSION

RULEMAKING: 11 III. Admin. Code 100.500

FAIR/IRMA	5(B)(iv)	Quantity discounting is only permissible if: i..... ii..... iii)... <u>iv) The sales incentives are documented on related sales or credit memoranda; and</u>	Text: The <del>sales incentives</del> <u>Quantity Discounts</u> are documented on related sales or credit memoranda;	Replacing the term "Sales incentives" with "Quantity Discounting."	Accept: Change made to narrow the subject of the Rule.
FAIR/IRMA	5(B)(v)	Quantity discounting is only permissible if: i..... ii..... iii)... iv) .... v) The sales incentives are offered to all similarly situated retailers.	Text: The <u>Quantity Discounts</u> are offered to all similarly situated retailers <u>within the same geographic area.</u>	Add the "geographic area" condition.	Accept: Change made.
FAIR/IRMA	5(H)(i) Bullet Point 1	A distributor or a manufacturer with the <u>privilege of self distribution may issue product credits and rebates as an adjustment on the purchase price based on volume purchasing,</u> such as "end of month", "end of year", "end of period", or other such temporary cumulative discounts, credits and rebates to a retailer These cumulative discounts are considered to be a form of pricing arrangement.; <u>i) A distributor or a manufacturer with the privilege of self distribution utilizing credits/rebates shall conform the credit/rebate program to the following conditions:</u> <u>the rebate/credit program is made pursuant to a written agreement;</u>	Text: the rebate/credit program is made pursuant to a written agreement. <u>The written agreement includes but is not limited to invoices, sales memoranda and other documents that reflect the rebate/credit to a retailer.</u>	States that the written agreement does not have to be a formalized offer of a QD but rather should be proven, in writing, through regular business transaction documents.	Accept the principle but language of change does not match suggested change.

ATTACHMENT C  
 AGENCY EVALUATION OF SPECIFIC CRITICISMS AND SUGGESTIONS  
 AGENCY: ILLINOIS LIQUOR CONTROL COMMISSION

RULEMAKING: 11 III. Admin. Code 100.500

FAIR/IRMA	5(H)(ii)	<p>If the retailer is part of a group of retailers with common ownership, <u>or a member of a cooperative purchasing agreement in compliance with this subsection (d)(5), cumulative discounts, credits or rebates may be aggregated into a single payment. If an aggregated payment is issued,</u> the cumulative discount, credit or rebate must be calculated based upon the volume purchases of each individual retailer, with supporting documentation that denotes the portion of the discount, credit or rebate attributable to each individual retailer.</p>	<p>Text: If a retailer is part of a group of retailers with common ownership, or a member of a cooperative purchasing agreement in compliance with this subsection (d)(5), cumulative discounts, credits or rebates may <u>not</u> be aggregated into a single payment to the cooperative purchase group. Any <u>accumulated or aggregated discount must be paid by a credit or cash payment to each retailer that is a member of the cooperative purchase agreement on a pro rata basis, based on the individual retailer's a share of the total purchase...."</u></p>	<p>The change would require the distributors to make individual payments to all retailers that are part of a cooperative. It also (possibly unintentionally) removes the authorization to make one payment to commonly held retailers.</p>	<p>Reject: Requiring the distributors to break down the payments to individual retailers would seem to provide something "of value" to the cooperative retailers that is not provided to the commonly owned retailers.</p>

ATTACHMENT C  
 AGENCY EVALUATION OF SPECIFIC CRITICISMS AND SUGGESTIONS  
 AGENCY: ILLINOIS LIQUOR CONTROL COMMISSION

WSDI	5(A)(i) (first sentence)	<p style="text-align: center;">RULEMAKING: 11 III. Admin. Code 100.500</p> <p>following definitions shall apply:        (j) Quantity Discounting: A quantity discount is a legitimate sales programming between a distributor, or a manufacturer with the privilege of self-distribution, and a retailer or retailers in which the primary purpose of the programming is to increase product sales and merchandising to retailers and is not a subterfuge to provide prohibited "of value" inducements to a retailer. Specifically, a distributor or a manufacturer with the privilege of self-distribution offers a retailer or retailers a discount based upon an agreement by which the retailer will purchase a predetermined number of products in return for receiving a discount on the goods purchased. The discount may be applied either as a price reduction at the time of sale or as a</p>	<p>Text: Quantity Discounting: A quantity discount is a legitimate sales programming between a distributor, or a manufacturer with the privilege of self-distribution, and a retailer or retailers in which the primary purpose of the programming is to increase product sales <del>and merchandising</del> to retailers and is not a subterfuge to provide prohibited "of value" inducements to a retailer.</p>	<p>Remove the term "merchandising" from the definition of QD. Purpose of QD should be to increase sales not "merchandising"</p>	<p>Accept: Term "merchandising" is removed.</p>
------	--------------------------	---	---	---	---

ATTACHMENT C  
 AGENCY EVALUATION OF SPECIFIC CRITICISMS AND SUGGESTIONS  
 AGENCY: ILLINOIS LIQUOR CONTROL COMMISSION

RULEMAKING: 11 III. Admin. Code 100.500									
WSDI	5(A)(i) Second sentence		<p>following definitions shall apply:</p> <p><u>i) Quantity Discounting: A quantity discount is a legitimate sales programming between a distributor, or a manufacturer with the privilege of self-distribution, and a retailer or retailers in which the primary purpose of the programming is to increase product sales and merchandising to retailers and is not a subterfuge to provide prohibited "of value" inducements to a retailer. Specifically, a distributor or a manufacturer with the privilege of self-distribution offers a retailer or retailers a discount based upon an agreement by which the retailer will purchase a predetermined number of products in return for receiving a discount on the goods purchased. The discount may be applied either as a price reduction at the time of sale or as a</u></p>				Text: "Specifically, a distributor or a manufacturer with the privilege of self-distribution offers a retailer or retailers a discount based upon an agreement by which the retailer <del>will</del> may purchase a predetermined number of products in return for receiving a discount on the goods purchased."	Replace the term "will" with "may."	Accept: The use of the term "will" does not mean that the retailer must purchase in quantity. It means that, to avail itself of the QD, it must (or shall or will) purchase the minimum quantity amount. Nevertheless, it makes sense to replace "will" with "may."
WSDI	5(A)(ii)		<p><u>Retailer: The term retailer, as used in this subsection (d)(5), includes individual license holders as well as groups of licensees with either a common ownership interest or a cooperative purchasing agreement as defined in subsection (d)(5)(A)(iv). A retailer is further defined as any license holder purchasing product for the legal sale to consumers and not for resale to another retailer</u></p>				Text: Retailer includes "...any license holder purchasing product for the legal sale to consumers."	Argues that this definition of retailer will include brewer tap rooms. WSDI wants rule de all manufacturers.	Accept: Rule changed to clarify that retailers do not include "manufacturers."

ATTACHMENT C  
 AGENCY EVALUATION OF SPECIFIC CRITICISMS AND SUGGESTIONS  
 AGENCY: ILLINOIS LIQUOR CONTROL COMMISSION

WSDI	5(A)(iii)		Common Ownership: Common owners <u>purposes of this subsection (d)(5), is defined as two or more retail license holders who are owned by the same individual or individuals, partnership, corporation, limited liability company, or limited partnership.</u>	RULEMAKING: 11 III. Admin. Code 100.500 Text: Common ownership definition should match same definition in 100.90(a): "Common ownership shall be any ownership interest of more than 5% of the total ownership interests in each retailer."		Rules should be consistent		Accept: Change consistent with Rule 100.90
WSDI	5(A)(iv)		Entire Cooperative Section	Text: None suggested but conceptually, this Section should include: 1. Commission approval of cooperatives; 2 Tracking of cooperatives; 3. Publication of cooperatives; 4. Delinquency List enforcement		Commission oversight question.		Partially Accept: Rule changed to add reporting cooperative agreement to Commission; added delinquency rules.  Partially Reject: Commission will not approve or track cooperative agreements.
WSDI	5(A)(iv)		Entire Cooperative Section	Text: None suggested but WSDI proposes that the Commission make "minimum content" requirements for cooperative agreements.		Minimum content requirements will help identify legit an non-legit cooperatives and be more cohesive.		Reject: All rule cooperative requirements are in existing draft.
WSDI	5(A)(iv)		Entire Cooperative Section	Text: None suggested but WSDI proposes that the Commission have a procedure by which Cooperative Agreements are submitted. 1. Require submit agreement; 2. Define how additions and subtractions are processed and acknowledged; 3. Time periods additions and removals are processed.		Procedures will help with "cohesion and efficiency"		Partially Accept: Rule changed to add reporting cooperative agreement to Commission; added delinquency rules.  Partially Reject: Commission will not approve or track cooperative agreements.
WSDI	5(A)(iv) All bullets			Number the bullet points		Advisable from a legal citing perspective.		Reject: Follow JCAR/SOS requirements

ATTACHMENT C  
 AGENCY EVALUATION OF SPECIFIC CRITICISMS AND SUGGESTIONS  
 AGENCY: ILLINOIS LIQUOR CONTROL COMMISSION

RULEMAKING: 11 III. Admin. Code 100.500

WSDI	5(A)(iv) Bullet 1		<u>The agreement must be in writing, signed by all parties to the agreement;</u>		Text: No suggested change (Agreement should be in writing signed by all parties)		Commission needs to have a mandated master agreement, or certain specified provisions and for a Commission created form to join and leave a cooperative.		Reject: All necessary rule cooperative requirements are in the draft.
WSDi	5(A)(iv) Bullet 2		<u>The agreement must contain the complete license information for all parties to the agreement, including State and local license numbers and expiration dates;</u>		Text: No suggested change (Agreement shall contain license info and numbers of all retailers)		Commission form should include licensee info.		Reject: All necessary license information is in the current draft of the Rule.
WSDI	5(A)(iv) Bullet 3		<u>Any party to the agreement cannot be a party to any other liquor related cooperative purchasing agreement;</u>		Text: No suggested change (Retailers can only be a part of one cooperative)		Commission should monitor and provide a list of cooperatives. Distributors do not have the technology to monitor and obtain tech would be cost prohibitive.		Partially Accept: New language requires Cooperative Agreement to be submitted to Commission. Commission may consider posting Agreement.
WSDI	5(A)(iv) Bullet 4		<u>The agreement shall contain procedures to ensure that parties to the agreement do not violate the 30-day merchandising credit requirement and remain subject to the enforcement mechanism found in Section 6-5 of the Act;</u>		Text: No suggested change (30 day credit rule)		Commission needs a "joint and several" or "one delinquent, all delinquent" rule; also the use of the word "requirement" is not accurate since there is no mandate that a wholesaler offer to sell wine and spirits on credit.		Accept: Rule change to add delinquency list requirements.
WSDI	5(A)(iv) Bullet 5		<u>The agreement must designate an agent or select group of agents who will place orders on behalf of the entire group;</u>		Text: No suggested change (Identification of cooperative agents)		Commission needs to license or register the agents and maintain a list; process to list and remove agents; also		Reject: No policy reason to keep track of agents.

ATTACHMENT C  
 AGENCY EVALUATION OF SPECIFIC CRITICISMS AND SUGGESTIONS  
 AGENCY: ILLINOIS LIQUOR CONTROL COMMISSION

RULEMAKING: 11 III. Admin. Code 100.500

WSDI	5(A)(iv) Bullet 6		<u>The designated agent or group of agents cannot be compensated directly or indirectly for making purchases on behalf of the parties to the agreement. However, the agents may be compensated for actual costs incurred on behalf of the parties to the agreement. The agent may be compensated as a regular employee of one of the parties to the agreement.</u>		Text: No suggested change (payment of agent).		Agree that an agent should not be compensated but that the term "actual cost" should be better defined to exclude personnel salaries, rent, profits and other general expenses associated with operating a business.		Accept: Actual cost defined.
WSDI	5(A)(iv) Bullet 9		<u>A copy of the executed agreement, including any amendments, deletions or additions, shall be kept on the premises of each party to the agreement for a period of three years.</u>		Text: No suggested change. (each retailer must obtain an executed copy of cooperative agreement)		Retailers should not be required to maintain signature pages containing all retailers but only required to keep its own cooperative form and master cooperative agreement		Reject: All necessary license information is in the current draft of the Rule.
WSDI	5(A)(iv) Bullet 10		<u>A copy of the executed agreement, deletions or additions shall be given to any distributor or manufacturer with a privilege of self-distribution, prior to making any purchases under the agreement.</u>		Text: No suggested change (retailer provide distributor with agreement before purchases)		Distributors need to be informed of the cooperative agreement well in advance of any purchase in order to ensure the cooperative is updated in the distributor computer systems.		Reject: Distributors are obligated to sell to cooperatives upon given notice. Agreement will also be provided to Commission.
WSDI	5(A)(iv) Bullet 11		<u>The agreement shall include such terms and conditions as required by the Commission.</u>		Text: No suggested change (Commission should establish terms and conditions for Agreements)		Terms and conditions should be in the Rule or it "kicks the can down the road."		Reject: All necessary license information is in the current draft of the Rule but Commission has flexibility to make additional requirements if necessary.

ATTACHMENT C  
 AGENCY EVALUATION OF SPECIFIC CRITICISMS AND SUGGESTIONS  
 AGENCY: ILLINOIS LIQUOR CONTROL COMMISSION

RULEMAKING: 11 III. Admin. Code 100.500

WSDI	5(A)(iv) Bullet 12		<u>Failure to comply with the terms and conditions of this subsection (d)(5) will render the agreement void and any party availing itself of a quantity discount as a party to the agreement shall be deemed in violation of Section 6-5 of the Act.</u>				Distributors should not be hit with "of value violations for selling to illegitimate cooperatives; failure to abide by conditions would not constitute an "of value" violation		Accept: Changed "shall" to "may."
WSDI	5(B)(ii)		Quantity discounting is only permissible if: i..... <u>ii) Sales incentives are temporary and designed and implemented to produce product volume growth with retailers;</u>				Text: No suggested change (sales incentives; temporary requirements)  Change the term "Sales Incentives" to Quantity Discounts. QDs should not be required to be temporary.		Accept: Changes made.
WSDI	5(B)(iii)		Quantity discounting is only permissible if: i..... ii..... <u>iii) The sales incentives to retailers are based on volume and discounted pricing, including discounts in the form of cash, credits, rebates, alcoholic liquor products, and product displays;</u>				Text: No suggested change (form of discount can come in by way of a "product display")  "Product displays" are not a type of discount and should be removed.		Accept: Change made.

ATTACHMENT C  
 AGENCY EVALUATION OF SPECIFIC CRITICISMS AND SUGGESTIONS  
 AGENCY: ILLINOIS LIQUOR CONTROL COMMISSION

RULEMAKING: 11 III. Admin. Code 100.500

WSDI	5(G)		<p>G) Record Keeping  <u>i) A distributor or a manufacturer with the privilege of self distribution who makes quantity discount sales to retailers with a common ownership interest or who have executed a cooperative purchasing agreement shall issue a master invoice to the designated agent and each participating licensee. The master invoice shall contain the following information: the alcoholic beverages sold; the license information for each participating retailer; the price per unit; and the quantity per participating retailer.</u></p>		Text: No suggested change (requirement for a Master Invoice)	"Master Invoices" are not required for commonly owned QDs and requiring a distributor to create such an invoice for cooperatives is overburdensome and will cause a significant increase in costs related to invoicing systems.		Reject: Master invoices are commonly required in other states and are a clear indicator of the volume of product needed to meet minimum quantity discount thresholds.
WSDI	e.		<p><u>e) Unless otherwise stated, for the purposes of this Section, the following definitions apply:</u>  <u>1) Manufacturer: The holder of a license in the State of Illinois as defined in Section 5-1 of the Act as a Distiller, Rectifier, Brewer, Class 1 Brewer, Class 2 Brewer, First Class Wine Manufacturer, Second Class Wine Manufacturer, First Class Winemaker, Second Class Winemaker, Limited Wine Manufacturer, Craft Distiller, Class 1 Craft Distiller, Class 2 Craft Distiller, Non-resident Dealer, or Winery Shipper.</u></p>		Text: No suggested change. (definitions of manufacturer, distributor, retailer)	Numbering/lettering is wrong; non-resident dealer being included in the definition of "manufacturer" is not consistent with Act.		Reject: But section removed as unnecessary.
Wine Institute	Overall				(Disagree with Cooperative Concept)	Cooperatives are not logistically or financially feasible for our wholesaler partners and thus would create a market inefficiency that would result in overall higher prices."		Reject: Cooperatives purchasing group is a common practice in other states and has been a common practice in Illinois.

ATTACHMENT C  
 AGENCY EVALUATION OF SPECIFIC CRITICISMS AND SUGGESTIONS  
 AGENCY: ILLINOIS LIQUOR CONTROL COMMISSION

RULEMAKING: 11 III. Admin. Code 100.500

Wine Institute	Overall				Text: Changing "industry member" to "distributor and self distributing manufacturer."	Changing the terms seems to prevent non-self distributing manufacturers from many interactions with retailers that had previously been permitted. (e.g. providing samples, rotations, resets, other types of merchandising).	Accept: The term "industry member" used throughout Rule 100.500.
Wine Institute/DISCUS	(d)(3)				Text: Remove adding the word "reasonable" before transportation expenses for display.	Adding the word reasonable leaves too much discretion in the hands of the regulator to determine the reasonableness of display transportation expenses.	Reject: The term "reasonable" is additional security against "of value" violations.
DISCUS	Overall				Text: No textual recommendations related to cooperative purchasing agreements	"Question the rationale" for Cooperative Purchasing Agreements. "Fundamentally changes the marketplace." Complaint about lack of stakeholders notice.	Reject: Stakeholders given ample notice on multiple occasions. Cooperatives are common in other states and have existed in Illinois.
DISCUS	d(6)				Text: No textual recommendations. (Product Samples)	Industry should be allowed to provide the "next larger available size if particular size is unavailable." Industry member that has acquired the brand <b>within</b> the last 12 months should be allowed to provide sample even if the retailer has purchased a brand within the last 12 months.	Reject: Not subject of Rule change.
DISCUS	d(7)				Text: Eliminate Subs. E. (Social Media Advertising E) <del>The distributor or manufacturer industry member does not offer social media advertising to a specific retailer to the exclusion of other, similarly situated retailers.</del>	Section E must be eliminated because 27 CFR does not require an industry member to offer social media to all similarly situated retailers. Sub (D) states that the ILCC social media rules comply with the TTB Rules.	Reject: Not subject of the Rule change.

ATTACHMENT C  
 AGENCY EVALUATION OF SPECIFIC CRITICISMS AND SUGGESTIONS  
 AGENCY: ILLINOIS LIQUOR CONTROL COMMISSION

RULEMAKING: 11 III. Admin. Code 100.500

DISCUS	d(7)				Text: No specific textual recommendations social media advertising.		Allow the social media advertisement to include retailer's phone number, email and website addresses and a photograph or depiction of retail premises (e.g. mixologist preparing drink)		Reject: Not subject of the Rule change.
DISCUS	d(8)				Text: No specific textual changes related to industry member promotional events at retailer locations.		Same as social media request - allow additional references to retailers (phone, email, photos). Also do not require industry member to offer promotional events to similarly situated retailers.		Reject: Not subject of the Rule change.
DISCUS	d(9)				Text: No specific textual changes related to consumer advertising specialties.		An industry member should be allowed to give a CAS to a consumer; Rule seems to only allow giving CAS to a retailer		Reject: Not subject of Rule change; Consumer Advertising Specialties may be given to a retailer
DISCUS	d(17)				Text: No specific textual changes related to stocking and rotation.		Do not limit stocking and rotation to sales calls and deliveries; should be allowed any time after delivery.		Reject: Not subject of the Rule change; stocking and rotation must be limited to prevent retailers from making "of value" labor demands.

**JOINT COMMITTEE ON ADMINISTRATIVE RULES**  
ILLINOIS GENERAL ASSEMBLY

CO-CHAIR:  
SEN. BILL CUNNINGHAM

CO-CHAIR:  
REP. KEITH WHEELER

EXECUTIVE DIRECTOR:  
VICKI THOMAS



700 STRATTON BUILDING  
SPRINGFIELD, ILLINOIS 62706  
217/785-2254

SEN. JOHN CURRAN  
SEN. KIMBERLY LIGHTFORD  
SEN. TONY MUÑOZ  
SEN. SUE REZIN  
SEN. PAUL SCHIMPF  
REP. TOM DEMMER  
REP. MIKE HALPIN  
REP. FRANCES HURLEY  
REP. STEVEN REICK  
REP. ANDRE' THAPEDI

MEMORANDUM

TO: Chimaobi Enyia, Executive Director  
Liquor Control Commission

FROM: Vicki Thomas  
Executive Director

DATE: 6/3/20

RE: The Illinois Liquor Control Commission (11 Ill. Adm. Code 100)  
43 Ill. Reg. 14571 - 12/20/19

The Office of the Joint Committee on Administrative Rules has accepted the Second Notice for the above-referenced rulemaking. The Second Notice period began on 6/3/20 and ends no later than 7/17/20, unless extended pursuant to Section 5-40 of the IAPA.

This rulemaking is scheduled to be considered by JCAR at its 7/14/20 meeting, in Room C600, Bilandic Building, Chicago IL at 11:00 a.m. contingent on the Legislative schedules. Staff will be contacting you if they have questions concerning this rulemaking and will advise you of any change in time or location of the Committee meeting.

Please contact us if you have any questions regarding the JCAR review procedure.

VT:KK:pb

cc: Pamela Paziotopoulos  
Adm. Code Div.