

**ADDENDUM TO FINAL STATEMENT OF REASONS
NON-CONTROLLING SUMMARY**

On December 10, 2007, the Board submitted the following regulations for approval: 2558. *Distilled Spirits, 2559. Presumption – Distilled Spirits, 2559.1. Rebuttable Presumption – Distilled Spirits, 2559.3. Internet List and 2559.5. Correct Classification.* It has now come to the Board’s attention that one written comment submitted by Miller Brewing Company within the public comment period was inadvertently left out of the rulemaking file. The written comment is being placed in the rulemaking file behind tab 21 and the following is the Board’s response to the written comment and should be substituted for Comment 14 on page 22 of the Final Statement of Reasons:

Comment 14: Gene Livingston, Esq., Greenberg Traurig, LLP, on behalf of Miller Brewing Company

On behalf of Miller Brewing Company, in a brief with separate appendices, Mr. Livingston wrote in opposition to the proposed regulations. In summary, Mr. Livingston set forth the following comments:

A. The Board has no authority to adopt the proposed regulations because the Board’s authority to adopt regulations does not reach to interpreting the statutory definitions of “beer,” “wine” and “distilled spirits”; the Department of Alcoholic Beverage Control (ABC) has the exclusive authority to define these statutory terms, and the Board is obligated to follow the ABC’s classifications of alcoholic beverages, notwithstanding any concerns the Board may have about underage drinking.

Response

See Responses to Written Comments 3.C., 5.D., and 7 of the Final Statement of Reasons. Accordingly, no changes were made to the regulations adopted by the Board.

B. The adopted regulations are inconsistent with the statutes they purport to interpret or make specific.

Response

See Responses to Written Comments 3.A. and 3.B. of the Final Statement of Reasons. Accordingly, no changes were made to the regulations adopted by the Board.

C. The classification of flavored malt beverages should be left for the Legislature to address.

Response

See Response to Written Comment 7 of the Final Statement of Reasons. Accordingly, no changes were made to the regulations adopted by the Board.

The separate appendices Mr. Livingston submitted with his brief, which he also referenced in his oral comments on behalf of Miller Brewing Company, are comprised of the following:

- (1) Full Text of Proposition 3 – Alcoholic Beverage Control (6 pages); and
- (2) 38 pages of various newspaper articles.

Response

See Response to Oral Comments, Oral Comment 2, below. As explained below, no changes were made to the regulations adopted by the Board.