

Colorado Liquor Enforcement Division
Trade Practices Sub-Group
Meeting #3 – August 4, 2016

- I. Minutes from last meeting
 - a. Approved as presented

- II. Discussion of Issues
 - a. Display Items
 - i. Jim Schpall presented rule language that he drafted and explained that he tightened up rule to read that giveaways are allowed, no real restrictions, it is the responsibility of the Retailer, Wholesaler or Supplier regarding giveaway item.
 - ii. Issues that arose:
 1. Not going to consumer
 2. Opens door to control
 3. When did this originally change?
 4. Exclusivity Issues
 5. Control or attempt to control, address
 6. 30 day limit?
 7. Cap on amount

 - iii. A discussion took place and it was decided to table until next meeting with a commitment to finalizing this issue at that time.

 - b. Hand Sales
 - i. Ron presented the draft language and opened the meeting up for discussion.
 - ii. Issues that arose:
 1. Establishing limits
 - a. - 24 oz Beer - 375 ml Spirits - 375 ml Wine
 2. Does this proposal create sales tax issues/accounting
 3. Easier to have supplier rep buy at retail and let give away
 - iii. 47-322(B)
 1. e.) Supplier representatives must be present to provide sample.
 - iv. The members decided on the following:
 1. Anything not sold must be taken with them when they leave.
 2. Has to be in inventory to hand sale
 3. Can use IRC's – Have to modify rule on IRC to allow
 4. Mini bottles for distilled and wine – limit.
 - v. Patrick will revise the Hand Sales Draft Language and Ron will get it sent out prior to the next meeting.

- c. Sampling
 - i. Patrick would like to clarify in the rule that what off premise retailers do with those samples that are left behind. The working group members agreed to further clarification. Patrick will prepare new draft rules to present at the next meeting.
- d. Control Issues
 - i. Equipment
 - 1. Ron opened up the discussion of the concept of a supplier leasing equipment to a retailer. Should we prohibit it or should we not?
 - 2. John and Jim will come up with language and Ron will send it out to working group members prior to the next meeting.
 - ii. Laid-In Costs
 - 1. Patrick discussed drafting language to even out the difference in laid in cost for an independent wholesaler and a wholesaler that is owned mostly by a brewery. The definition is different for these two.
 - 2. This issue will be discussed further at the next meeting.
 - iii. Advertising Funding
 - iv. Stocking & Labor
 - v. Promo Logo Items – Cost Sharing
 - 1. Stephanie Fransen agreed to draft language for all three items: Advertising Funding, Stocking & Labor and Promo Logo Items. She will provide information and the group will look at other states best practices on these issues and will review federal laws and restrictions. Ron will send out prior to the next meeting.

The meeting ended here except for Organizational Matters, the next two bullet points were not discussed.

- vi. Warehousing

- vii. Control

III. Organization Matters

Present at the Meeting:

Ron Kammerzell
 Patrick Maroney
 Donia Amick

Dave Taylor
 Mark Brusen
 David Densmore

Jeanne McAvoy
Kim Abbott
Nick Hoover
Mickey Petrollini
Laura Long
John Tipton
Garin Vorthman
Tyler Rudd

Jim Schpall
Stephanie Fransen
Michael Steppat
David Reitz
Micki Hackenberger
Andrew Lemley
Steve Findley

Present via Phone:

Joan Green
Jenn Penn
Mickey Hackenberger

**The next sub group meeting will be held on Thursday, August 31 from 1:30
– 5:00 pm at the Department of Revenue located at 1881 Pierce Street,
Room 110, Entrance B, Lakewood, Colorado 80214**

Liquor Rules Working Group

Trade Practice Subgroup Drafts

08-23-16

(v1.0)

Hand Sales

47-322(B)

3. A supplier-sponsored consumer give-a-way of alcohol beverages held in retail establishments licensed for off-premises consumption for the purpose of product sales promotion, are permitted under the following conditions:
 - a. The wholesaler must purchase the alcohol beverage from the retailer at the retail price of the product to be given away, including tax.
 - b. A retailer/wholesaler may not impose any charge to the consumer to enter or participate in the give-a-way.
 - c. The product purchased must be of the supplier's brands and currently offered by the supplier.
 - d. The supplier must be present and shall be the person who gives the product to consumers.
 - e. The supplier and retailer must keep records of all items purchased from a retail liquor store to be used as a free give away to consumers. The records must include the date, retailer/wholesaler name, amount paid, and name of products purchased.
 - e. Supplier representatives or their authorized agents may give away sealed alcohol beverage products directly to the consumer, if the product has been purchased in accordance to this regulation and the retailer has so consented. The retail licensee or their employee(s) are not eligible to receive free alcohol beverage samples.
 - f. The maximum amount of alcohol beverages given to each consumer is limited to twenty-four (24) ounces of malt liquor, or 375 ml of vinous liquor, or 50 ml of spirituous liquor.
 - g. Suppliers may provide or pay for any media announcement of a supplier-sponsored consumer give-a-way that primarily advertises the product, the location, and the date and time of the give-a-way. The name of the retail outlet may also be mentioned.

Retailer Samples

47-322(E)

2. Wholesalers, or those licensed to sell at wholesale pursuant to article 46 and 47 of title 12, may furnish or give a limited amount of alcohol beverage samples to retailers licensed solely for off-premises under the following conditions:
 - a. The retailer's class of liquor license permits the sale of the type of beverage offered as a sample.
 - b. The providing of samples is not conditioned upon future purchases of alcohol beverages, or as compensation for any previous alcohol beverage purchase.
 - c. The wholesaler provides not more than 3.0 liters per brand of spirituous liquor, not more than 3.0 liters per brand of vinous liquor, and not more than one six- pack per brand of malt liquor or fermented malt beverage so packaged. If a particular brand is not available in a size meeting the quantity limitations stated herein, a wholesaler may furnish the next available larger size.
 - d. The wholesaler is present at the time of consumption and maintains sole possession of the container after sampling. Samples, in the quantities described herein, may be left in the retailer's possession if the container seal is left intact, but must be removed from the licensed premises at the end of the day they were left.

Give-a-ways

Regulation 47-316(B)(5)

3. A supplier may advertise, within retail premises, alcohol beverage products, consumer mail-in rebate offers, consumer giveaways, sweepstakes, contests, and cross promotions with non-alcohol beverage products. Suppliers may also provide contest and sweepstakes information and consumer entry forms. Further, suppliers may provide items, subject to the regulations below, to be given away in a consumer giveaway, sweepstake or contest.

For consumer giveaways, sweepstake or contests, (collectively "Consumer Contest") the following regulations shall apply:

- a. No item provided as part of a Consumer Contest may be awarded to, received by or otherwise kept by the licensee or any of the licensee's employees or an employee's immediate or extended family members.
- b. No item provided as part of a Consumer Contest may be awarded to, received by or otherwise kept by a supplier licensee that is providing alcohol beverage products to the retail licensee or any of the supplier licensee's employees or any supplier licensee's employee's immediate or extended family members.
- c. Any item(s) to be given away in a Consumer Contest must be awarded and given to the winning consumer or otherwise returned to the supplier at the end of the Contest date which date shall be clearly posted as a part of the Consumer Contest rules.
- d. The actual item(s) that is(are) part of the Consumer Contest shall be delivered to the retail license premises together with an invoice made out to the retail licensee for not less than the actual fair market value cost of the item(s). The retail licensee shall be responsible for and required to pay the invoice cost for the item unless the retail licensee can establish to the satisfaction of the Liquor Enforcement Division that the item(s) was(were) in fact presented to the winning consumer in accordance with the rules of the Consumer Contest. Both the retail licensee and the supplier of the item shall each maintain in their respective records proof establishing that the item(s) was(were) delivered to the winning consumer. Such records shall include but not be limited to a signed acknowledgement of receipt of the item(s) by the winning consumer which acknowledgment shall include a valid form of identification proving the identity of the consumer, the consumer's name, address, phone number, e-mail address (if available) and the date on which the item was presented to the consumer. In addition, the records shall include the name and position of the person or persons presenting the item to the consumer sufficient so that the Liquor Enforcement Division can verify that the item was presented to the Consumer Contest winner.
- e. In the event that the supplier does not have the signed acknowledgement of receipt from the consumer within 30 days of the end of the Consumer Contest, supplier shall be required to obtain payment in full of the invoice by the retail licensee for the item(s). Absent payment within 24 hours of the expiration of the 30 day period, no supplier representing the brand advertised in the Consumer Contest shall be permitted to sell or otherwise provide any product to the retail licensee until the invoice is paid in full.
- f. The Consumer Contest, including the drawing period, shall not last longer than 30 days.
- g. Entrance into the Consumer Contest is not contingent on any purchases.
- h. The actual item(s) that is(are) part of the Consumer Contest may be displayed in the licensed premises only during the period of the Consumer Contest and for a period not to exceed the shorter of 30 days following the end of the Consumer Contest period or the delivery of the item(s) to the Consumer Contest winner.
- h. The item(s) must be properly identified in signage as a prize that is part of the Consumer Contest, e.g. "Win this Umbrella."
- i. Signage shall display the starting date and ending date of the Consumer Contest, the name of the company providing the item(s), and all other relevant terms and conditions of the Consumer Contest.
- j. Failure to comply with this Regulation shall be considered a violation of the Regulation.

Laid-in cost definition

47-322

A. Sales of alcohol beverages.

1. No vinous or spirituous liquor may be sold by a vinous or spirituous liquor manufacturer or wholesaler to a retail licensee below the laid-in cost of said vinous and spirituous liquor products.
2. No malt liquors or fermented malt beverages may be sold by a malt liquor/beverage manufacturer or wholesaler to a retail licensee below the laid-in cost of said malt liquor/beverage products.
3. Product cost per case will be determined utilizing a "Last In/First Out" basis unless a supplier has adequate records to verify that the actual cost of said products was less than the most recent shipment received.
4. A wholesaler's laid-in cost is defined as the actual proportionate invoice price and freight charge to that wholesaler or distributor, plus applicable state and federal taxes of any given product. An in-state manufacturer's laid-in cost is defined as ~~the actual costs of the manufacturer, plus applicable state and federal taxes;~~ the lowest laid-in cost of the Colorado Independent malt liquor/fermented malt beverage wholesaler that the manufacturer sells to, or if the manufacturer does not sell to an independent wholesaler, the laid-in cost will be defined as the total ordinary expenses for the product reported on the financial statement used on their Colorado state tax return plus applicable state and federal taxes.

Tavern League of Colorado
Draft Language Regarding Advertising Funding for Display Items:

Regulation 47-320. Signs and Interior Displays.

A. For purposes of this regulation, "signs" shall mean any visual message intended for the consumer that is located within, or on the exterior of, licensed premises for the purpose of displaying advertising messages or other information related to alcohol beverage suppliers or their products.

B. 1. A supplier's signs, illuminated or otherwise, that may be provided free of charge to a licensed retailer, shall be composed of any standard, pre-manufactured material such as paper, plastic, glass (including mirrored glass), cloth, metal, or programmable electronic components, and shall have no other utilitarian value, EXCEPT AS PROVIDED IN SUB-PARAGRAPH (2) BELOW.

2. SIGNS THAT HAVE AN ADDITIONAL UTILITY VALUE SUCH AS PATIO UMBRELLAS, CLOCKS AND POOL TABLE LAMPS MAY BE PROVIDED TO A RETAILER FREE OF CHARGE SO LONG AS THE TOTAL VALUE OF ALL SIGNAGE OF UTILITARIAN VALUE PROVIDED BY A SUPPLIER TO A RETAILER DOES NOT EXCEED \$400 AT ANY ONE TIME IN ANY ONE RETAIL ESTABLISHMENT. THE VALUE OF THE SIGN IS THE ACTUAL COST TO THE SUPPLIER WHO INITIALLY PURCHASED IT. TRANSPORTATION AND INSTALLATION COSTS ARE EXCLUDED.

C. The term "displays within such premises," hereinafter referred to as "interior displays," shall mean all nonrefrigerated racks, bins, barrels, casks, shelving, or similar items, the primary function of which is to hold, shelve, or display alcohol beverages within retail premises.

D. A supplier's standard interior display that may be provided free of charge to a licensed retailer, shall have no other utilitarian value other than that of being purely for display purposes. Any interior display containing any property other than that authorized in paragraph C above, may not be given or loaned to a licensed retailer, but must be sold at a price not less than the supplier's actual cost.

E. Advertising statements on signs and interior displays that are permitted to be provided free of charge to a retailer, shall primarily consist of a supplier's name, brand name, trade name, or trademarks; words or phrases, such as "on tap," "on draft," "in bottles," "in cans," "beverages," "beverage department," "ice cold," "take home," and similar copy; and words or phrases such as "delicious with (specifically named food or food products or food generally) " and similar statements relating alcohol beverages to food and constituting a part of the supplier's standard advertising. Permitted language may also include a retailer's name and address, the retailer-established selling price of alcohol beverages, and retailer-specific promotional announcements, provided that the sign or interior display, in its totality, primarily advertise the supplier or its products.

F. No supplier shall directly or indirectly pay to any retailer, and no retailer shall accept, any value or consideration in connection with, or for the right or privilege of, installing or maintaining any sign or interior display on, or in, or relating to, a retailer's licensed premises.

Related Federal (TTB) Signage Regulation

§6.84 Point of sale advertising materials and consumer advertising specialties.

(a) *General.* The act by an industry member of giving or selling point of sale advertising materials and consumer advertising specialties to a retailer does not constitute a means to induce within the meaning of section 105(b)(3) of the Act provided that the conditions prescribed in paragraph (c) of this section are met.

(b) *Definitions—*(1) *Point of sale advertising materials* are items designed to be used within a retail establishment to attract consumer attention to the products of the industry member. Such materials include, but are not limited to: posters, placards, designs, inside signs (electric, mechanical or otherwise), window decorations, trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, back bar mats, thermometers, clocks, calendars, and alcoholic beverage lists or menus.

(2) *Consumer advertising specialties* are items that are designed to be carried away by the consumer, such as trading stamps, nonalcoholic mixers, pouring racks, ash trays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, post cards, pencils, shirts, caps, and visors.

(c) *Conditions and limitations.* (1) All point of sale advertising materials and consumer advertising specialties must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed. The name and address of the retailer may appear on the point of sale advertising materials.

(2) The industry member may not directly or indirectly pay or credit the retailer for using or distributing these materials or for any expense incidental to their use.

§6.102 Outside signs.

The act by an industry member of giving or selling outside signs to a retailer does not constitute a means to induce within the meaning of section 105(b)(3) of the Act provided that:

(a) The sign must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed;

(b) The retailer is not compensated, directly or indirectly such as through a sign company, for displaying the signs; and

(c) The cost of the signs may not exceed \$400.