

**Colorado Liquor Enforcement Division
Trade Practices Sub-Group
Meeting #1 – July 11, 2016**

- I. **What are the issues we want to focus on??**
 - a. **Display Items (LED)**
 - b. **Hand Sales (LED)**
 - c. **Harmonizing Requirements for Sampling between Off and On-Premises Retailers (LED)**
 - d. **Cumulative Discounts**
 - e. **Other Suggestions from the Sub-Group**
 - i. **Cooler Rentals - Prohibiting**
 - ii. **Laid-in Costs – further refinements to definitions**
 - iii. **Funding of Advertising – Not allowing**
 - iv. **Unlawful Financial Assistance – More Clarity**
 - v. **Stocking and Labor Provisions**
 - vi. **Directing wholesalers on what labor they can provide to retailers**
 - vii. **Cost sharing on promotional logo items**
 - viii. **Warehousing – where items come to rest**
 - ix. **Control or attempt to Control – General Concepts and Case Law**
 - 1. **What is prohibited?**
 - 2. **What is permitted?**

II. **Discussion**

The Group discussed the issues identified and also worked on prioritizing issues to focus on in an effort to ensure the scope was reasonable and there was a realistic possibility of delivering some recommendations to the overall Liquor Rules Working Group.

The Sub-group agreed to focus on items a. through d. as listed in I. above. With respect to the various items listed under e., the group felt that they should be addressed in some way, but felt that they were all collectively related to control issues. The group decided to have further discussions on the overall concept of “control” and to attempt to address some of the individual items listed in e. as a part of these further discussions.

III. **Takeaways and Assignments**

The Sub-group agreed to have further discussions on display items before trying to develop some recommendations for the Liquor Rules Working Group.

John Tipton agreed to provide some proposed language regarding hand sales.

Patrick Maroney agreed to provide some proposed language on harmonizing the requirements for samples between on and off-premises retailers.

Mark Berzins agreed to provide some draft language that was created several years ago related to cumulative discounts.

The group was encouraged to review Liquor Regulations 47-316, 47-320, 47-322, 47-323 and Section 12-47-308, C.R.S. prior to our next meeting.

The Chair agreed to provide the additional documents along with the minutes as soon as possible in preparation for the next meeting.

IV. Organizational Matters

The Sub-group agreed to two additional meeting dates in the near future:

Wednesday, July 20 from 1 to 3 p.m. at the Colorado Division of Gaming Commission Room located at 17301 W. Colfax Ave., Suite 135 in Golden.

Thursday, August 4 from 9 to 11 a.m., location to be determined.

Attachments:

- **Colorado Liquor Code – Section 12-47-308, C.R.S.**
- **Liquor Regulations – 47-316, 320, 322, and 323**
- **Draft language for cumulative discounts**
- **Laid in cost draft language provided by CBDA**
- **Hand sales draft language from a previous working group**

beverage laws;

(IV) The information submitted by an applicant is incomplete; or

(V) The character, record, or reputation of the applicant, his or her agent, or his or her principal is such that a potential violation of this article or article 46 of this title may occur if a license is issued to the applicant.

12-47-308. Unlawful financial assistance.

(1)(a) It is unlawful for any person licensed pursuant to this article or article 46 of this title as a manufacturer, limited winery licensee, wholesaler, or importer, or any person, partnership, association, organization, or corporation interested financially in or with any of said licensees, to furnish, supply, or loan, in any manner, directly or indirectly, to any person licensed to sell at retail pursuant to this article or article 46 or 48 of this title any financial assistance, including the extension of credit for more than thirty days, as specified in section 12-47-202 (2) (b) or in rules of the state licensing authority, or any equipment, fixtures, chattels, or furnishings used in the storing, handling, serving, or dispensing of food or alcohol beverages within the premises or for making any structural alterations or improvements in or on the building in which such premises are located. This section shall not apply to signs or displays within such premises.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (1), any person or party described in said paragraph (a) may provide financial or in-kind assistance, directly or indirectly, to a nonprofit arts organization that has been issued an arts license pursuant to section 12-47-417 or to a state-supported institution of higher education in Colorado, including junior colleges, area vocational schools, and the Auraria higher education center, or the governing board of a state-supported institution of higher education, or to a nonpublic institution of higher education as defined in section 23-3.7-102, C.R.S., that is operating pursuant to 26 U.S.C. sec. 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, if the institution has been issued a license pursuant to article 46, 47, or 48 of this title.

(2) The state licensing authority, by rule and regulation, shall require a complete disclosure of all persons having a direct or indirect financial interest, and the extent of such interest, in each hotel and restaurant license and each retail gaming tavern license issued under this article. A willful failure to report and disclose the financial interests of all persons having a direct or indirect financial interest in a hotel and restaurant license or in a retail gaming tavern license shall be grounds for suspension or revocation of such license by the state licensing authority. The invalidity of any provision of this subsection (2) concerning interest in more than one hotel and restaurant license or retail gaming tavern license shall invalidate all interests in more than one hotel and restaurant license or retail gaming tavern license, and such invalidity shall make any such interest unlawful financial assistance.

(3)(a) It is unlawful for any person licensed to sell at retail pursuant to this article or article 46 of this title to receive and obtain from the persons or parties described and referred to in subsection (1) (a) of this section, directly or indirectly, any financial assistance or any equipment, fixtures, chattels, or furnishings used in the storing, handling, serving, or dispensing of food or alcohol beverages within the premises or from making any structural alterations or improvements in or on the building on which such premises are located. This subsection (3) shall not apply to signs or displays within such premises or to advertising materials that are intended primarily to advertise the product of the wholesaler or manufacturer and that have only negligible value in themselves or to the inspection and servicing of malt or vinous liquor-dispensing equipment to the extent necessary for the maintenance of reasonable standards of purity, cleanliness, and health.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (3), a nonprofit arts organization that has been issued an arts license pursuant to section 12-47-417 or a state-supported institution of higher education in Colorado, including junior colleges, area vocational schools, and the Auraria higher education center, or the governing board of a state-supported institution of higher education, or a nonpublic institution of higher education as defined in section 23-3.7-102, C.R.S., that is operating pursuant to 26 U.S.C. sec. 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, if the institution has been issued a license pursuant to article 46, 47, or 48 of this title, may receive financial or in-kind assistance, directly or indirectly, from the persons or parties described and referred to in paragraph (a) of subsection (1) of this section.

(4)(a) Except as otherwise authorized, it is unlawful for any person or corporation holding any license pursuant to this article or article 46 of this title or any person who is a stockholder, director, or officer of any corporation holding a license pursuant to this article or article 46 of this title to be a stockholder, director, or

officer or to be interested, directly or indirectly, in any person or corporation that lends money to any person or corporation licensed pursuant to this article or article 46 of this title, but this subsection (4) does not apply to banks or savings and loan associations supervised and regulated by an agency of the state or federal government, or to FHA-approved mortgagees, or to stockholders, directors, or officers thereof; and it is unlawful for any person or corporation licensed pursuant to this article or article 46 of this title, or any stockholder, director, or officer of such corporation, to make any loan or be interested, directly or indirectly, in any loan to any other person licensed pursuant to this article or article 46 of this title; except that this paragraph (a) does not apply to any financial institution that comes into possession of a licensed premises by virtue of a foreclosure or deed in lieu of foreclosure if such financial institution does not retain such premises for longer than one year or for such time exceeding one year as provided in paragraph (b) of this subsection (4).

(b) In the case of a financial institution that comes into possession of a licensed premises by virtue of a foreclosure or deed in lieu of foreclosure, the state and the local licensing authority may grant a transfer of ownership for such license for a period of one year and, upon notice and hearing, renewal of such license may be granted. This paragraph (b) shall apply in the case of every foreclosure or deed in lieu of foreclosure in which disposition of the license has not otherwise been made by the state or local licensing authority.

(5) It is unlawful for any owner, part owner, shareholder, stockholder, or person interested, directly or indirectly, in any retail business or establishment of a person licensed to sell at retail pursuant to the provisions of this article or article 46 or 48 of this title to enter into any agreement with any person or party or to receive, possess, or accept any money, fixtures, supplies, or things of value from any person or party, whereby a person licensed to sell at retail pursuant to this article or article 46 or 48 of this title may be influenced or caused, directly or indirectly, to buy, sell, dispense, or handle the product of any manufacturer of alcohol beverages. This subsection (5) shall not apply to displays within such premises.

(6) Any transaction, agreement, or arrangement prohibited by the provisions of this section, if made and entered into by and between the persons and parties described and referred to in this section, is unlawful, illegal, invalid, and void, and any obligation or liability arising out of such transaction, agreement, or arrangement shall be unenforceable in any court of this state by or against any such persons and parties entering into such transaction, agreement, or arrangement.

(7) This section is intended to prohibit and prevent the control of the outlets for the sale of alcohol beverages by any persons or parties other than the persons licensed pursuant to the provisions of this article or article 46 or 48 of this title.

(8) It is unlawful for an owner, part owner, shareholder, or person interested directly or indirectly in a brew pub, distillery pub, or vintner's restaurant license to conduct, own in whole or in part, or be directly or indirectly interested in a wholesaler's license issued under this article or article 46 of this title.

12-47-309. Local licensing authority - applications - optional premises licenses.

(1) A local licensing authority may issue only the following alcohol beverage licenses upon payment of the fee specified in section 12-47-505:

- (a) Retail liquor store license;
- (b) Liquor-licensed drugstore license;
- (c) Beer and wine license;
- (d) Hotel and restaurant license;
- (e) Tavern license;
- (f) Brew pub license;
- (g) Club license;
- (h) Arts license;
- (i) Racetrack license;
- (j) Optional premises license;
- (k) Retail gaming tavern license;
- (l) Vintner's restaurant license;
- (m) Distillery pub license.

(2) An application for any license specified in subsection (1) of this section or section 12-46-107 shall be filed with the appropriate local licensing authority on forms provided by the state licensing authority and containing such information as the state licensing authority may require. Each application shall be verified by

Regulation 47-316. Advertising Practices

A. Consumer Advertising Specialties

1. "Consumer advertising specialties" shall mean those items designed to advertise or promote a specific alcohol beverage brand or supplier, that have a utilitarian function to the consumer in addition to product promotion and that are intended and designed to be carried away by the consumer. Consumer advertising specialties shall include: t-shirts, caps, visors, bottle or can openers, cork screws, printed recipes, pencils, pens, pins, buttons, matches, computer flash and jump drives (not to exceed 8 GB), computer mouse pads, shopping bags, key chains, paper or plastic cups and plates, and similar items of negligible value, as approved by the Liquor Enforcement Division. For purposes of this regulation, glassware and plates do not qualify as consumer advertising specialties.
2. Suppliers may provide consumer advertising specialties free of charge to a licensed retailer, so long as they contain an advertising message that promotes the supplier or their products, and do not contain any information, markings, or logos that are specific to a retailer.
3. Consumer advertising specialties that contain any information, markings, or logos specific to a licensed retailer may not be provided free of charge, but must be purchased by a retailer at a minimum of the supplier's cost.
4. Suppliers must have available for inspection those customary business records that verify these transactions, in accordance with 12-47-701, C.R.S., and for the time frame specified in Regulation 47-700.

B. Point-of-Sale Advertising

1. "Point-of-sale advertising" shall mean alcohol beverage brand-specific or supplier-specific promotional materials, within a retailer's licensed premises. Such items may also include a retailer's name and address.
2. Suppliers may provide the following point-of-sale advertising materials to licensed retailers free of charge for use within retail premises: display decorations of negligible value, table tents, table tent holders, sports schedules and brackets, case cards, serving trays, condiment trays, bar utensil caddies, stir rods, strainers, presses, check and credit card holders, shakers, pitchers, table mats, bar mats, alcohol beverage lists or menus, menu cards, menu holders, calendars, napkins, napkin holders, coasters, stir sticks, and similar items of negligible value, as approved by the Liquor Enforcement Division.
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.
4. Supplier Rebates for Consumers and Supplier Coupons

Supplier rebates and coupons, as contemplated in this regulation, are a permitted method of alcohol beverage product promotion if they are intended to reach the consumer through permitted advertising practices, and to provide the consumer with a direct financial benefit through the redemption process. Rebates and coupons may not be used as a means of financial assistance to licensed retailers or as a means to influence or control a retailer's product selection.

- a. A supplier's "consumer rebate" provides a consumer with cash back after the consumer has purchased a supplier's product and has provided proof of product purchase upon redemption.
 - i. A supplier may provide consumer rebate certificates to consumers through point-of-sale advertising (such as tear pads, shelf talkers, case cards, or other point-of-sales materials), package inserts, or other printed or electronic media.

network advertising.

- b. A licensed retailer may not receive revenues, directly or indirectly, from licensed suppliers who advertise on the network. Revenue from non-alcohol beverage suppliers who advertise on the same network, which can be clearly distinguished by the network advertiser from supplier revenues, are permitted provided that the retailer can document that the source of the revenue is not a licensed supplier.
 - c. The advertising network and all related advertising receipts and distributions must be controlled by third party entities who are not licensed pursuant to article 46 or 47 of title 12, and who are wholly independent, in both form and substance, of any licensed supplier or retailer.
- D. Nothing in this regulation shall apply to non-profit, charitable, or other qualifying organizations, when such organization conducts licensed events pursuant to the requirements contained in article 48 of title 12, and related regulations, and such organization does not otherwise hold a retail license pursuant to articles 46 or 47 of title 12. However, nothing herein shall authorize any financial assistance for the purpose of altering or influencing an organization's product selection for said events.
- E. Except as otherwise provided for in this regulation, 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 posting or maintaining any advertising message, on or in, or relating to a retailer's licensed premises.

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. 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.
- C. The term "displays within such premises," hereinafter referred to as "interior displays," shall mean all non-refrigerated 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.

at market value.

- b. A wholesaler's aged inventory of vinous and spirituous liquors for which the current market value has fallen substantially below the wholesaler's original purchase cost, after a period of twelve (12) months, and for which a recovery of the original cost through an increase in market value is unlikely. For aged inventories sold to retailers below their cost due to market-below-cost conditions, wholesaler's shall maintain the following records for a minimum of three years:
 - i. Original purchase invoice.
 - ii. Aged inventory schedule verifying slow sales and drop in market value.
 - iii. Other factors that had an effect on a decrease in market value (e.g. over- production, poor media critique).
 - c. Products for use, but not for resale by the drink, by a non-profit organization or similar group, on a retailer's licensed premises, may be invoiced to a retailer at no cost. The invoice for said products must detail the products provided and the group for whose benefit it is provided. At the conclusion of the organization's event any unused product must be returned to the manufacturer, wholesaler, brewpub, distillery pub, or vintner's restaurant, or invoiced at a minimum of cost to the retailer.
6. Suppliers authorized to sell alcohol beverages to licensed retailers pursuant to articles 46 or 47 of title 12, may offer product discounts to licensed retailers that meet the requirements of paragraph A, and the following additional conditions:
- a. "Product Discount" shall mean a price reduction negotiated between supplier and retailer before the sale and delivery of alcohol beverage products, and where a description of the products subject to discount, and the dollar amount of the discount, is finalized and recorded in the supplier's sales records.
 - b. Discount programs are not subject to time limitations, and any discount program that will affect more than a single sales transaction and sales invoice are permitted, provided that no invoice, by itself, reflects a zero cost or below-cost sale.
 - c. Product discounts that are conditioned upon a retailer's commitment to prominently display the supplier's products are prohibited.
7. Any rebate, whereby a monetary value is returned by a supplier to a retailer, in cash, account credit, or free goods, as a reward or compensation for meeting a pre-specified purchase goal, is prohibited.
8. Suppliers authorized to sell alcohol beverages to licensed retailers pursuant to articles 46 or 47 of title 12, may offer account credits to licensed retailers under the following conditions:
- a. Any account credit offered on previously issued sales invoices must be in direct relation to previous product purchases, lawful returns pursuant to this regulation or other legitimate commercial transactions as authorized under articles 46 or 47 of title 12, C.R.S. and related regulations.
 - b. Credits that cannot be connected with authorized business transactions, as described herein, will be considered unlawful financial assistance, and are therefore prohibited.
 - c. Both the seller and retail licensee shall maintain copies of sales invoices and evidence of payment related to the transactions described in this section, in accordance with 12-47-701, C.R.S., and for the time frame specified in Regulation 47-700.

where sponsorship proceeds are received directly by the charity or civic endeavor, and not by a licensed retailer.

2. Suppliers may provide a sponsorship fee to advertise in ballparks, resorts, racetracks, stadiums, concert venues or entertainment districts as long as such sponsorship fee is not paid to a person or entity holding a retail license at such venue, directly or indirectly, and is not intended to influence the product selection of such retailer. The retailer's product selection for the event may not change as a condition of the event sponsorship and the products of the supplier's competitors may not be excluded.
3. Suppliers may provide or pay for any media announcement of a sponsored event that primarily advertises the product, the location, and the date and time of the event. The name of the retail outlet may also be mentioned.
4. Suppliers providing sponsorship fees to advertise at the aforementioned venues may also provide those items and services authorized under regulations 47-316, 47-320, and 47-322 to the licensed retailers at, or in conjunction with, the sponsored event.

D. Retailer entertainment

Suppliers may provide food, beverages, entertainment, recreation, or the costs associated with the same, to a retailer and its employees at meetings, social events, conferences, trainings, or other similar events, subject to the following:

1. Food, beverages, entertainment, or recreation are provided when, and where, suppliers or supplier representatives are participating or present.
2. Entertainment may include tickets or admission fees for athletic or sporting events, concerts, artistic performances, festivals, and similar forms of entertainment.
3. Recreation may include fees associated with participation in athletic or sports-related activities.
4. For any supplier-provided retailer entertainment, the supplier is prohibited from providing the costs associated with lodging and travel, other than nominal ground transportation.
5. Suppliers must maintain records sufficient to verify those entertainment expenses associated with retailers and their employees. Failure to maintain such records shall not be a per se violation of this regulation, but could constitute a violation of section 12-47-701, C.R.S. or Regulation 47-700.

E. Alcohol Beverage Samples for Retailers

1. 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 on-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 retailer has not purchased the product SKU of the alcohol beverage offered as a sample within the previous six (6) months.
 - d. 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, or 72-ounce equivalent, per brand of malt liquor or fermented malt beverage so packaged. If a particular brand is not available in a size meeting the quantity

the newly-manufactured product.

- f. Manufacturer's quality standards: To ensure freshness standards for malt liquor and fermented malt beverages, wholesalers may withdraw product from the retailer's inventory and replace it with new product, without additional charge, under the following conditions:
 - i. Out of freshness standard is defined as: a product that has a pre-printed freshness date on the alcohol beverage container that is no more than thirty (30) days away from the current date.
 - ii. The product to be withdrawn is undamaged and in its original packaging.
 - iii. The retailer purchased the original product from the wholesaler providing the replacement, or the current wholesaler is acting as an authorized successor wholesaler.
 - iv. The wholesaler replaces the product with the identical product SKU, the identical quantity, and the identical package.
 - v. If the wholesaler can substantiate that repeated replacement of the identical type and brand is ineffective (e.g. the wholesaler has replaced the same product at least twice), the wholesaler may instead substitute a product from the same brand family that is equal in value to the original purchase.
 - vi. If a seasonal product is out of the freshness standard, out of season and not available for replacement, a wholesaler may pick up the product from a retailer and replace it with a product from the same brand family that is equal or lessor in value to the original purchase.
 - vii. A wholesaler may sell a product to another retailer that was picked up because it was within thirty (30) days prior to the freshness date. The sale of this replaced product to another retailer can only be done once.
 - g. Retailer's seasonal operation: For those retailers who are only open for business a portion of the year due solely to seasonal influences, or for venues that operate only during scheduled events, a wholesaler may remove and grant credit for those products that are likely to spoil or violate a manufacturer's freshness standards.
 - h. Wholesalers that have lawfully exercised their claim to a retailer's inventory as secured creditors.
 - i. Products in a retailer's inventory that may no longer be sold due to statutory or regulatory changes or disciplinary actions over which the wholesaler and retailer had no control.
 - j. Evidence of a lawful surrender and cancellation of a retail liquor license by the state licensing authority.
 - k. Holders of special events permits that have unsold alcohol beverages after the licensed event.
4. A return of product for the following reasons does not qualify as a return for ordinary and usual commercial reasons:
- a. A retailer's overstocked inventory or slow-moving products.
 - b. Products for which there is only a limited-time or seasonal demand, such as holiday decanters or seasonal brands.

G. Warehousing of products for a retailer

3. Cost of labor provided to a retailer for services such as the installation of a dispensing system shall be at least at a minimum of that employee's hourly wage.

Regulation 47-323. Lawful Extension of Credit

A. Definitions: For purposes of this regulation, the following definitions are applicable:

1. "Supplying licensee" means those persons authorized pursuant to articles 46 and 47 of title 12, C.R.S. to sell fermented malt beverage, malt liquor, vinous liquor, and spirituous liquors to licensed retailers.
2. "Retailer" means those persons licensed pursuant to Sections 12-47-401(1)(h) – (t) and (v) and 12-46-104(1)(c) to sell alcohol beverages to the end consumer.
3. "Cash" means United States currency.
4. "Cash equivalent" means a financial transaction or negotiable instrument other than cash, including: bank drafts (business or personal check, cashier's check, certified check) money order, any other type of completed electronic funds transfer, or a supplying licensee's lawfully-issued credit to a retailer's account. Nothing in this regulation shall require a supplying licensee to make available all of the aforementioned types of cash equivalent.
5. "Alcohol beverage purchase" means the date upon which the alcohol beverage is delivered to the retailer and the retailer takes possession.

B. Transaction Requirements and Restrictions:

1. Regarding retailers' alcohol beverage purchases on credit, supplying licensees are prohibited from extending credit to any retailer for a period in excess of thirty (30) days.
2. A supplying licensee's delivery of alcohol beverages to a retailer must be accompanied by a sales invoice that shows the name of the retailer, the place of delivery (address of the licensed location), the invoice date, the date of delivery, a full description of the alcohol beverages delivered and accepted, a full description of any items on backorder to be delivered on a different date, and the price and terms of sale.
3. If there are discrepancies between the product described in the original sales invoice and the actual delivery, handwritten amendments shall be made to the invoice to reflect any corrections and shall be initialed by an authorized representative of the retailer or supplying licensee. Invoiced product that will be delivered on another date must be re-invoiced by the supplying licensee to reflect the date upon which the actual delivery took place.
4. Where there is lawful ownership of multiple, separately-licensed retail locations, each location must be considered separate and distinct with respect to alcohol beverage purchases. Therefore, a supplying licensee shall consider each location as separate and distinct for the purpose of extending credit. For retailers holding a resort complex class of hotel and restaurant license, all areas within the resort complex must be considered as a single location for the purpose of extending credit.

C. Calculation of Lawful Credit Period:

1. The lawful credit period is thirty (30) calendar days.
2. For the purpose of determining compliance with this regulation, the credit period shall commence on the alcohol beverage purchase and conclude on the date of full legal discharge from all indebtedness arising from the sales transaction related to the delivery, except as otherwise provided in paragraph G of this regulation.

4. A supplying licensee's normal and customary business practice related to the assessment of finance charges on credit balances that exceed 30 days is not a per se violation of this regulation.

F. Record Keeping Requirements for Supplying Licensees:

1. Pursuant to Section 12-47-701, C.R.S., licensees shall keep and maintain business records necessary to fully show the business transactions of such licensee. The following additional minimum requirements shall be met in order to demonstrate compliance with this regulation.
 - a. Before a supplying licensee extends credit to a retailer, it shall review the credit status of the retailer's account to determine whether any unpaid balance remains on a credit sale that is beyond the lawful credit period for such sale. The supplying licensee shall develop a procedure that documents this credit verification process, and shall be obligated to demonstrate compliance upon any review by the state licensing authority.
 - b. The supplying licensee shall maintain sufficient records that verify the commencement of the lawful credit period.
 - c. A supplying licensee that extends credit to retailers shall develop a method of verifying and documenting the date(s) of payment, and the final discharge of indebtedness of each sales invoice if it recognizes a payment date sooner than the date of its final accounting entry. This may include the retention of postmarked envelopes, hand written receipt ledgers, hand written acknowledgement of receipt on the supplying licensee's copy of a sales invoice, or other accounting records developed by the supplying licensee.
 - d. A supplying licensee that extends credit to retailers shall keep a record of those retailers that did not discharge indebtedness within the lawful credit period, and evidence that subsequent sales were cash or cash equivalent on delivery until the indebtedness was discharged.
2. A retailer's records may supplement the supplying licensee's records in determining compliance with record keeping requirements, but shall not mitigate a supplying licensee's lack of compliance.

G. Dispute Resolution: The purpose of this section shall be solely for the purpose of determining if a supplying licensee may continue to extend credit to a retailer when transaction amounts in dispute cannot be resolved within the lawful credit period. Nothing herein shall restrict the licensees from exercising their contractual rights in civil disputes.

1. If there is a good faith dispute by a retailer as to the validity or reasonableness of the amount owed or the payment made to the supplying licensee, then the retailer shall give written notice to the supplying licensee prior to the close of the lawful credit period. The retailer shall include the disputed amount due or payment tendered, the invoice number, and a detailed reason for the dispute.
2. Upon receipt of written notification, the supplying licensee shall determine its position and respond within 15 days of the retailer's written notification. The supplying licensee may continue to extend 30 days credit on new purchases pending the resolution of the dispute, so long as the retailer has provided written notice as described in paragraph G.1., and has tendered payment for all amounts not in dispute.
3. For purposes of this regulation, the amount of a qualifying price dispute shall be calculated as the disputed price differential times the number of cases purchased. For example, if the supplying licensee invoices a case of alcohol beverage at \$11.00 per case, and the retailer's records reflect a negotiated case deal of \$10.00, then the amount in dispute for purposes of this regulation is calculated as \$1.00 times the number of cases purchased.
4. The supplying licensee is prohibited from extending 30 days credit on new purchases if the retailer fails to claim disputes in the manner described in this section or fails to make full payment of undisputed amounts on or before the end of the lawful credit period. A retailer's action to stop or delay payment on any financial transaction does

Revise Regulation 47-322 A. 7. To permit LIMITED CUMMULATIVE DISCOUNTS

7. Any rebate, whereby a monetary value is returned by a supplier to a retailer, in cash, account credit, or free goods, as a reward or compensation for meeting a pre-specified purchase goal, is prohibited; HOWEVER, CUMMULATIVE DISCOUNT PROGRAMS THAT MEET THE FOLLOWING REQUIREMENTS ARE PERMITTED

a. A "CUMULATIVE DISCOUNT PROGRAM" MEANS A PRODUCT PURCHASE PROGRAM OF NO LONGER THAN ONE HOUNDRED TWENTY DAYS, UNDER WHICH A SUPPLIER CAN PROVIDE A RETAILER WITH AN ACCOUNT CREDIT AS A REWARD OR COMPENSATION FOR THE RETAILER MEETING A PREVIOUSLY SPECIFIED PURCHASE GOAL.

b. THE CUMULATIVE EFFECT OF THE PROGRAM CAN NOT RESULT IN A SALE OF THE ALCOHOL BEVERAGE PRODUCTS PROVIDED IN THE PROGRAM BELOW THE SUPPLIER'S LAID-IN COST.

c. A CUMULATIVE DISCOUNT PROGRAM CAN NOT REQUIRE THE EXCLUSION OF A COMPETING SUPPLER'S PRODUCTS.

d. A SUPPLIER IS PROHBITED FROM PROVIDING, AND A RETAILER IS PROHBITED FROM ACCEPTING, AN ACCOUNT CREDIT UNDER A CUMMUATIVE DISCOUNT PROGRAM UNLESS THE RETAILER HAS MET THE PREVIOUSLY SPECIFIED PURCHASE GOAL OF THE PROGRAM.

Justification for Change

The sale of alcohol beverage products where a monetary value is returned to the retailer for meeting a purchase goal over a set period of time allows a retailer with limited storage space to take advantage of what is in essence a volume discount. Under Federal law these types of sales programs are referred to as "cumulative discounts" and are also commonly referred to as "growth programs". Under Federal law these programs are not unlawful unless they involve the exclusion of a competing supplier's products. We believe that allowing limited "Cumulative Discount" programs would benefit the small retailer who, due to storage space limitations, is currently unable to take advantage of most volume discount programs offered by their suppliers. We believe that the case law found under Noble v. Colorado Wine and Spirits Wholesalers v. Colorado clearly allows the State Licensing Authority to consider what trade practices including pricing constitutes prohibited "control or attempt to control" of a retailer's alcohol beverage purchase decisions. In this case we feel that by allowing large retailers the benefit of volume discounts while prohibiting small retailers the ability to purchase a volume discount over a period of time (cumulative discount) is clearly discriminatory. The current prohibition on cumulative discounts limits price competition in the retail tier. In this draft regulation we believe the program's time limitation of 120 days, a prohibition on exclusion and a prohibition on allowing an account credit to be provided or received unless the program goal is met addresses past concerns that a cumulative discount program would be a per se unlawful financial assistance between a supplier and a retailer. It should be noted that many industries utilize similar product growth programs as a means of rewarding customers who purchase a set level of products within a set time period. Most commonly credit card companies reward their card holders with an account credit when a set dollar level of use has occurred.

Additionally the language in this proposed revision reinforces the State Licensing Authority's principal underlying requirement in Regulation 47-322 "that the sale of alcohol beverage products from a supplier to a retailer be made at a minimum of the supplier's laid-in cost."

Laid-in Cost Language Provided by CBDA

Example Language: An in-state manufacturer's laid-in cost is defined (as the Lowest laid in cost of the Colorado independent beer distributor that the manufacturer sells to, or if the manufacturer does not sell to a distributor the cost will be defined as the total ordinary expenses reported on the financial statements used on their Colorado state tax return) plus applicable state and federal taxes.

HAND SALES DRAFT LANGUAGE

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3. SUPPLIER-SPONSORED CONSUMER GIVE-AWAY OF ALCOHOL BEVERAGES THAT IS HELD IN ESTABLISHMENTS LICENSED FOR OFF-PREMISES CONSUMPTION FOR THE PURPOSE OF PRODUCT SALES PROMOTION, ARE PERMITTED UNDER THE FOLLOWING CONDITIONS:
 - a. PRODUCT USED FOR GIVE-AWAY MUST BE INVOICED BY A LICENSEE, WHO IS AUTHORIZED TO SELL ALCOHOL BEVERAGES AT WHOLESALE TO LICENSED RETAILERS PURSUANT TO ARTICLE 46 OR 47 OF TITLE 12, AS IF SOLD TO THE RETAILER.
 - b. A RETAILER MAY NOT IMPOSE ANY CHARGE TO THE CONSUMER TO ENTER OR PARTICIPATE IN THE GIVE-AWAY.
 - c. IF ALL PRODUCT LISTED IN THE SALES INVOICE IS USED AS PERMITTED HEREIN, THE WHOLESALER MUST ISSUE THE RETAILER A CREDIT AGAINST THE ENTIRE AMOUNT OF THE ORIGINAL INVOICE. IF THE SUPPLIER-SPONSORED CONSUMER GIVE-AWAY IS CONDUCTED BY A LICENSEE OTHER THAN THE COLORADO LICENSED WHOLESALER OF THE PRODUCT, THEN THE SUPPLIER LICENSEE MUST ISSUE THE WHOLESALER A CREDIT AGAINST THE ENTIRE AMOUNT OF THE ORIGINAL INVOICE, AND THE WHOLESALER MUST ISSUE THE RETAILER THE CREDIT FROM THE SUPPLIER AGAINST THE ENTIRE AMOUNT OF THE ORIGINAL INVOICE.
 - d. ANY REMAINING PRODUCT MUST BE RETURNED TO THE COLORADO LICENSED WHOLESALER OF THE PRODUCT, OR SOLD TO THE RETAILER AT A MINIMUM OF THE WHOLESALER'S LAID IN COST.
 - e. SUPPLIER REPRESENTATIVES OR THEIR AUTHORIZED AGENTS MAY PROVIDE ALCOHOL BEVERAGE SAMPLES DIRECTLY TO THE CONSUMER, IF THE PRODUCT HAS BEEN DELIVERED TO THE RETAIL PREMISES PURSUANT TO THE CONDITIONS DESCRIBED HEREIN, AND THE RETAILER HAS SO CONSENTED. CONSUMER SAMPLES PROVIDED UNDER THIS SECTION SHALL BE PURCHASED DIRECTLY FROM THE RETAILER BY THE SUPPLIER'S REPRESENTATIVE. ALL SAMPLE PURCHASES MUST BE AT THE RETAILER'S CURRENT RETAIL PRICE INCLUDING SALES TAXES.
 - f. SUPPLIERS MAY PROVIDE OR PAY FOR ANY MEDIA ANNOUNCEMENT OF A SUPPLIER-SPONSORED CONSUMER GIVE-AWAY THAT PRIMARILY ADVERTISES THE PRODUCT, THE LOCATION, AND THE DATE AND TIME OF THE GIVE-AWAY. THE NAME OF THE RETAIL OUTLET MAY ALSO BE MENTIONED.