

Administrative Release



Comptroller of the Treasury ● Alcohol and Tobacco Tax Unit ● Goldstein Treasury Building ● P.O. Box 2999
Annapolis, Maryland 21404-2999 ● Telephone: 410-260-7314

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To: Licensed Manufacturers, Wholesalers. Nonresident Dealers and Holders of Solicitor Permits

Subject: Alcoholic Beverages Trade Practices - Questions and Answers

Recently, the Alcohol and Tobacco Tax Unit has been presented with a number of questions from individual wholesale licensees and trade associations seeking clarification of the trade practice regulations which were issued effective October 1, 1996 (previously trade practice guidelines issued October 1, 1994). Answers to some questions are already addressed in the regulations. Other questions involved an interpretation of broader provisions of the regulations.

The trade practice regulations are intended to implement the spirit and intent of Section 12-104 of Article 2B of the Annotated Code of Maryland which prohibits a manufacturer, wholesaler, nonresident dealer or solicitor acting on behalf of a licensee, from providing something of value or illegal gratuities to a retail licensee. Many of the questions directly relate to Regulation .03.02.05.11 re services to retailers.

Below is listed each trade practice question we have been asked to answer by licensees we directly license and regulate. Restrictions applicable to wholesalers or wholesaler salespersons, as discussed herein, are equally applicable to other wholesaler representatives (such as merchandisers) and to supplier representatives.

The answers provided below are considered to be the official administrative policy of the Alcohol and Tobacco Tax Unit and interpretations of the existing regulations. All affected licensees should be guided accordingly.

1. Can salesmen of wholesalers make signs using a retailer's equipment in addition to or instead of making the signs by hand or at their

place of business and bringing them to the retailer's establishment?

Salespersons of wholesalers may not use retailer supplied equipment, supplies, computers, etc. to make and/or prepare signs.

2. Can sales personnel prepare or build displays on a retailer's floor?

Salespersons can build displays on a retailer's floor not to exceed fifteen cases (this applies to wine and liquor only). A wine and liquor merchandiser may build displays of more than fifteen cases and make the appropriate charge back to the supplier. Beer salespersons may build displays and are not limited as to quantity providing it is not excessive.

3. Can salespersons of the wholesaler restock displays?

This is viewed as similar to a restocking of shelves, which is not permitted. Replenishing displays should be the responsibility of the retailer once the display has been prepared by the salesperson or merchandiser.

4. Can a retailer have the salesperson move displays from one area of the retail location to another?

No, a retailer cannot require nor is it permissible for a wholesale or supplier representative to restock or move displays within the retail establishment once the display has been built. (over)

5. Can salespersons use “bottle neckers” on their products?

Yes, there is no problem with a wholesale representative placing “bottle neckers” on products provided it is not done using retailer supplied equipment or materials.

6. Can salespersons take an inventory of the retailer’s products?

There is no problem with a salesperson taking an inventory of the salesperson’s company products for purposes of recommending a purchase order provided the salesperson does not place or post the information on a retailer’s computer or other records of the retailer.

7. Can a salesperson rotate beer?

Under the existing trade practices regulations it is permissible for a beer salesperson to rotate his company’s products in case lots only.

8. Can a wholesaler place stock in several places within the retail store upon delivery?

No, it is not the wholesaler’s responsibility to deliver to multiple locations within the retail establishment. The wholesaler should deliver all products to the normal storage area at the retailer’s location, wherever that may be, and not deliver to multiple locations within the facility. Delivery must be to a central point within the store whether that is in the sales area or a particular area designated as a storage area.

9. Where can displays be built?

Authorized displays may be built anywhere within the retailer’s sales area but may not be a part of the shelving system that the retailer may have or supply. Shelf stocking and displays cannot be built onto a part of the existing shelving system at a retailer’s establishment.

10. Can wholesalers use a retailer’s fixtures to build displays?

No, wholesalers may not use retailer’s fixtures or other equipment to build or maintain displays.

11. Can a wholesaler provide a retailer with a customized disk for inventory purposes etc.?

A wholesaler cannot develop a customized product or price list for a particular retailer or group of retailers but may provide a generic disk which must be made available to any retailer who requests it.

12. Can a wholesaler rent to a retailer draft dispensing equipment?

Draft equipment may only be rented or leased to charity groups in conjunction with a temporary Class C non-profit license. Otherwise it must be sold to the retailer at cost or higher. The same applies to wine dispensing equipment.

13. Can products be delivered on dates other than an invoice date?

Products must be delivered on the invoice date or the next delivery date to that area. If products cannot be delivered on the invoice date or the next delivery date to that area, whenever that date is, the order must be canceled and a new order prepared with the appropriate price and conditions of sale for the date of the most recent order. No orders should be taken for products not in inventory.

14. Section B of Regulation .03.02.05.12 re on-premise promotions, allows the brand owner to expend up to \$125.00 on “incidental” expenses in addition to brand identifiable prizes or give-away items. Does this \$125.00 include buying drinks for consumers?

No, incidental expenses were not intended to include buying drinks for consumers participating in pre-planned and pre-announced on-premise promotional events. However, Regulation .03.02.05.06 does permit buying a consumer a drink if the action is spontaneous and without prior notice to either the retailer or consumer. It is not considered to be a spontaneous visit if the licensee or a competitor licensee is at the premises conducting a pre-announced promotional activity at the time of the visit.

The provisions of this administrative release are effective immediately. If you have any questions, please contact Mr. Aaron L. Stansbury, Assistant Administrator for trade practices, at 410-974-3319.

Charles W. Ehart, DPA
Administrator