

**Regulation 47-321. Bona Fide Loyalty or Rewards Programs – Discontinued Sales – Close-Out Sales.**

Basis and Purpose. The statutory authority for this regulation is found at subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(D), and 44-3-202(2)(a)(I)(O), C.R.S. The purpose of this regulation is to clarify how applicable licensees may sell alcohol beverages below cost under limited statutory exceptions.

- A. A retailer licensed pursuant to section 44-3-409 or 44-3-410, or subsection 44-4-107(1)(a), C.R.S., shall not sell alcohol beverages to consumers at a price that is below the retailer’s cost, as listed on the invoice, unless the sale is of discontinued or close-out alcohol beverages. For purposes of this subsection:
1. “Discontinued” means when a manufacturer or importer discontinues the production, importation, or market availability of a specific alcohol beverage product. A retailer’s decision to stop making available the alcohol beverage product for purchase by a consumer does not qualify as a discontinued product.
  2. To qualify as a “close-out” sale, the following conditions must be satisfied:
    - a. The close-out sale must include and liquidate, by sale or destruction, all of the retailer’s current inventory of a specific alcohol beverage product as of the date the close-out sale begins.
    - b. The retailer is prohibited from selling the specific alcohol beverage product that was involved in the close-out sale at a price below cost for a period of two (2) years commencing on the date the last item included in the close-out sale is liquidated.
- B. A retailer licensed pursuant to section 44-3-409 or 44-3-410, or subsection 44-4-107(1)(a), C.R.S., shall not be prohibited from operating a bona fide loyalty or rewards program for alcohol beverages the retailer is licensed to sell so long as the price for the product is not below the retailer’s costs as listed on the invoice. For purposes of subsections (B) and (C) of this regulation:
1. “Bona fide loyalty program” means a structured program used by a retailer licensed pursuant to section 44-3-409 or 44-3-410, or subsection 44-4-107(1)(a), C.R.S., to encourage participants to continue to shop at the retailer’s licensed business by allowing participants access to special pricing on products by virtue of being a member of the bona fide loyalty program.
  2. “Bona fide rewards program” means a structured program used by a retailer licensed pursuant to section 44-3-409 or 44-3-410, or subsection 44-4-107(1)(a), C.R.S., to encourage participants to continue to shop at the retailer’s licensed business by allowing participants to accrue program benefits, in the form of points or other accrual-

based methods of reward, through the purchase of alcohol beverages, to be redeemed in the form of a discount upon a subsequent sales transaction on alcohol beverage products only.

3. "Retailer's cost" means the actual proportionate invoice price charged by the wholesaler, per item, including applicable state and federal taxes. All invoices must clearly designate a price paid for each product, which shall not be less than the wholesaler's laid-in cost for each product.
  4. "Price" means the amount an alcohol beverage product is listed for sale to consumers by the retailer, before applicable taxes, and before application of bona fide loyalty or rewards program benefits in the form of a discount.
  5. A supplier shall not provide to a retailer, and a retailer shall not accept from a supplier, any financial assistance in connection with a bona fide loyalty or rewards program.
  6. bona fide rewards program benefits shall be structured so that both the accrual and redemption of benefits is applied without discrimination across all brands and labels of alcohol beverages. However, bona fide rewards program benefits may differentiate in accrual and redemption rate for classes of alcohol products (beer, wine, spirits).
- C. A retailer described in subsection (B) of this regulation shall maintain and make available those business records regarding all bona fide loyalty or rewards program transactions consistent with Regulation 47-700, 1 C.C.R. 203-2. A retailer described in subsection (B) of this regulation must maintain, at a minimum, the following records regarding its bona fide loyalty or rewards program:
1. Documentation regarding the value of loyalty or rewards program benefits and how those benefits may be accrued and redeemed by participants;
  2. Documentation showing the loyalty or rewards program benefits actually accrued and redeemed by each participant, organized by a unique customer identification number assigned to each participant;
  3. Invoices showing the retailer's cost of the individual alcohol beverage product to which any consumer loyalty or rewards benefit was applied or redeemed; and
  4. Receipts for every alcohol beverage sale to which loyalty or rewards program benefits are redeemed, showing the price for every alcohol beverage and the amount of such benefits.