

Regulation 47-316. Advertising Practices

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-103, 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(G), 44-3-202(2)(a)(I)(O), 44-3-202(2)(a)(I)(R), and 44-3-308, C.R.S. The purpose of this regulation is to establish certain permitted and prohibited advertising practices between suppliers and retailers.

A. Consumer Advertising Specialties

1. “Consumer advertising specialties” shall mean those items primarily designed to advertise or promote a specific alcohol beverage brand or supplier, that are intended and designed to be carried away by the consumer, and that have negligible value. Consumer advertising specialties are considered to be of negligible value if the suppliers’ cost to purchase the consumer advertising specialties is less than ten (10) dollars per item. Apparel items are considered to be of negligible value if the suppliers’ cost to purchase a single apparel item is less than twenty-five (25) dollars per item. For purposes of this regulation, glassware, plates, and barware such as jiggers, bar tins, and utensils do not qualify as consumer advertising specialties.
2. Suppliers may provide consumer advertising specialties of negligible value free of charge to a licensed retailer, so long as the consumer advertising specialties 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. Licensees must have available for inspection those customary business records that verify these transactions, in accordance with section 44-3-701, 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 of negligible value 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 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.
 - ii. A supplier's consumer rebate certificate may not be redeemed through a licensed retailer.
- b. A supplier's "instant redeemable coupon" provides a consumer with a discount off of the retailer's selling price of an alcohol beverage product, at the time it is redeemed through a licensed retailer.
 - i. Licensed retailers may redeem suppliers' instant redeemable coupons only after they have been made available to consumers through general print or electronic media directed at the consumer; package inserts; or, a supplier's representative or agent, who is not the retailer or their agent, who is providing coupons to consumers at the retail premises for the purpose of product promotion.
 - ii. Licensed retailers are prohibited from accepting and redeeming any supplier-issued instant redeemable coupons unless redemption included presentation of the coupon by a consumer with the purchase of the product advertised therein, or in accordance with other applicable redemption rules specified by the supplier or their marketing agents.
 - iii. Suppliers are prohibited from providing their instant redeemable coupons directly to licensed retailers, except when said coupons are packaged with, or attached to, each individual product package before such products are delivered to a licensed retailer.
 - iv. Suppliers may never reimburse licensed retailers for suppliers' instant redeemable coupons. Redemption must be through a third party that is independent from the supplier and the retailer.

- v. Retailers must have available for inspection, applicable business and banking records that verify these transactions, in accordance with 44-3-701, C.R.S., and for the time frame specified in Regulation 47-700. Verification may include the retailer's reconciliation of coupons redeemed to related products sold to consumers.

5. Supplier Sponsored Consumer Contests and Related Displays

A supplier may advertise, within retail premises, alcohol beverage products, via consumer mail-in rebate offers, consumer give-a-ways, 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 to be given away in a consumer give-a-way, sweepstake, or contest, to a retailer with the purpose of the item being displayed in the retail licensed premises during the contest period, subject to the regulations below, to be given away in a consumer give-away, sweepstake or contest.

For consumer give-a-ways, 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 within the time afforded by this regulation. Otherwise the item(s) must be returned to the supplier who will be responsible for awarding the item(s) to the winner.
- d. If the actual item(s) that is(are) part of the Consumer Contest are delivered to the retail license premises with the intention of displaying the item during the contest period, the item(s) shall be delivered together with an invoice made out to the retail licensee for not less than the actual 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 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 Division can verify that the item was presented to the Consumer Contest winner.

- e. The Consumer Contest, including the drawing period, shall not last longer than 60 days.
- f. 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, it is the responsibility of both the retail licensee and the supplier, that payment in full of the invoice by the retail licensee is made to the supplier 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.
- 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 on display in the licensed premises only during the period of the Consumer Contest. At the end of the contest period, the item(s) may be stored at the retailer location for no more than 30 days following the end of the Consumer Contest period.
- i. The item(s) must be properly identified in signage as a prize that is part of the Consumer Contest, e.g. "Win this Umbrella."
- j. 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.

C. Media Advertising

- 1. Except as provided in Regulations 47-322(B) and 47-322(C), and subsection (C)(3) of this regulation, no supplier shall directly or indirectly furnish or pay for any advertising for or with respect to any one or more retail licensee by means of the internet, device applications (apps), radio or television broadcast, magazines, newspapers, pamphlets, or similar media, or by means of any sign not located on or in the licensed premises of the retailer which is advertised.
- 2. Except as provided in Regulations 47-322(B) and 47-322(C), suppliers that purchase internet, device applications (apps), radio or television advertising packages from third party advertising agencies:
 - a. May not authorize the advertising agency to apply any value attributable to the supplier's advertising package toward the advertising or promotion of any licensed retailer or their location.

- b. May not authorize the advertising agency to combine supplier-purchased advertising packages with those purchased by licensed retailers, for the purpose and benefit of cooperative advertising.
- 3. A supplier may directly or indirectly advertise for or with respect to any one (1) or more retailers that sell the supplier's alcohol beverages, via the supplier's internet websites (including forums such as a supplier's Facebook page, blog or device applications (apps)) and electronic advertising messages delivered directly to consumers' private electronic devices.
- 4. Closed-circuit television advertising networks, or similar advertising networks, that deliver advertising messages to consumers are permitted in retail licensed premises with the following conditions:
 - a. A supplier may not provide a licensed retailer with any electronic equipment necessary to deliver 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 3 or 4 of title 44, 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 5 of title 44, and related regulations, and such organization does not otherwise hold a retail license pursuant to articles 3 or 4 of title 44. 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 47-950. Display of Alcohol Beverages Immediately Adjacent to Soft Drinks, Fruit Juices, Bottled Water, Candy, or Toys.

Basis and Purpose. The statutory authority for this regulation includes but is not limited to subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), and 44-3-202(2)(a)(I)(R), C.R.S. The purpose of this regulation is to prevent consumer confusion regarding whether a beverage contains alcohol and to help prevent sales of alcohol beverages to persons under 21 years of age.

A. Definition.

1. As used in this regulation, "immediately adjacent" means directly touching or immediately bordering one another from above, below, or the side, for example, on a shelf directly above or below another shelf; or on a shelf, cooler shelf, or display (including permanent or temporary displays) that is adjacent to another shelf, cooler shelf, or display. "Immediately adjacent" does not include a separate aisle or shelving units or cooler shelving units on the opposite side of an aisle.

B. Alcohol Beverages Immediately Adjacent to Soft Drinks, Fruit Juices, Bottled Water, Candy, or Toys. Any retail liquor store, liquor licensed drug store, fermented malt beverage and wine retailer, or fermented malt beverage on/off premises licensee that locates, places, or displays (including permanent or temporary displays) alcohol beverages immediately adjacent to soft drinks, fruit juices, bottled water, candy, or toys, shall:

1. Place signage that is clearly visible to consumers on any such shelves, cooler shelves, or displays (including permanent or temporary displays) that contains alcohol beverages and is immediately adjacent to soft drinks, fruit juices, bottled water, candy, or toys. This signage must:
 - a. Be at least 8.5 x 5.5 inches or 4.2 x 11 inches, depending on the orientation of the sign;
 - b. Use a font size of at least 40 points in black ink; and
 - c. State "THESE PRODUCTS ARE ALCOHOL BEVERAGES AVAILABLE FOR SALE ONLY TO PERSONS WHO ARE 21 YEARS OF AGE AND OLDER."
2. Signage may contain only retailer store branding or logos, but may not contain branding or logos of any alcohol beverage brand, manufacturer, or wholesaler.