

Florida Beer Wholesalers Association

August 5, 2012

To: FBWA Members

From: Mitch Rubin

Re: Refrigerated Singles Bins—Removal from Market

Issue: When must a manufacturer or distributor remove a refrigerated singles bin from a vendor's account?

Brief Answer: It depends on when the item was provided and whether it was given or loaned.

Analysis: Recall that under the old rule there was doubt as to whether refrigerated singles bins were lawful. The FBWA took the position that they were unlawful, but some at the DABT (and the Retail Federation and BIF by their silence) took the position that the expression "at room temperature or cold" meant that refrigeration was permitted. This is an important point because it affects whether a refrigerated singles bin was ever authorized under the rules. The best way to proceed is to put the interpretation of the old rule aside and proceed under the new rule.

Below, please find a copy of Rule 61A-1.0101 Product Displays Exception, Florida Administrative Code, including its effective date of September 15, 2010.

61A-1.0101 Product Displays Exception.

(1) Industry members may give, loan, or sell alcoholic beverage product displays to vendors, for use on a vendor's licensed premises, to include wine racks, bins, barrels, casks, shelving, or similar product display items which are separated from a vendor's ordinary shelves and used primarily to hold and display factory sealed products of the provider for sale to customers at room temperature or cold. Such displays shall not have, or be used to provide, a secondary function, other than advertising, which would function to provide equipment, including refrigeration; furniture; or other fixtures.

(2) Industry members may transport, install, assemble and disassemble their own product displays on a vendor's licensed premises. Industry members may require the vendor to purchase a minimum amount of the product advertised on the display in a quantity necessary for the completion of the display.

(3) The value of any product display, excluding transportation, installation, and disassembly costs, shall not exceed \$300 per brand, and the total value of all product displays at any one time on any one vendor's licensed premises shall not exceed \$300 per brand. Industry members shall not pool or combine dollar

limitations in order to provide a vendor a product display valued in excess of \$300 per brand.

(4) The product display shall bear product or industry member information that is conspicuous and permanently inscribed or securely affixed to the product display. The vendor's name, business name, website address, logo, and address may be part of the product display.

(5) Payments of slotting fees for alcoholic beverages shall not be made to vendors. A slotting fee is defined as any form of assistance given by an industry member to a vendor to purchase or rent additional, particular, favorable, or dedicated display, shelf, cooler, storage or warehouse space for alcoholic beverages.

Rulemaking Authority 561.11, 561.42 FS. Law Implemented 561.08, 561.42 FS. History—New 9-15-10.

A refrigerated singles bin given or loaned to a vendor after September 15, 2010 must be removed. A refrigerated singles bin loaned prior to September 15, 2010 must be removed. A singles bin given prior to September 15, 2010 must not be removed.

The difference in treatment between an item given and an item loaned before September 15, 2010, arises from the fact that a loaned item remains the property of the distributor. The continuing loan is a violation of the new rule. In contrast, when an item was given before September 15, 2010, title transferred to the vendor. There is not a continuing violation because the interpretation of the old rule has been set aside.

Conclusion: A refrigerated singles bin given or loaned to a vendor after September 15, 2010 must be removed. A refrigerated singles bin loaned prior to September 15, 2010 must be removed. A singles bin given prior to September 15, 2010 must not be removed.