



Advisory Opinion 24-03: Product Displays vs. Equipment

I. Issue or Question Presented

A trade association representing certain alcoholic beverage wholesalers posed the following questions to the Indiana Alcohol and Tobacco Commission (“ATC” or “Commission”):

1. May a primary source of supply or wholesaler provide coolers to retail accounts as product displays in Indiana? If so, does this include both plug-in coolers and regular coolers?
2. How does the ATC determine and/or regulate the value of a product display?
3. If coolers are not considered product displays, may they be provided to retailers under any other provision of state and federal law?

The purpose of this advisory opinion is to provide guidance to regulated entities about what constitutes a product display and what constitutes equipment for purposes of applicable relevant state and federal law, and the legal requirements surrounding both.

II. Legal Authority

A. Federal Laws & Regulations

According to the Federal Alcohol Administration (“FAA”) Act, it is unlawful for an industry member¹ to directly or indirectly require a retailer of alcoholic beverages to purchase any such products from the industry member to the exclusion of alcoholic beverages sold or offered for sale by other industry members in interstate or foreign commerce, whether by agreement or otherwise. 27 U.S.C. § 205(a). Similarly, it is also unlawful for an industry member to directly or indirectly induce a retailer of alcoholic beverages to purchase such products from the industry member to the exclusion of alcoholic beverages sold or offered for sale by other industry members in interstate or foreign commerce. 27 U.S.C. § 205(b). In the case of malt beverages, the prohibition on tie-in sales and inducements applies to transactions between a retailer in one State and a brewer, importer, or wholesaler of malt beverages inside or outside such State, only to the extent that the laws of such State impose similar requirements with respect to similar transactions between a retailer in such State and a brewer, importer, or wholesaler of malt beverages in such State. [27 U.S.C. § 205](#) (penultimate paragraph); [27 C.F.R. 6.4\(b\)](#) and [27 CFR 8.4\(b\)](#).

Subject to certain exceptions, the act by an industry member of furnishing, giving, renting, lending, or selling any equipment, fixtures, signs, supplies, money, services, or other things of value to a retailer constitutes a means to induce within the meaning of the FAA Act. [27 CFR 6.41](#). Similarly, the furnishing, giving, renting, lending, or selling of equipment, fixtures, signs, supplies, money, services, or other thing of value by an industry member to a third party, where the benefits resulting from such things flow to individual retailers, is indirectly furnishing of a thing of value to retailer within the meaning of the FAA

¹ The term “industry member” is defined as any person engaged in business as (1) a distiller, brewer, rectifier, blender, or other producer; (2) an importer or wholesaler of distilled spirits, wine, or malt beverages; or (3) a bottler, or warehouseman and bottler, of distilled spirits. 27 CFR 4.60, 5.231, and 7.231.

Act and is prohibited. [27 CFR 6.42](#)(a). However, there are limited exceptions in cases where the item of value is furnished to the retailer by a third party without the knowledge or intent of the industry member and where the industry member did not reasonably foresee that the thing of value would have been furnished to the retailer by a third party. [27 CFR 6.42](#)(b). Finally, while there are also exceptions for items such as product displays, point-of-sale advertising materials, consumer tasting or sampling at retail locations, limited equipment and supplies, and product management services such as stocking, rotation and pricing, any exceptions to the prohibitions contained in 27 U.S.C. 205(b) must generally be of little value.

According to [27 CFR 6.83](#), the term “product display” includes wine racks, bins, barrels, casks, shelving, or similar items, the primary function of which is to hold and display consumer products. As further noted in Industry Circular 86-16 published by the U.S. Department of Treasury Alcohol and Tobacco Tax and Trade Bureau (“TTB”), examples of product displays contained in [27 CFR 6.83](#) are all “items on which product either rest or are stacked” such that each of the items listed possesses the capability of storing or containing products². For purposes of the FAA Act, the act of an industry member giving or selling a product display to a retailer does not constitute a means to induce if the following conditions are met:

- (1) The total value of all product displays given or sold by an industry member may not exceed three hundred dollars (\$300) per brand at any one time in any one retail establishment. Industry members may not pool or combine dollar limitations in order to provide a retailer a product display valued in excess of three hundred dollars (\$300) per brand, and the value of a product display is the actual cost to the industry member who initially purchased it (excluding transportation and installation costs);
- (2) All product displays must bear conspicuous and substantial advertising matter on the product or the industry member which is permanently inscribed or securely affixed; and
- (3) Giving or selling product displays may be conditioned upon the purchase of the alcoholic beverages advertised on those displays in a quantity necessary for the initial completion of such display, but no other condition can be imposed by the industry member on the retailer for the retailer to receive or obtain the product display.

On the other hand, [27 CFR 6.11](#) defines “equipment” as functional items such as tap boxes, glassware, pouring racks, and similar items used in the conduct of a retailer's business. Similarly, according to [27 CFR 6.88](#), the term “equipment and supplies” includes glassware (or similar containers), dispensing accessories (e.g., faucets, cold plates, rods, vents, taps, tap standards, hoses, washers, couplings, gas gauges, vent tongues, shanks, check valves), carbon dioxide and other gasses used in dispensing equipment, and ice. Pursuant to the FAA Act, the act of an industry member selling equipment and/or supplies to a retailer is not considered a means to induce if: (1) the equipment or supplies are sold at a price not less than the cost to the industry member who initially purchased them; and (2) payment is collected within thirty (30) days of the date of sale.

B. State Laws & Administrative Rules

² Available at www.ttb.gov/public-information/industry-circulars/archives/1986/86-16 (last visited _____)

Indiana has trade practice restrictions which are similar to federal law, but with some important distinctions. To begin, [Ind. Code 7.1-5-5-10](#) prohibits a person³ that holds a retailer or dealer permit of any type to receive or accept a gift⁴ from a manufacturer of alcoholic beverages or a permittee authorized to sell and deliver alcoholic beverages. Similarly, [IC 7.1-5-5-11](#) prohibits a manufacturer of alcoholic beverages or a permittee authorized to sell and deliver alcoholic beverages from giving a gift to another permittee who purchases alcoholic beverages from the manufacturer or having a business dealing with another permittee unless authorized by statute or rule. To that end, [IC 7.1-5-5-11](#) is also subject to certain limited exceptions. For example, [IC 7.1-5-5-11\(e\)](#) authorizes a manufacturer or a permittee authorized to sell and deliver alcoholic beverages to provide entertainment⁵ and professional and educational expenses⁶ to another permittee, unless the entertainment or professional and educational expenses are provided in exchange for an agreement to directly or indirectly purchase alcoholic beverages from a: (1) manufacturer; or (2) permittee authorized to sell and deliver alcoholic beverages; to the exclusion, in whole or in part, of alcoholic beverages sold or delivered by another manufacturer or a permittee authorized to sell and deliver alcoholic beverages.

[905 IAC 1-5.1](#) (Rule 5.1) sets forth prohibited trade practices between primary sources of supply, manufacturers, wholesalers, and retailer or dealer permittees. Under [905 IAC 1-5.1-1\(a\)](#), it is unlawful for any primary source of supply⁷ or wholesaler to directly or indirectly induce any retailer or dealer to purchase any alcoholic beverages from a primary source of supply or wholesaler to the exclusion, in whole or in part, of alcoholic beverages sold or offered for sale by another primary source of supply or wholesaler by doing any of the following:

- (1) Acquiring or holding any interest in any retailer or dealer permit (except as permitted by IC 7.1-3-10-12⁸).
- (2) Acquiring any interest in real or personal property owned, occupied, or used by the retailer or dealer in the conduct of its alcoholic beverage business (except to the extent a lien or other security interest is acquired to secure payment of goods sold on credit if such credit is permissible under IC 7.1).
- (3) Furnishing, giving, renting, lending, or selling to the retailer or dealer, any equipment, fixtures, supplies, money, services, or other things of value (subject to the exceptions contained in 905 IAC 1-5.2).

³ As defined in [IC 7.1-1-3-31](#), the term “person” includes: (1) a natural individual; (2) a firm; (3) a corporation; (4) a partnership; (5) a limited partnership; (6) a limited liability company; (7) an incorporated or unincorporated association; or (8) other legal entity, whether acting by themselves or by a servant, an agent, or an employee.

⁴ As defined in [IC 7.1-1-3-18.3](#) the term “gift” means anything of value, including a rebate, sum of money, accessory, furniture, fixture, loan of money, concession, privilege, use, title, interest, or lease, rehabilitation, decoration, improvement, or repair of premises.

⁵ As defined in [IC 7.1-1-3-16.4](#), the term “entertainment” means one or more of the following: (1) participation in a sporting event; (2) attendance at a sporting event or an event featuring live performances; (3) meals; (4) beverages; and (5) ground transportation provided in connection with an activity described in (1) through (4).

⁶ As defined in [IC 7.1-1-3-32.7](#), the term “professional and educational expenses” means retailer or dealer association activities, educational seminars, and advertising specialties and consumer advertising specialties.

⁷ As defined in [IC 7.1-1-3-32.5](#), the term “primary source of supply” means: (1) an artisan distiller or distiller; (2) a producer; (3) a vintner; (4) a rectifier; (5) an importer into the United States; (6) an owner at the time it becomes a marketable product; (7) a bottler; (8) a brewer, or (9) an agent of a person listed in subsection (1) through (8) who is authorized to make sales of alcoholic beverages to an Indiana wholesaler.

⁸ Repealed by P.L.204-2001, SEC.68.

- (4) Paying or crediting the retailer or dealer for any advertising, display, or distribution service.
- (5) Guaranteeing any loan or the repayment of any financial obligation of the retailer or dealer.
- (6) Requiring the retailer or dealer to take and dispose of a certain quota of any alcoholic beverages.

It is also unlawful for a retailer or dealer to purchase (or offer to purchase) any alcoholic beverages from a primary source of supply or wholesaler to the exclusion, in whole or in part, of alcoholic beverages sold or offered for sale by another primary source of supply or wholesaler if the selling primary source of supply or wholesaler has done, or is requested by the retailer or dealer to do, any of the prohibited activities listed above. Similarly, [905 IAC 1-5.1-12](#) states that whenever a primary source of supply or wholesaler is prohibited from furnishing supplies, services, or things of value to a retailer or dealer, the retailer or dealer is also prohibited from soliciting or receiving any of the unauthorized supplies, services, or things of value from a primary source of supply or wholesaler.

Despite the prohibitions above, [905 IAC 1-5.2](#) (Rule 5.2) authorizes certain limited trade practices between permittees; however, a primary source of supply or wholesaler may only furnish equipment, fixtures, signs, glassware, supplies, services, and advertising specialties to a retailer or dealer as authorized in Rule 5.2. To that end, [905 IAC 1-5.2-4](#) authorizes a primary source or wholesaler to furnish, give, rent, loan, or sell product displays (e.g., racks, bins, barrels, casks, nonilluminated signs, or special shelving bearing the brand name of the alcoholic beverage from which alcoholic beverages are displayed and sold) to a retailer or dealer subject to the limitations set forth in [27 CFR 6.83](#). Similarly, [905 IAC 1-5.2-8](#) authorizes a primary source or wholesaler to sell tapping accessories (e.g., standards, faucets, rods, vents, taps, tap standards, gas gauges, wine guns, and other accessories enumerated in [27 CFR 6.88](#)) to a retailer or dealer and to install them on the retailer or dealer's premises if: (1) the tapping accessories are sold at a price not less than the cost to the primary source of supply or wholesaler initially purchasing them; and (2) payment is collected within fifteen (15) days of the date of sale.

Finally, under [905 IAC 1-5.2-18](#), a primary source of supply, manufacturer, or wholesaler may supply equipment on a temporary and nondiscriminatory basis to the holder of a retailer permit or a temporary permit for the purpose of holding, storing, and dispensing product to consumers for a special event for the duration of the special event. However, ownership of the equipment remains with the primary source of supply, manufacturer, or wholesaler, and the equipment must be returned to the primary source of supply, manufacturer, or wholesaler who supplied it at the conclusion of the special event.

III. Analysis

In order to determine whether an item is considered a product display or equipment for purposes of state and federal law, several factors must be examined in conjunction with the legal authority above, such as the primary function or purpose for which the item is being used, whether the item has any electrical and/or mechanical components, whether the item has physical contact with alcoholic beverages or other products, and the conduct of the underlying business in question. Each of these factors will be addressed below in detail.

A. Primary Function or Purpose

The primary function of an item is a critical factor in determining its classification as a product display or equipment under state and federal law. According to [27 CFR 6.83](#), product displays are items “the primary function of which is to hold and display consumer products.” As further clarified by TTB Industry Circular

86-16, product displays are “items on which product is either rest or stacked,” possessing “the capability of storing or containing products.” In contrast, equipment is defined under [27 CFR 6.11](#) as functional items such as tap boxes, glassware, pouring racks, and similar items used in the conduct of a retailer’s business. Equipment and supplies under [27 CFR 6.88](#) include dispensing accessories and other items that facilitate the sale or service of alcoholic beverages.

Although coolers and refrigerators possess the ability to cool, chill, ice, or otherwise alter the temperature of the products they contain, not all coolers and refrigerators have the capability of displaying products for sale. Additionally, not all coolers and fridges contain advertising material, which is a requirement of a product display as defined under [27 CFR 6.83](#) and [905 IAC 1-5.2-4](#). In other words, coolers and refrigerators are functional items that are used in the conduct of a retailer’s business because they have a primary function of cooling or chilling products to a desired temperature and do not necessarily display products for sale or advertisement. As such, coolers and refrigerators are properly classified as equipment.

B. Mechanical & Electrical Components

Items with electrical or mechanical components that perform functions beyond simply holding and displaying products are more likely to be classified as equipment rather than product displays. This distinction is important because coolers, especially plug-in coolers, have electrical components that provide refrigeration, which is a function that goes beyond merely displaying products. For example, refrigerators have mechanical components such as compressors, condensers, evaporators, expansion devices, refrigerants, and thermostats, and electrical components such as motors, bulbs, and fans. On the other hand, product displays are merely designed to capture the attention of consumers and do not have complex mechanical or electrical components, and although product displays may have components such as a display screen or display panel, connectors, wires or cables, and switches or buttons to interact with the display itself, they do not possess temperature management capabilities similar to that of a cooler or fridge.

C. Physical Contact with Products

Product displays primarily hold and showcase products without altering them, whereas equipment, often has direct physical contact with products in ways that affect their condition or dispensing, such as cooling, pouring, or dispensing systems. Because coolers and fridges maintain products at specific temperatures, which suggests they serve a functional purpose beyond holding, stacking, or displaying products.

D. Business Conduct Considerations

The conduct of the retailer or dealer business is also relevant to determining whether an item is considered a product display or equipment. For example, if an item is necessary for the proper service or sale of the product (like refrigeration for certain beverages that should be served cold), it may be more properly classified as equipment essential to the conduct of business rather than merely a display or promotional item. In this case, coolers and refrigerators are used in the conduct of a retailer's business as functional necessities rather than merely promotional items. Refrigeration equipment is also more closely aligned with the "dispensing accessories" category of equipment since it's part of the beverage storage and service system.

E. Application

Based on the factors above, coolers and refrigerators—both plug-in and regular—are properly classified as equipment (as opposed to product displays) under federal and state laws, rules, and regulations for the following reasons:

- The primary function of coolers extends beyond merely holding and displaying products; they serve to maintain products at specific temperatures.
- Plug-in coolers contain electrical components that provide refrigeration, a function beyond simple display.
- Coolers alter the physical condition of the products they contain by cooling them, which is more consistent with the definition of equipment.
- In the retail alcoholic beverage business, coolers are often essential to the proper service of certain products that should be consumed cold.

F. Regulatory Implications

Given this analysis, the following answers apply to the specific questions posed above:

1. Coolers would not qualify as product displays under Indiana or federal laws, rules, or regulations. Therefore, primary sources of supply and wholesalers may not provide them to retailers or dealers as product displays.
2. Because coolers are classified as equipment rather than product displays, the \$300 per brand limitation for product displays set forth in [27 CFR 6.83](#) is not applicable.
3. Coolers may be considered similar to other tapping accessories under 905 IAC 1-5.2-8 if they are necessary for the proper dispensing or service of alcoholic beverages. If so, they could be sold (not given) to retailers at a price not less than the cost to the wholesaler, with payment collected within fifteen (15) days of sale. Alternatively, under [905 IAC 1-5.2-18](#), coolers may be supplied to retailer permit holders and temporary permit holders on a temporary and nondiscriminatory basis for special events, so long as ownership of the equipment remains with the supplier, manufacturer, or wholesaler, and the equipment is returned to the supplier, manufacturer, or wholesaler who supplied it upon conclusion of the special event.

IV. Conclusion

In summary, while product displays may be given or sold to retailers within certain parameters, coolers and refrigerators are classified as equipment under both federal and Indiana regulations. As such, they cannot be provided as product displays but may be sold to retailers under specific conditions outlined in the regulations for equipment and supplies. Any transaction involving coolers must comply with the applicable regulations to avoid violating the trade practice restrictions.

DISCLAIMER: The purpose of this advisory opinion is to provide guidance and information concerning the position of the Commission on particular issues or topics and is not intended to serve as business or legal advice. All opinions expressed herein are fact-sensitive, limited to the information and circumstances presented, and based on the 2024 version of the Indiana Code and Indiana Administrative Code.