

# Administrative Release



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No. AB-24

November 4, 2003

**TO:** Wholesalers of Malt Beverage Products

**SUBJECT:** "Clearance" Sales

A Maryland wholesaler recently agreed to pay an offer in compromise (monetary fine) for the sale of malt beverage products near their expiration date to selected retail accounts at a significantly lower price than the same product/package was being concurrently offered and sold to other retail accounts. This activity constitutes price discrimination contrary to Section 12-102 of Article 2B of the Annotated Code of Maryland.

This office has no objection to a short-term "clearance" sale for products that are soon to be "out-of-date" as long as the sale is announced in writing in advance to all retail accounts and all accounts have an equal opportunity to purchase product on a first come, first served basis. It is anticipated that such sales would be the exception rather than the norm and will occur, if at all, infrequently.

To avoid discrimination, or the appearance of discrimination, wholesalers should adhere to the following guidelines when engaging in clearance sales of near out-of-date product:

1. Advance written notice of the "sale" shall be given to all retail accounts. A flyer hand-delivered by sales representatives is acceptable. The flyer should include the date the sale will begin and the brand(s),

package size(s), and quantities that will be available. Retailers must have the notice in hand at least three days before the beginning of the "sale".

2. Wholesalers may not accept pre-orders for such sales but may accept phone orders beginning the first day of the sale on a first come, first served basis.
3. For the first 48 hours of the sale, no single retail account may purchase more than 10% of the available inventory as indicated on the flyer.
4. Wholesalers must keep a file for each sale, including a copy of the flyer distributed and a record of all orders taken and actual sales made.

Please contact this office if you have any questions or need further clarification.

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Director  
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