



TRADE PRACTICE MANUAL

Prepared by the Idaho Beer and Wine Distributors
Association in partnership with ISP-ABC

Idaho Beer and Wine Distribution Retail Trade Practices FAQ

Index

A.	Receiving Complete Payment at the Time of Delivery.....	2
B.	Requests for Giveaway Items.....	2
C.	Inventory Assistance Guidelines.....	2-3
D.	Requests for Removal of Excess or Damaged Product.....	3
E.	Guidelines for Exterior Signage.....	3-4
F.	Requests for Free Promotional Items.....	4-5
G.	Requests for Samplings/Tastings.....	5
H.	Requests for Draft Assistance.....	5-6
I.	The Challenges of Donations, Special Events, and Sponsorships.....	6
J.	Price Control Regulations.....	6
K.	Small Brewers Exemptions.....	6
L.	Cold Storage/Draft Trailer Equipment Rentals	7
M.	Age of Employment.....	7

A. Receiving Complete Payment at the Time of Delivery

- (1) Are both parties liable for complete payment at the time of delivery?** Payments at the time of delivery must be made by cash, check, or electronic funds transfers (EFTs). Debit cards, Venmo, Cash App, Apple Pay, and other similar cash transfer methods meet the definition of EFT. Any other form of payment is an unlawful extension of credit and unlawful aid to the retailer. BOTH the distributor and retailer are liable. Idaho Code § 23-1031(4).
- (2) Is there a grace period if complete payment is not made upon delivery?** EFTs must be initiated and completed promptly, but never later than five (5) business days after delivery. This grace period is NOT intended to be a short-term extension of credit and exists only to facilitate e-commerce. Idaho Code § 23-1031(3).
- (3) What about bounced checks?** When a distributor receives knowledge that a check has bounced, the distributor must make every attempt to collect upon the check. Future beer and wine deliveries must cease until the debt is eliminated.

B. Requests for Giveaway Items

- (1) What are the rules governing promotions as they relate to aid to retail?** Promotions by distributors and beer and wine suppliers must be made equally available to all similarly sized retailers. However, distributors and suppliers need not actually offer the promotions to all retailers, so long as they are equally available to all similarly sized retailers. It is also important to remember that any promotion cannot be tied to the exclusivity of the retailer carrying the product. Idaho Code § 23-1033.
- (2) Do raffles require licensure?** Raffles do not require licensure due to the “merchant exception” so long as there is no consideration required to enter (i.e. no costs or purchase necessary to enter). Idaho Code § 18-3801(4).
- (3) What are the rules governing “backroom grease” and giveaways for retailers and their employees?** A distributor or supplier cannot give anything of value to a retailer or employee. It may be sold but must be no less than the item’s reasonable value, and it must be available to all retailers. It cannot be sold in a way that attempts inducement to carry a brand or not carry a competing brand. Idaho Code § 23-1033(2).

C. Inventory Assistance Guidelines

The following questions address reasonable expectations and permissible aid given from a distributor to a retailer as it relates to inventory in accordance with Idaho Code § 23-1033.

- (1) Moving back stock for floor cleaning?** A retailer cannot require a distributor to move back stock for floor cleaning. A distributor is not prohibited from generally cleaning their own area and should clean areas resulting from the actions of the distributor. It is unlawful aid to retailer if the retailer would otherwise have to use its own employees to clean. The distributor providing that staff time results in an unlawful aid to retailer.
- (2) Requiring a distributor to come in on non-call days for inventory purposes?** It depends on the type of inventory. If it is for something that the retailer would otherwise be responsible to perform and pay for by itself, then it is not reasonable for the retailer to require the distributors to perform that task.
- (3) Counting back stock?** Again, if it would otherwise be the duty of the retailer to have its employees count stock, then it is unlawful aid to retailer to require distributors to perform that function.
- (4) Complete cleaning/organizing of shelves not during resets?** A retailer cannot require a distributor to take all products off the shelves and thoroughly clean them. A distributor is not prohibited from generally cleaning their own area and should clean areas resulting from the actions of the distributor. It is aid to retailer if the retailer would otherwise have to use its own employees to clean.
- (5) Inventory and remodel?** Similarly, a retailer cannot ask a distributor to perform a complete inventory or perform a remodel. Performance of free labor that would otherwise be performed by a retailer is unlawful aid to retailer.

D. Requests for Removal of Excess or Damaged Product

- (1) May a distributor remove damaged products?** If the distributor caused the damage, the distributor may pick the product up and replace it. If the distributor did not cause the damage, then it is unlawful for the distributor to pick it up because the Alcohol & Tobacco Tax and Trade Bureau (“TTB”) expressly prohibits it.

E. Guidelines for Exterior Signage

- (1) What are the guidelines for retailer exterior signs?** Signs may only be displayed on the exterior portion of the building or on property owned by the retailer. No more than two (2) single-faced signs or one (1) double-faced sign indicating that beer is sold may be displayed. No exterior retailer sign may display or make reference to the name of any brewer or the trade name, trademark, or label of any beer. Idaho Code § 23-1035. Idaho Code § 23-1033(e) does not include special events away from the retail premises (e.g. pop-up tents at music festivals).
- (2) May a distributor provide such signs to a retailer?** Yes, but two specific rules must be followed. First, the sign must be incident to merchandising in “the ordinary course of business.” Second, they must be available to all retailers without discrimination. The second rule proves particularly problematic with neon signs because they are expensive and generally not made available to all retailers. Idaho Code § 23-1033(3).
- (3) Who is the owner of neon signs?** Generally, neon signs are owned by the distributor. They can be rented or sold to the retailer at fair market value. It is also lawful for the distributor to loan the signs without charge, but the signs remain the property of the distributor and must be returned to the distributor.
- (4) Who is the owner of the tap handles?** Tap handles are similar to neon signs. They are property of the distributor unless they are sold or leased at fair market value to the account for the retailer.
- (5) What is fair market value?** The amount a willing buyer would pay a willing seller when neither is under the compulsion to buy or sell. The price must be equal for all retailers without discrimination.
- (6) What does “in the ordinary course of business” mean?** This term simply means activities within the beer and wine industry that are every day, necessary actions that are common within the industry. As long as the action taken is fairly common for the industry, the act should fall within this definition.
- (7) Are branded temporary tents loaned for special events permissible?** Branded pop-up tents may be loaned for special events so long as they are temporary and available for use by similarly sized retailers. They cannot be loaned in exchange for exclusivity of a brand at an event. Such tents fit the definition of “temporary banners” for special events. Idaho Code § 23-1033(e).

F. Requests for Free Promotional Items

- (1) May distributors give free promotional items to retailers at no cost?**
Generally, no, however, certain items may be given if in the ordinary course of business, incident to marketing, and available to all retailers without discrimination.
- (2) What free promotional items may be given to retailers?** Signs, posters, placards, designs, devices, decorations, and graphic designs of nominal value are all items that may be given to retailers if the above conditions are satisfied. Distributors may also provide sports schedules, posters, calendars and informational pamphlets, but only if these items are intended to be given to the retailer's customers. §23-1033(b)-(e).
- (3) May distributors sell promotional items to retailers?** Yes, promotional items may be sold at a reasonable price to a retailer if it is available to all retailers without discrimination and at the same price. Promotional items include glassware, hats, shirts, etc.
- (4) May the distributor pay the retailer to display the promotional items?**
No. The distributor cannot pay the retailer or credit the retailer for displaying the items.

G. Requests for Samplings/Tastings

- (1) What restrictions are there on providing beer or wine samples?** Any brewery, winery or wholesaler may give a licensed retailer, for sampling purposes only, a container of beer or wine containing no more than 64 oz., provided however, that the retailer must not be currently selling such beer (for beer) or wine and the container must clearly be marked "NOT FOR SALE – FOR SAMPLING PURPOSES ONLY." Idaho Code § 23-1033(6) and §23-1325B(5).
- (2) How many beer or wine tastings can an off-premises retailer conduct?**
A retailer that is unassisted by a brewer, winery or distributor may have an unlimited number of beer or wine tastings on its premises. However, if a brewer, winery or distributor assists the tasting, the retailer may only conduct a total of eight (8) tastings on its premises for each brewer, winery or distributor per calendar year. If a brewer, winery or distributor assists in the tastings, they may not do so at a retail location for more than two (2) consecutive days, and future tastings must be four (4) weeks apart. § 23-1019 and §23-1325C.
- (3) What other requirements exist for off-premises retailer tastings?**
Sample sizes must not exceed 1.5 ounces; there must be an identified tasting area and servers must be at least twenty-one (21) years of age. These requirements must be met regardless of whether the retailer is assisted in conducting the tasting. Idaho Code § 23-1019 and §23-1325C.

- (4) What requirements exist for a brewer, winery or distributor-assisted tasting?** The brewery, winery or distributor must supply the product, provide or pay the server – who cannot be an employee of the retailer – and must keep a record of each tasting, complete with date, location and products served. If the consumer wants to purchase the product they must purchase from the retailer. Idaho Code § 23-1019 and §23-1325C.

H. Requests for Draft Assistance

- (1) What about beer supplied or maintained by another distributor?** A distributor may maintain, repair and clean draft beer equipment, and may sell required equipment and parts. A distributor is not obligated to do this. A distributor certainly cannot be required to perform this service on the lines of a competing distributor's brand. The performance of such service would be an unlawful aid to retailers because it is a function that the retailer either needs to pay for or perform itself. Idaho Code § 23-1033(4)(b)(iv).

I. The Challenges of Donations, Special Events, and Sponsorships

- (1) Are “not for resale” donations allowed?** Items cannot be donated in any way that benefits a retailer. For example, if a non-profit event takes place at a retailer's location, the donation must go directly to the non-profit organization – not the retailer – since providing product that benefits the retailer would be considered unlawful aid.
- (2) Are resale donations for a benevolent purpose permissible?** Yes, items and products can be sold or donated to a bona fide benevolent, charitable, or public purpose if a permit has been issued by ABC, and ABC deems the event a bona fide, charitable, or public purpose.
- (3) What about sponsoring events such as sports seasons or concerts?** As long as the sponsorship is incident to the ordinary course of business, a distributor or supplier can sponsor concerts and sporting contests. It cannot, however, be tied to exclusivity of a brand, or an agreement to keep other brands from being sold at the venue.
- (4) Can distributors credit back seasonal retailers (ski resorts, etc.) for products going out of date upon the resort's seasonal closure?** Distributors can pick up out-of-date products but cannot issue a credit. Distributors can replace the out-of-date products with the same or similar products upon reopening.

J. Price Control Regulations

- (1) **What are the guidelines in place for deals such as “two-for-ones,” “happy hours,” and “all you can drink” for retailers?** It is completely the prerogative of the retailer to offer such deals. Idaho’s price control regulations mandate that all retailers must buy at the same price, but retailers are left to make pricing decisions themselves.

K. Small Brewers Exemptions

- (1) **Are small breweries exempt from some limitations that larger breweries are not?** Yes, but only for the purposes of the small brewery being able to obtain a retailer’s license, wholesaler’s license, and/or a brewer’s pub license. Idaho Code § 23-1003(d)-(f).
- (2) **What defines a small brewery?** In Idaho, a brewery that produces 30,000 barrels or less per year is considered a small brewery for the purposes of the exemption. Idaho Code § 23-1003(d). In cases where a non-profit organization requests donated items, those items can be donated directly to the non-profit, even if the fundraising event is being held at a licensed retail establishment.

L. Cold Storage/Draft

- (1) **Can a retailer request to use a refrigerated draft trailer for a special event?** A distributor may not provide a refrigerated draft trailer to a retailer, unless the distributor charges a reasonable fair market value for the unit during the special event. For larger events, a distributor may bring a refrigerated truck that stores the distributor’s products. In these instances, the distributor must control the products, similar to a regular delivery.

M. Cold Storage/Draft

- (1) **Can a person under the age of 21 deliver beer and wine products in the course of employment?** Idaho Code § 23-1023 authorizes a person under the age of 21 to lawfully possess beer and wine products so long as they are possessing the products as part of their employment. Idaho Code § 23-1023.