

ILLINOIS LIQUOR CONTROL COMMISSION

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: The Illinois Liquor Control Commission
- 2) Code Citation: 11 Ill. Adm. Code 100
- 3)

<u>Section Number</u> :	<u>Proposed Action</u> :
100.500	New Section
- 4) Statutory Authority: 235 ILCS 5/3-12; 235 ILCS 5/6-5, 5/6-6, 5/6-6.63
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking establishes regulations that implement provisions of the Liquor Control Act of 1934 ("Act") governing "of value" transactions between retailers and manufacturers, distributors and importing distributors. The term, "of value," originates in the Federal Tied House Laws, 27 USC 205 (a), (b) and (c). The objective of these laws is to provide a clear framework for permissible and prohibited interactions between retailers and manufacturers and distributors in order to promote a competitive alcohol market. The Illinois General Assembly has enacted its own "tied-house" provisions at 235 ILCS 5/6-5, 5/6-6 and 5/6-6.3. This rulemaking implements those provisions. The rules provide that except as allowed by the Act, it is unlawful for any licensed manufacturer, non-resident dealer, distributor, importing distributor or foreign importer ("Industry Member") to furnish, give, or lend money or anything of value, or to otherwise loan or extend credit, directly or indirectly, to a licensed retailer. Licensed retailers are similarly prohibited from accepting or receiving money or any item of value from an Industry Member. The rules also prohibit "of value" activities between Industry Members and third parties, where the resulting benefits flow indirectly to retailers. The rules detail prohibited "of value" activities by Industry Members (including shelf space payment, display service and slotting fees; provision of credit to retailers; maintenance of a security interest in the real or personal property of retailers; loan guarantees for retailers; and prohibited advertising services). The rules set out requirements for maintenance of books and records by licensees and extensively discuss the numerous exceptions to prohibited "of value" activities (these include provisions governing signage; sale of equipment and supplies to retailers; quantity discounting; provision of samples; use of social media advertising; promotional events at retailer locations; provision of consumer advertising specialties; provision of educational seminars; service and inspection of draft beer, wine or distilled spirits systems; provision of courtesy wagons, coil boxes, cold plates and pumps; product donations; customized labels for wine and spirits; provision or sale of non-alcoholic merchandise; and stocking, rotation, resetting and pricing services).

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- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? Yes
- 11) Section Numbers: Proposed Actions: Illinois Register Citations:
 100.40 Repealed 41 Ill. Reg. 14998; December 15, 2017
 100.130 Repealed 41 Ill. Reg. 14998; December 15, 2017
 100.190 Repealed 41 Ill. Reg. 14998; December 15, 2017
 100.230 Repealed 41 Ill. Reg. 14998; December 15, 2017
 100.275 Repealed 41 Ill. Reg. 14998; December 15, 2017
 100.285 Amendment 41 Ill. Reg. 14998; December 15, 2017
 100.310 Repealed 41 Ill. Reg. 14998; December 15, 2017
 100.370 Repealed 41 Ill. Reg. 14998; December 15, 2017
 100.380 Repealed 41 Ill. Reg. 14998; December 15, 2017
 100.390 Repealed 41 Ill. Reg. 14998; December 15, 2017
 100.420 Repealed 41 Ill. Reg. 14998; December 15, 2017
 100.430 Repealed 41 Ill. Reg. 14998; December 15, 2017
 100.180 Amendment 41 Ill. Reg. 15193; December 26, 2017
- 11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Chimaobi Enyia
 Acting Executive Director
 Illinois Liquor Control Commission
 100 West Randolph St., Ste. 7-801
 Chicago IL 60601

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312/814-1801

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Retail licensees selling alcoholic liquor; municipalities; not-for-profit corporations; licensed manufacturers, importing distributors and distributors.
 - B) Reporting, bookkeeping or other procedures required for compliance:
Bookkeeping
 - C) Types of professional skills necessary for compliance: Bookkeeping
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2018

The full text of the Proposed Amendment begins on the next page:

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TITLE 11: ALCOHOL, HORSE RACING, LOTTERY, AND VIDEO GAMING

SUBTITLE A: ALCOHOL

CHAPTER I: ILLINOIS LIQUOR CONTROL COMMISSION

PART 100

THE ILLINOIS LIQUOR CONTROL COMMISSION

Section	
100.5	Penalties
100.10	Definitions
100.20	Employment of Minors
100.30	Violation of Federal Law, State Statute or City, Village or County Ordinance or Regulation
100.40	Registration of Tasting Representatives
100.50	Advertising
100.60	Geographical Territories
100.70	Labels
100.80	Bonds (Repealed)
100.90	Credit to Retail Licensees
100.100	Internal Changes Within Corporations
100.110	Application Forms
100.120	Railroad Licenses
100.130	Books and Records
100.140	Miniatures (Repealed)
100.150	Salvaged Alcoholic Liquors
100.160	Sanitation
100.170	Taps
100.180	Procedure Before Commission on Citations
100.190	Procedure Before Commission on Request for Continuance of Any Hearing
100.200	Wagering Stamps (Repealed)
100.210	Inducements
100.220	Retail Licensee Clubs (Repealed)
100.230	Resumption of Business on Appeal
100.240	Transactions Involving Use of Checks and Their Equivalent (Repealed)
100.245	Consignment Sales Prohibited; Bona Fide and Non-Bona Fide Returns
100.250	Transfer of Alcohol
100.255	Off-Premises Retail Warehousing Prohibited
100.260	Uniform Systems of Accounts
100.270	Multi-Use Facilities

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100.275	Hotel/Motel Mini Bars and Room Service
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100.290	Refilling
100.300	Authorization to Remove Bottles
100.310	Food Service at Park Districts
100.320	Airplanes
100.325	Boats/Riverboat Gaming
100.326	Auction Liquor Licenses
100.330	Advertising
100.340	Petitions for the Adoption, Amendment or Repeal of a Rule
100.350	Procedures For Filing Appeals From an Order of the Local Liquor Control Commissioner
100.360	Review on Record – Certification of Ordinance
100.370	Procedures Before the Commission
100.380	Ex Parte Consultations
100.390	Transcripts – Administrative Review
100.400	Procedures Before the Commission on Disputes under Section 35 of the Illinois Wine and Spirits Industry Fair Dealing Act (Repealed)
100.410	Representation of Licensees before the Commission Meetings (Repealed)
100.420	Wine Maker Self-Distribution
100.430	Craft Brewer Self-Distribution
100.460	Revoked Licenses
100.480	Importation of Alcoholic Liquor
100.500	"Of Value" Provisions – General Applicability

AUTHORITY: Implementing and authorized by Section 3-12(a)(2) of the Liquor Control Act [235 ILCS 5/3-12(a)(2)].

SOURCE: Rules and Regulations of the Illinois Liquor Commission, amended March 31, 1977; amended July 7, 1977; amended at 3 Ill. Reg. 12, p. 65, effective March 22, 1979; codified at 5 Ill. Reg. 10706; amended at 8 Ill. Reg. 6041, effective April 19, 1984; amended at 12 Ill. Reg. 19387, effective November 7, 1988; amended at 18 Ill. Reg. 4811, effective March 9, 1994; amended at 20 Ill. Reg. 834, effective January 2, 1996; expedited correction at 20 Ill. Reg. 4469, effective January 2, 1996; amended at 21 Ill. Reg. 5542, effective May 1, 1997; amended at 23 Ill. Reg. 3787, effective March 15, 1999; emergency amendment at 23 Ill. Reg. 8687, effective July 13, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 13609, effective October 28, 1999; amended at 25 Ill. Reg. 13596, effective October 15, 2001; amended at 26 Ill. Reg. 17966, effective December 9, 2002; amended at 27 Ill. Reg. 17386, effective November 10, 2003;

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amended at 39 Ill. Reg. 4433, effective March 12, 2015; amended at 39 Ill. Reg. 10386, effective July 10, 2015; amended at 42 Ill. Reg. _____, effective _____.

Section 100.500 "Of Value" Provisions – General Applicability

- a) Except as allowed by the Act, it shall be unlawful for any licensed manufacturer, non-resident dealer, distributor, importing distributor, foreign importer or any of their officers, managers, partners, owners, employees, agents, or affiliates (collectively referred to as an "industry member") to furnish, give or lend money or anything of value, or otherwise loan or extend credit (other than merchandising credit in the ordinary course of business for a period not to exceed 30 days, as permitted by Section 6-5 of the Act, and Section 100.90 of this Part), directly or indirectly to a licensed retailer or any officer, associate, member, representative, or agent of that licensee ("retailer"). It is likewise unlawful for any retailer, as defined in this subsection, to accept or receive money or any item of value from an industry member. A retailer does not include a special event retailer as defined in Section 1-3.17.1 of the Act.
- b) Third-Party Arrangements. The furnishing, giving, renting, lending or selling of equipment, fixtures, signs, supplies, money, services or other thing of value, not specifically allowed by this Section, by an industry member to a third party, when the benefits resulting from the things of value flow to a retailer, is an indirect furnishing of a thing of value within the meaning of Sections 6-5 and 6-6 of the Act. Indirect furnishing of a thing of value includes, but is not limited to, making payments for advertising to a retailer association or a display company when the resulting benefits flow to an individual retailer. An indirect furnishing of a thing of value does not arise when the industry member did not intend that the thing of value would be furnished to a retailer by a third party, or the industry member did not reasonably foresee that the thing of value would have been furnished to the retailer.
- c) Violations of the "Of Value" Provisions of Sections 6-5 and 6-6. Performance of the following activities or provision of the following items violates the provisions on giving anything "of value" under Sections 6-5 and 6-6 of the Act:
- 1) Shelf Space Payments, Display Service and Slotting Fees Prohibition. An industry member shall not directly or indirectly offer or give anything "of value" to a retailer, and a retailer shall not directly or indirectly request or accept anything "of value" from an industry member, in exchange for

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offering for sale or displaying an industry member's product on a retailer's shelf, on a tap handle, at any other desired location within the retail establishment, or on a retailer's website.

- 2) Credit to Retailers. An industry member shall not provide credit to retailers unless permitted by Section 6-5 of the Act as implemented by Section 100.90 of this Part. The statute provides the following parameters for extending credit to retailers:
 - A) No credit extensions are allowed on the purchase of beer by retailers. The full invoice cost of beer must be paid in cash as defined in Section 100.90(j) by the retailer on or before the delivery date.
 - B) An industry member selling wine or spirits to a retailer may extend a merchandising credit in the ordinary course of business not to exceed 30 days.
- 3) Security Interest. An industry member's acquisition of a mortgage on any of the real or personal property a retailer uses in its alcoholic beverage business is a prohibited interest in the retailer's property, except to the extent a lien or other security interest is acquired only in the industry member's products sold to the retailer in order to secure payment of goods sold on credit, if that credit is permissible under Section 6-5 of the Act.
- 4) Guaranteeing Loans. An industry member is prohibited from guaranteeing any loan or repayment of any financial obligation owed by a retailer, and a retailer is prohibited from guaranteeing any loan or repayment of any financial obligation owed by an industry member.
- 5) Industry Member Advertising. An industry member shall not give, and a retailer shall not accept, anything of value in exchange for any advertising service, including but not limited to:
 - A) Display space advertising or placement of ads in a retailer's publications, including a retailer's website; or

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- B) Payments to a third party for advertisements in which the primary purpose of the advertisement promotes a retailer's business or aspects of the retailer's business.
- d) Exceptions to the "Of Value" Provisions of Sections 6-5 and 6-6 of the Act. Having due regard for public health, established trade customs not contrary to the public interest, the purposes of the Act, and the items or activities permissible under the "of value" provisions of Sections 6-5 and 6-6, performance of the following activities or provision of the following items is permissible under Sections 6-5 and 6-6, as long as the performance or provision is not conditioned upon an activity or arrangement intended to create a tied-house.
- 1) All licensees shall maintain records on the licensed premises, subject to a Section 100.130(e) waiver, for all items furnished to retailers, or received by retailers, under Sections 6-5 and 6-6 and this Section 100.500 for a period of three years. Commercial records or invoices may be used to satisfy this recordkeeping requirement, provided that all required information listed in this subsection (d)(1) is contained in these commercial records or invoices. These records must include:
- A) The name and address of the retailer receiving the item;
- B) The item furnished;
- C) The cost of the furnished item to the industry member, determined by the invoice price paid by the industry member; and
- D) Charges to the retailer for any item.
- 2) Signage. An industry member may provide signage to a retailer, and a retailer may accept signage from an industry member, so long as the signage, in the aggregate, does not exceed the number of signs allowed or the cost adjustment factor dollar limitations under Section 6-6.
- 3) Product Displays. An industry member shall not directly or indirectly offer or give anything "of value" to a retailer, and a retailer shall not directly or indirectly request or accept anything "of value" from an industry member, in exchange for setting up product or other displays, or renting displays, shelf, cold box, storage or warehouse space at a retail

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establishment (i.e., slotting fee or allowance), except as specifically permitted by Section 6-6.3. The act by an industry member of giving or selling product displays to a retailer is permissible if the total value of the product display does not exceed \$300 per brand at any time per retail location. The value of a product display is the actual cost to the industry member that initially purchased the product display or, if the industry member did not purchase the product display, the fair market value of the product display. Transportation and installation costs are not included in the \$300 value.

- A) A product display means any racks, bins, barrels, casks, coolers (having a fair market value of no more than \$175, with no exterior plumbing or electrical hookup), buckets, glass or transparent display cases, shelving or similar items whose primary function is to hold and display alcoholic liquors at point-of-sale, at or on a retail licensed premises. Product displays may also include "display enhancers" that are exclusive of trade fixtures and equipment and include only items that convey the product display sales programming message to consumers. All product displays, including display enhancers, must cumulatively fall within the dollar limitation of product displays.
- B) All product displays must bear conspicuous and substantial advertising matter on the product of the industry member that is permanently inscribed or securely affixed. The name and address of the retailer may appear on the product display.
- C) Industry members may not pool or combine dollar limitations to provide a retailer with a product display in excess of \$300 per brand.
- D) The giving or selling of product displays may be conditioned upon the purchase of alcoholic liquor advertised on those displays in a quantity necessary for the initial completion of the display. No other condition can be imposed by the industry member on the retailer in order for the retailer to obtain the product display.
- 4) Equipment, Fixtures, Furniture and Supplies. Except as provided under the Act, an industry member cannot give, lend, lease, furnish or sell

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furniture, equipment or fixtures to a retailer. An industry member may sell equipment and supplies to retailers if the equipment or supplies are sold to the retailer for a price that is not less than the cost of the equipment or supplies. For purposes of this Section, the cost of equipment or supplies is the amount that the industry member paid for the equipment or supplies if the industry member did not acquire them from another industry member. If the industry member selling equipment or supplies to a retailer acquired the equipment or supplies from another industry member (initial selling industry member), the cost of the equipment or supplies is the amount that the initial selling industry member paid for them. In either case, if the equipment or supplies were manufactured or produced by an industry member, the cost of the equipment or supplies is deemed to be the fair market price of the equipment or supplies. The sale price must be collected from the retailer by the industry member within 30 days after the date of the sale. Equipment and supplies includes items such as glassware (or similar containers made of other material), dispensing accessories, carbon dioxide (and other gasses used in dispensing equipment), coasters, trays, napkins, cups and buckets. Dispensing accessories include items such as standards, faucets, cold plates, rods, vents, taps, tap standards, hoses, washers, couplings, gas gauges, vent tongues, shanks, check valves, and counter-top branded shot machines.

- 5) Quantity Discounting. Quantity discounting is permissible only if an industry member offers the same quantity price discount to all similarly situated retailers in the same geographic area who agree to purchase the required predetermined quantity of alcoholic liquor of the same brand. A "quantity discount" is when an industry member offers a retailer a discount at the time of sale based upon an agreement by which the retailer will purchase a predetermined number of products in return for receiving a discount on the same goods purchased. However, the following activities are prohibited:
- A) An industry member may not require a retailer to take and dispose of any quota of alcoholic liquors. Bona fide quantity discounts shall not be deemed to be quota sales.
 - B) An industry member may not require a retailer to purchase one product in order to purchase another. This includes combination sales if one or more products may be purchased only in

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combination with other products and not individually. However, an industry member is not prohibited from selling, at a special combination price, two or more kinds or brands of products to a retailer provided:

- i) The retailer has the option of purchasing either product at the usual price; and
 - ii) The retailer is not required to purchase any product it does not want.
- C) The furnishing of free warehousing by delaying delivery of alcoholic liquors beyond the time that payment for the product is received, or if a retailer is purchasing on credit as permitted by Section 6-5 of the Act, as implemented by Section 100.90 of this Part, delaying final delivery of product beyond the close of the 30-day credit period, is the furnishing of an "of value" service in violation of Section 6-5.
- D) Subsections (d)(5)(A) through (C) notwithstanding, this Section does not prohibit legitimate sales programming among or between the industry tiers in which the primary purpose of the programming is to increase product sales and merchandising to retailers and is not a subterfuge to provide prohibited "of value" inducements to a retailer. These legitimate sales programs are lawful if:
 - i) Sales incentives are temporary and designed and implemented to produce product volume growth with retailers;
 - ii) The sales incentives to retailers are based on volume and discounted pricing, including discounts in the form of cash, credits, rebates, alcoholic liquor products, and product displays;
 - iii) The sales incentives are documented on related sales or credit memoranda; and

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- iv) The sales incentives are offered to all similarly situated retailers.
- E) The use of product credits and rebates, such as "end of month", "end of year", "end of period", or other such temporary cumulative discounts, credits and rebates from an industry member to a retailer is an adjustment of the purchase price based on volume purchasing and, as such, is not a violation of Section 6-5 of the Act. These cumulative discounts are considered to be a form of pricing arrangement; provided they are made pursuant to a written agreement, entered into at the time of sale; extend for a specific period of time; are calculated based solely upon the purchases made by the retailer receiving the cumulative discount; and are documented on related sales and credit memoranda. If the retailer is part of a group of retailers with common ownership, however, cumulative discounts, credits or rebates may be provided in one aggregate payment for all retailers within the common ownership structure. In this case, the cumulative discount, credit or rebate must be calculated based upon the volume purchases of each individual retailer, with supporting documentation that denotes the portion of the discount, credit or rebate attributable to each individual retailer.
- F) "No Charge" Products. Price-to-retailer sales incentives that include volume-based discounts on the purchase price, and/or "no charge" products that represent an additional overall discount on the related alcoholic liquor product purchased, is an adjustment of the purchase price based on volume purchasing if made at the time of sale, and if the amount of the product given at no charge with the order is not so great as to constitute a subterfuge in which the pricing aspect is merely a means to provide a retailer with a "gift" or "free" product. These transactions are not a violation of Section 6-5 or 6-6 of the Act. However, "penny deals" and other such transactions in which the "no charge" or deeply discounted products (i.e., \$.01 per case) are not related to a corresponding volume purchase are considered free product and a violation of Section 6-5 or 6-6. Deals regarding product closeouts and other such deep discounting, non-ordinary business transactions are not prohibited under this subsection (d)(5)(F). "No charge" goods

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must be listed and indicated as such on the invoice to the retailer. The importing distributor or distributor must have records to support the volume-based discount and the purchase price. The provisions of Section 100.280 prohibiting a licensee from giving away alcoholic liquor for commercial purposes is applicable.

- 6) Samples. If a retailer has not purchased a brand of alcoholic liquor from an industry member during the immediately preceding 12-month period, it is not an "of value" violation for an industry member to provide that retailer with not more than 384 ounces of any brand of beer, 3 liters of any brand of wine, and 3 liters of any brand of spirits. These sample requirements do not apply to consumer tastings.

- 7) Social Media Advertising. An industry member may use social media to advertise product location communications that inform the public where its products may be purchased (retail locators) and pre-announcing any promotional activity to be held on a retailer's premises, if otherwise permitted by the Act, provided:
 - A) The industry member does not give compensation to, or receive compensation from, directly or indirectly, the retail license holder for social media advertising.

 - B) If the social media advertising is a product location communication, the purpose of the communication must be limited to allowing a consumer to determine the availability of a specific product at a retailer. If the social media pre-announces promotional activity at a retailer's premise, the focus of the social media advertising must be the product promotion and any reference to the retailer should provide only necessary information, such as location of the event.

 - C) The advertisement does not contain the retail price of the product.

 - D) All social media advertising must also comply with all applicable rules and regulations issued by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury.

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- E) The industry member does not offer social media advertising to a specific retailer to the exclusion of other, similarly situated retailers.
- 8) Industry Member Promotional Events at Retailer Locations. Any promotional event sponsored by an industry member at a retailer's premises that primarily promotes the retailer's business and does not promote, or only incidentally promotes, the industry member's brand or brands of products violates the "of value" provisions of Section 6-5 of the Act. Industry member promotional events held at retailer premises must focus on the industry member or brands being promoted and all reference to the retailer in any advertisement shall be limited to the name and address of the retailer, which shall be relatively inconspicuous in relation to the advertisement as a whole. Promotional events include, but are not limited to, tastings, samplings, bottle signings, public product launch events, or other similar methods of brand promotion. The promotions shall be available to all similarly situated retailers without a purchase requirement imposed upon a retailer.
- 9) Consumer Advertising Specialties. Consumer advertising specialties, which are items designed to be carried away by the consumer, including but not limited to trading stamps, non-alcoholic mixers, pouring racks, ash trays, bottle or can openers, corkscrews, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, postcards, pencils, shirts, caps and visors, that are intended to be given to and received by the consumer, may be given by an industry member to a retailer, as long as the retailer gives all the items away to consumers.
- A) The industry member may not, directly or indirectly, pay or credit the retailer for using or distributing these items, or for any expense incidental to their use.
- B) Only if the retailer pays for the consumer advertising specialties may the items be retailer-specific. Consumer advertising specialties must bear conspicuous and substantial advertising matter about the brand or the industry member.
- 10) Educational Seminars. An industry member may give or sponsor educational seminars for employees of retailers either at the industry

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member's premises or at the retail establishment. Examples of these educational seminars include seminars dealing with use of a retailer's equipment, training seminars for employees of retailers, or tours of the industry member's plant premises. This subsection (d)(10) does not authorize an industry member to pay a retailer's expense in conjunction with an educational seminar (such as travel and lodging). Industry members may provide nominal hospitality during the event, including meals and local transportation.

- 11) Industry members may service, balance or inspect draft beer, wine or distilled spirits systems at regular intervals, and may provide labor to replace or install rods, taps, faucets, fittings and lines in draft beer, wine or distilled spirits dispensing equipment. However, free cleaning of coils by an industry member or by a company whose services are paid for by an industry member shall be considered something of value in violation of Sections 6-5 and 6-6 of the Act.
- 12) Courtesy wagons, coil boxes, cold plates or pumps may be supplied to a retailer, by an industry member, free of charge one time per year for a one-day period. However, the industry member shall not supply free beer, wine or distilled spirits to a retailer for the event.
- 13) Courtesy wagons, coil boxes, cold plates or pumps may be supplied to a retailer, by an industry member, for an event that is given by or under the auspices or sponsorship of a municipal, religious, charitable, fraternal or social organization that is a holder of a Special Event License. However, the industry member shall not supply free beer, wine or distilled spirits to a retailer for the event.
- 14) Product Donations. An industry member may make contributions of cash, alcoholic liquor products, non-alcoholic products, services, equipment or signs to a not-for-profit organization, including but not limited to charitable organizations, religious organizations, trade associations, political organizations, and fraternal organizations. An industry member may not make contributions of alcoholic liquor products to any not-for-profit organization that has a local municipal and State of Illinois retail license. These donations shall be subject to the following conditions:

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- A) Donations of alcoholic liquor products may not be given for commercial purposes. The proof of donative intent is on the industry member;
 - B) An industry member must maintain invoices on its licensed premises for a period of three years for all alcoholic liquor products donated to not-for-profit organizations;
 - C) Signage dollar limitations contained in Section 6-6 of the Act do not apply to signage and advertising materials donated to a not-for-profit organization; and
 - D) Advertising and signage referencing the industry member must be reasonably commensurate with a donative intent to ensure that the charitable donation is not being made for a commercial purpose, in violation of Section 100.280. The proof of donative intent is on the industry member.
- 15) Customized Label for Wine and Spirits Products. Wine or spirits customized label programs may be offered by industry members to retailers. A customized label program is defined as a sale in which the retailer purchases a single barrel of wine or spirits and the retailer has the option of selecting the product blend, age, estate, barrel or wood type in which the wine or spirits is stored or aged. Custom label programs must be offered to all similarly situated retailers who agree to purchase the program, under the following guidelines:
- A) All formulas and brand rights to the wine and spirits products must be owned by industry members; no brand rights to the wine or spirits product, or exclusive use of the blend or product options, may be offered to, or accepted by, the retailer;
 - B) An individual, non-exclusive custom label may include the retailer's name, provided there is a matching Federal Certificate of Label Approval and no language on the label or container suggests or implies that the wine or spirits is exclusive to the retailer; and

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- C) Any product displays that are a part of the customized label program must adhere to the rules on product displays set forth in subsection (d)(3).
- 16) Non-Alcoholic Merchandise. An industry member who is also in business as a bona fide producer or vendor of merchandise other than "alcohol", "spirits", "wine", "beer" or "alcoholic liquor", as those terms are defined in Article I of the Act, may furnish, give, sell or offer to sell that non-alcoholic merchandise to retailers as provided in Section 6-6.3 of the Act. However, non-alcoholic merchandise may not be used by an industry member to induce or cause a retailer to engage in any activity prohibited by the Act or this Part.
- 17) Stocking, Rotation, Resetting, and Pricing Services
- A) Industry members, at retail licensed establishments, may stock alcoholic liquors they sell, provided that alcoholic liquor products of other industry members are not moved, altered or disturbed. This stocking may be done only during the course of, or within 24 hours of, a regular sales call or delivery to the retailer. The stocking is considered service incidental to a sales call or delivery. Stocking is defined as any placing of alcoholic liquors where they are to be stored or at point-of-sale where they are offered for sale.
- B) Industry members may rotate their own alcoholic liquor products at a retailer's premises during the normal course of a sales call or a delivery. Rotation is defined as moving newer, fresher product from a storage area to a point-of-sale area and the replenishing of the point-of-sale area with fresh product. Rotation may be performed at any location within a retailer's premises.
- C) Industry members are permitted to participate in or be present at merchandising resets conducted at a retailer's premises no more than four times per year. Resets are defined as large-scale rearrangement of the alcoholic liquor products at a retailer's premises. During resets, industry members may stock or restock entire sections of point-of-sale locations at the retailer's premises. No reset shall occur without at least 14 days prior notice made by the retailer to all industry members whose alcoholic liquor

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products are carried by the retailer. Industry members may only move, alter, disturb or displace their alcoholic liquor products and the products of properly notified but nonattending industry members.

- D) Industry members may provide to retailers recommended diagrams, shelf plans or shelf schematics that suggest beneficial display locations for their alcoholic liquor products at the retailer's premises. Industry members may not condition pricing discounts, credits, rebates, access to brands, or provision of any other item or activity permissible under the Act or this Section upon a retailer's choice to implement or not implement diagrams, shelf plans or shelf schematics.
- E) Industry members may not affix prices to products on behalf of retailers. This prohibition includes the indirect affixing of prices to product, including entering prices into a retailer's computer system. This prohibition does not prohibit industry members, after stocking a shelf, from affixing shelf tags that identify the product and price of the alcoholic liquor; however, at no time may an industry member delegate or contract this service to a third party. Shelf tags are considered point-of-sale advertising materials and are subject to the provisions of Section 6-6 of the Act. If permitted stocking by an industry member involves movement and a change in the placement of its product on the retailer's shelf, shelf tags may be moved to the new position of the product.

(Source: Added at 42 Ill. Reg. _____, effective _____)