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MARKETING PRACTICES BULLETIN – MPB 112004009dj
Fuel Surcharge

To: ALCOHOLIC BEVERAGE INDUSTRY
ALL CAPTAINS & COMPLIANCE SUPERVISORS

Recently we were petitioned by members of the wholesale tier to provide an opinion on the legality of industry members seeking the recovery of fuel cost relative to retail deliveries. As the cost of fuel soars, industry members are seeking to defray increasing operating costs.

To issue a ruling on this matter, a review of Alcoholic Beverage Code, Sections 102.12, 102.07, 102.15 and 108.06 was conducted. These sections, paralleled with 16 (TAC) Section 45.110 prohibit members of the manufacturing or wholesaler tier from engaging into any practice which restricts retailer independence. Conversely, nothing in the statute would prevent a member of the wholesale tier from assessing a fuel surcharge on its deliveries. However such practice if used in a discriminatory manner, whereby the surcharge is not assessed fairly to all retailers in the same local market on the same terms without a prudent business reason, may be subject to regulatory action.

This bulletin does not serve as a mandate but rather offers an opinion on the right of members of the wholesaler tier to assess a fuel surcharge on its deliveries in an effort to defray its increasing operating cost. If you should have any questions or would like further information, please do not hesitate to contact me at 512-206-3411

Kind Regards,

Dexter K. Jones
Acting Director of Marketing Practices

CC: Executive Management