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Howard A. Tyler
Division Director

NOTICE

DATE: April 7, 2015

TO: Beverage Alcohol Wholesalers and Suppliers

FROM: Howard A. Tyler, Division Director

RE: Branded Refrigerated Coolers

The Division initially approved equipment leases under certain conditions on January 17, 2014. Subsequent to that initial approval, the Department received numerous complaints and inquiries concerning how the program was implemented, how it functioned and the legality of the operations. The Division, on December 10, 2014, requested a moratorium on any new distribution pending a complete review and investigation.

The Department has now concluded that review and investigation. As we move forward, the Department believes that the program may be appropriately implemented and administered under the following conditions:

1. All refrigerated equipment, including branded coolers, must be leased or sold at or above fair market value. Fair market value will be based on retail price of similar or identical non-branded equipment available in the marketplace.
2. Invoices must reflect the billing and payment cycles for leased equipment or the full terms and conditions for any equipment sold outright.
3. All equipment leases of such coolers must be in writing for a set term and must contain explicit language clearly stating that during such lease term, the manufacturer or wholesaler relinquishes all control of such equipment, including control as to where the equipment may be placed, control over which brands or products may be displayed in the equipment, or any other control that might reasonably be viewed as a restriction on the

use of the cooler by the retailer. Maintenance requirements in an equipment lease will not be deemed by the Division to be a violation of this condition.

4. Leases or sales may not include any provision for future maintenance or service of the equipment. In the case of an equipment lease, the lease agreement may provide that the lessee will be responsible for properly maintaining and servicing the leased equipment according to manufacturer standards.
5. Equipment leases by a manufacturer or wholesaler to a retailer shall provide that, in the case of lease default, the lessor's sole remedy is damages in an amount not to exceed the aggregate remaining lease payments. Any cooler purchased by a retailer from a manufacturer or wholesaler must be for cash and without the granting of a security interest to the manufacturer or wholesaler in any property of the retailer. Equipment must be made available for lease or purchase to all licensees on equal terms and conditions.

Should there be question or concern, please contact the Division for clarification.