TEXAS ALCOHOLIC BEVERAGE COMMISSION
Texans Helping Businesses & Protecting Communities

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MARKETING PRACTICES ADIVSORY – MPA009

Fuel Surcharge

To: Wholesalers and Retailers

Scope of the Advisory
This advisory provides guidance to members of the wholesaler tier 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.

Source of Law
To provide guidance on this matter, a review of the Alcoholic Beverage Code, Sections 102.07, 102.12, 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 in any practice that restricts retailer independence. Conversely, nothing in the statute would prevent a member of the wholesaler 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 advisory does not serve as a mandate but rather offers guidance 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.

Statement From TABC
This advisory is issued pursuant to Alcoholic Beverage Code Section 5.57. It represents the opinion of the staff of the Commission. We hope this opinion will assist you in your endeavors. If you would like additional information or have questions regarding this advisory, you may contact me in writing at P.O. Box 13127, Austin, TX 78711; by email to advisories@tabc.texas.gov; or by phone at 512-206-3411.

Sincerely,

Thomas Graham
Director of Excise Tax and Marketing Practices

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