



America's Beer Distributors ■ [www.nbwa.org](http://www.nbwa.org)

Craig A. Purser  
President & CEO

Mr. John Manfreda  
Administrator, Alcohol Tax and Trade Bureau  
U.S. Department of the Treasury  
1310 G Street, NW  
Washington, DC 20005

November 16, 2015

Re: Request for Clarification on Category Management

Dear Administrator Manfreda:

On behalf of the National Beer Wholesalers Association (NBWA) and the nation's 3,330 beer distribution facilities, I am writing to urge the Alcohol Tax and Trade Bureau (TTB) to promptly clarify the rules regarding trade practices for the licensed beverage industry, specifically focusing on rules for category management.

This request comes as one of the nation's largest retailers is promoting a high-profile category management program. We believe the category management plan being mandated by Kroger raises serious compliance issues and, as implemented, likely violates both state and federal laws.

Various aspects of trade practice laws cited in the Federal Alcohol Administration Act (FAAA) – such as the tied house, commercial bribery and exclusive outlet prohibitions – are implicated by Kroger's category management program. In our opinion, this program significantly undermines laws regarding prohibitions on providing items of value (either directly or through indirect inducements such as third party arrangements) and prohibitions on free labor.

Beer distributors are uniquely at risk. Beer distributors have both a federal basic permit and a state wholesaler license, yet they conduct business with brewers, who have no federal basic permit under the FAAA, and retailers, who likewise have no permit under the FAAA. **As the only tier in the "three-tier" beer distribution system with a revocable federal basic permit, beer distributors need TTB to provide guidance immediately to ensure they are operating in compliance with federal law.**

Furthermore, the entire industry (suppliers, distributors and retailers) needs TTB guidance on this and other plans. When issues such as the category management program and payments to a third party providing services to one retailer are put in front of smaller industry members (issues



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addressed in the FAAA), TTB has a duty to advise this industry of what is permissible under the law and what the penalties are for violating it.

In 1995, TTB issued amendments to trade practice regulations to accommodate current business practices; those revisions were intended to be limited in application and not expanded to generate exceptions to the items of value laws. We believe the *de minimis* exceptions of 1995 are being used to justify programs that impermissibly provide millions of dollars of aid to one retailer and a competitive advantage to one wholesaler. Kroger's proposed program goes far beyond the scope of the amendments and is contrary to the purpose of the FAAA.

The alcohol marketplace in the United States is thriving due to an open and independent system that allows suppliers of all sizes to access retailers, large and small. This system is why the U.S. today has a record number of alcohol producers in the beer, wine and spirits industries. Yet the U.S. also is experiencing increasingly concentrated economic power at the retail tier. This is why the need for TTB to educate the regulated industry on the rules of alcohol regulation has never been greater.

Once again, NBWA asks the TTB to issue guidance on the category management program and compliance for the industry. We look forward to assisting with any questions you may have.

Sincerely,

A handwritten signature in black ink that reads "Craig A. Purser". The signature is fluid and cursive, with a long horizontal stroke at the end.

Craig A. Purser  
NBWA President & CEO

cc. The Honorable Jacob Lew, Secretary of the Treasury  
Mr. Timothy Skud, Deputy Assistant Secretary, U.S. Dept. of the Treasury