



**E-mail response to Wine Institute Consultant Art Libertucci from TTB
regarding Pennsylvania coupon law under Act 39**

As you know, section 205(b)(3) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(b)(3), prohibits industry members from inducing retailers to purchase alcohol beverages to the exclusion in whole or in part of alcohol beverages sold or offered for sale in interstate for foreign commerce by furnishing such retailers any “thing of value.” Discount coupons furnished by industry members to retailers are “things of value” within the meaning of the FAA Act.

Section 205(b)(3) also gives the Secretary the authority to make exceptions, by regulation, to the prohibition on giving retailers any “thing of value,” having due regard for public health, the quantity and value of articles involved, established trade customs not contrary to the public interest and the purposes of section 205(b)(3). Pursuant to that exception clause, 27 CFR 6.96 permits industry members to furnish to consumers coupons, which are redeemable at a retail establishment, but only if the coupons are distributed directly to consumers and provided the following conditions are met:

- All retailers within the market where the coupon offer is made may redeem such coupons; and
- An industry member may not reimburse a retailer for more than the face value of all coupons redeemed, plus a usual and customary handling fee for the redemption of coupons.

Accordingly, any program in which coupons are furnished by industry members to the retailer or to the consumer through the retailer would not meet the conditions for the exception clause in 27 CFR 6.96 and thus would be considered an inducement. Likewise, any program in which industry members furnish coupons to consumers that are not redeemable at all retail locations in that market would not meet the conditions for the 27 CFR 6.96 exception and would be considered an inducement. A violation of the FAA Act would ensue if such practices result in exclusion of a competitor’s product, in whole or in part, with the requisite connection to interstate or foreign commerce. (A similar State law is required only in the case of malt beverages, pursuant to the penultimate paragraph of section 205.)