

STATE OF NEW YORK
LIQUOR AUTHORITY

TO: “Grocery store beer” licensees and agency staff

SUBJECT: Minimum inventory standards for grocery stores

The purpose of this Advisory is to provide guidance with respect to maintaining a bona fide grocery store within the meaning of the Alcoholic Beverage Control Law (“ABCL”). Grocery stores and drug stores are eligible for licenses to sell beer (ABCL §54) or beer and wine products (ABCL §54-a) at retail for consumption off the licensed premises. “Grocery store” is defined in ABCL §3(13) as “any retail establishment where foodstuffs are regularly and customarily sold in a bona fide manner for consumption off the premises.”

In prior directives¹ the Members of the Authority have provided their interpretation as to the inventory that must be maintained in order to meet the statutory definition of “grocery store” and operate a bona fide business within the contemplation of the “grocery store beer” license. After consultation with representatives of the grocery store industry, the Members of the Authority hereby set forth a new inventory standard that must be maintained by a business in order that it shall be considered a “grocery store” within the meaning of the ABCL. This new standard takes into consideration that businesses seek to offer multiple services and goods to patrons. The Authority’s existing standard would, in some instances, prohibit a bona fide grocery store from obtaining an off-premises beer, or beer and wine product, license.

Accordingly, the Members of the Authority interpret the definition of “grocery store” to mean a business that devotes at least 50% of its public floor space exclusively to the display of “consumer commodities”, however packaged or contained. For purposes of the Advisory, “consumer commodities” shall mean:

- (a) Food, which means all items used or intended for consumption by human beings or household pets. Food does not include alcoholic beverages or carbonated beverages. At least ten different food items must be eligible

¹ Divisional Order 780 and Divisional Order 826, which rescinded and replaced Divisional Order 780.

for purchase using Supplemental Nutrition Assistance Program (“SNAP”) benefits.

- (b) Household items, which means napkins, facial tissues, toilet tissues, foil wrapping, plastic wrapping, paper towels and disposable plates and utensils.
- (c) Personal health/hygiene items, which means non-prescription drugs, hygiene products and toiletries.

Compliance with this standard shall be determined as follows: The number of square feet of floor space devoted to consumer commodities shall be divided by the total number of square feet of floor space occupied by the entire licensed premises. The resulting quotient must be at no less than 0.5 for the business to be considered a bona fide grocery store. In calculating the total number of square feet of floor space occupied by the licensed premises, businesses occupying less than 5,000 square feet may exclude up to 10% of their floor space for area used for food preparation, bottle redemption and automated teller machines. Businesses occupying 5,000 or more square feet may not exclude any space used for such purposes.

All existing grocery store beer licensees must maintain the inventory standards set forth above to be considered to be operating a bona fide business within the contemplation of the grocery store beer license. Failure to comply with these standards may result in disciplinary action against the licensee. All applicants for a grocery store beer license shall be required to sign a stipulation prior to the approval of the application in which the applicant agrees to abide by these standards.