

4301:1-1-03. Wine requirements.

(A) Every wine manufacturer, supplier, importer, bottler, or wholesale distributor operating in the state of Ohio shall have the appropriate federal permit or certificate, in effect, issued by the tax and trade bureau of the United States department of the treasury.

(B) Enforcement.

(1) Samples required. Every wine manufacturer, supplier, importer, bottler, wholesale distributor, or retail permit holder shall furnish, upon demand of and without cost to the commission or division, samples of all wines upon its premises for analysis.

(2) Suspension or revocation. The license or authorization to operate of any wine manufacturer, supplier, importer, bottler, wholesale distributor, or retail permit holder may be suspended or revoked, upon proof of violation of any of the provisions of these rules, as provided by the laws of this state.

(C) Minimum price: This section reflects the policy and intent of the commission to maintain effective control over the sale and distribution of wine, an alcoholic beverage, and to prevent abuses caused by the disorderly and unregulated sale of wine. Mandatory price markups: prevent aggressive sales practices that improperly stimulate purchase and consumption, thereby endangering the State's efforts to promote responsible, and discourage intemperate, consumption of alcoholic beverages; eliminate discriminatory sales practices that threaten the survival of wholesale distributors and retail permit holders; preserve orderly competition; ensure fair prices over the long term; assure adequate consumer choice; and promote compliance with Ohio law and rule.

(1) This rule shall apply to all sales of wine, not for consumption on the premises where sold and in sealed containers, by manufacturers, suppliers, importers, bottlers, wholesale distributors, and retail permit holders.

(2) Pricing:

(a) Manufacturers, suppliers, and importers shall sell to wholesale distributors at the "wholesale invoice cost."

(b) Wholesale distributors shall sell to retail permit holders at no less than the "minimum retail invoice cost," which shall be computed by adding a markup of not less than thirty-three and one-third percent to the "wholesale invoice cost," including freight and taxes.

(c) Retail permit holders and A-1-A permit holders shall sell to consumers at no less than the "minimum retail selling price," which shall be computed by adding a markup of not less than fifty percent to the "minimum retail invoice cost."

(d) A-2, B-2, and B-5 permit holders, selling to retail permit holders or A-1-A permit holders, must sell at no less than the "minimum retail invoice cost."

(e) A-2, B-2, and B-5 permit holders selling to consumers must sell at no less than the "minimum retail selling price."

(f) B-5 permit holders must sell to B-2 and B-5 permit holders at no less than the "wholesale invoice cost."

(3) No bottled wine of any kind or description, whether bearing a brand name or private label, shall be imported into or bottled in Ohio and sold or distributed in this state by retail permit holders unless registered for sale in Ohio and a price schedule is in effect. The price schedule shall be in writing and shall contain with respect to each item or brand listed (item or brand means each different type of wine, each different brand, and each different container size) the exact brand or trade name, size or capacity of the container or bottle, kind, and type of wine, the number of bottles or containers contained in each case, and the container and case price to all wholesale and retail permit holders.

(a) The price listed in the price schedule shall be individual for each item or brand and not in any combination with any other item or brand.

(b) A price schedule shall be created and maintained by each manufacturer, supplier, importer, bottler, and wholesale distributor of bottled wine in this state. The price schedule shall be created quarterly on or before the tenth day of December, the tenth day of March, the tenth day of June, and the 10th day of September of each calendar year. The price schedule, as provided herein, shall be effective on the first day of the calendar month following the date of creation.

(c) In the event that a person required to create and maintain a price schedule, as provided herein, determines to make no change in any items or prices listed in the last schedule, and no change in the price of any listed item as required by this rule, then such prices listed in the schedule previously created and in effect shall remain in effect for each quarterly period thereafter until a revised schedule is created for a subsequent quarterly period.

(d) All price schedules shall be subject to inspection by the division and shall not be considered confidential.

(e) Every manufacturer, supplier, importer, bottler, and wholesale distributor that sells, imports, or distributes bottled wine in Ohio shall create and maintain a price schedule, which shall contain:

(i) The name of every brand of wine to be sold in this state;

(ii) The kind and type of wine, size of container, and the alcoholic content thereof;

(iii) The wholesale invoice cost, minimum retail invoice cost, or minimum retail selling price of the wine, as applicable to that person, and as allowed that person under Ohio law and rule;

(iv) Prices for all such wine for single bottles or containers and in case lot quantities. The minimum retail selling price for single bottles or containers shall be fifty percent over the minimum retail invoice cost. The minimum retail selling price of units of one case of the same size (to-wit, forty-

eight splits, twenty-four (tenths, twenty-four pints, twelve fifths, twelve quarts, six one-half gallons and four one gallons), type, class, and kind of wine shall be forty percent over the minimum retail invoice cost for that bottled wine. A-1-A, A-2, B-2, B-5, and retail permit holders may calculate and advertise retail wine case prices, as "wine case" is defined in rule 4301:1-1-02 of the Administrative Code, as ten percent off the retail single bottle or container minimum price.

(4) Every manufacturer, supplier, importer, bottler, or wholesale distributor shall furnish to each A-1-A, B-2, or B-5 permit holder who purchases any brand of wine for resale to retail permit holders, a copy of its price schedule for the current period for which such price schedule is effective.

(5) No manufacturer, supplier, importer, bottler, or wholesale distributor shall sell or distribute in Ohio, for resale by retail permit holders, wine at a price less than the minimum retail invoice cost for the size of container, type, or kind of wine.

(6) No retail permit holder shall buy wine from a manufacturer, supplier, importer, bottler, or wholesale distributor at a price less than the listed minimum retail invoice cost set forth in the seller's price schedule for the size of container, type, or kind of wine.

(7) No retail permit holder shall sell wine at a price less than the listed minimum retail selling price set forth in that person's price schedule for such wine.

(8) The following sales and purchases at prices below the minimum price prescribed by this rule shall not be deemed a violation of this rule:

(a) Sales of wine made by the owner thereof for the purpose of going out of business or in liquidating the business.

(b) Close-out sales: discontinuance of the sale of an item or brand of wine that has been in the inventory of a B-2, B-5, C-2, D-2 or D-5 permit holder for a period of at least six months from date of the last invoice for the purchase of such item or brand of wine. The permit holder must keep a price schedule and complete documentation of each close-out sale available for inspection upon demand by the division for a minimum of twelve months following the close-out sale. The permit holder may not repurchase the same product, item, or brand of wine for a period of one year from the date of the close-out sale.

(9) Differential pricing practices: manner and frequency of price changes for wine.

(a) Manufacturers, suppliers, importers, bottlers, and wholesale distributors who sell wine to wholesale distributors must give thirty days written notice of any price change to all wholesale distributors to whom they sell their products before initiating the price change. Within five days of receiving said notice, not including Saturday or Sunday, the wholesale distributor must give notice of any resulting price change to its retail accounts.

(b) No manufacturer, supplier, importer, bottler, or wholesale distributor of wine may fix the price to be charged for any package by any other permit holder.

(c) No manufacturer, supplier, importer, bottler, or wholesale distributor of wine may differentiate the price of wine sold to wholesale distributors except when such price differentials are based on reasonable business grounds. A differential price may not be based on a wholesale distributor's refusal to participate in a price promotion. No manufacturer, supplier, importer, bottler, or wholesale distributor of wine may require a wholesale distributor, and no wholesale distributor of wine may require a retail permit holder, to participate in any price promotion.

(10) The commission may suspend or revoke the license or authorization to operate of any manufacturer, supplier, importer, bottler, wholesale distributor, or retail permit holder in Ohio who advertises, offers for sale, ships, sells, or buys bottled wine at a price less than that prescribed by this rule or stipulated in a price schedule, or who violates any provision of this rule.

History:Effective: 08/27/2007.

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