



STATE OF OHIO  
LIQUOR CONTROL COMMISSION

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JOHN R. KASICH, GOVERNOR

DEBORAH PRYCE, CHAIRMAN

October 16, 2017

**Notice of Public Hearing and Rules Review**

The Liquor Control Commission is in the process of reviewing three (3) administrative rules enumerated below as a result of HB 49 of the 132nd Ohio General Assembly, more commonly known as the "Budget Bill", as it relates to the sale of wine by the case. The Commission will receive comments and testimony concerning proposed amendments, as attached to this Notice:

- 4301:1-1-02 Definitions
- 4301:1-1-03 Wine requirements
- 4301:1-1-46 Miscellaneous restrictions

In compliance with the provisions of the Ohio Administrative Code, the Ohio Liquor Control Commission will hold a public hearing on **Wednesday, November 15, 2017, at 10:30 am**. The public hearing will be held in the Riffe Center located at 77 South High Street, 19<sup>th</sup> floor, Columbus, Ohio 43215. Anyone who wishes to speak to the Commission concerning these proposed amendments may do so at this time. You may also submit *written comments by November 8, 2017*, (drafted in accordance with OAC Rule 4303:1-1-66) to the Commission via email to [ellen.leidner@lcc.state.oh.us](mailto:ellen.leidner@lcc.state.oh.us), fax, or US mail as listed above.

At this public hearing, the Commission will consider a resolution authorizing staff to Initial File these rules with the Joint Committee on Agency Rule Review ("JCARR") and/or the Common Sense Initiative ("CSI"). The Commission previously held public hearings regarding this matter on June 16, August 18, and September 14, 2017.

If you have any questions, please do not hesitate to contact us.  
Ellen Leidner, Assistant Director

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**4301:1-1-02 Definitions.**

(A) As used in and for the purposes of the rules of the liquor control commission:

- (1) The term "alcoholic beverage" means any beverage containing one-half of one per cent or more of alcohol by volume.
- (2) The word "brand" means a trade name of the manufacturer, supplier, or bottler of an alcoholic beverage, and not the individual product type, kind, or size of the product of the manufacturer, supplier, or bottler.
- (3) The word "commission" means the Ohio liquor control commission.
- (4) The word "division" means the Ohio division of liquor control.
- (5) The term "home use" means the purchase of alcoholic beverages by a non-liquor permit holder from manufacturers or wholesale distributors under class A-1, A-2, B-1, B-2, B-4, or B-5 liquor permits, which are to be consumed at a non-liquor permit premises. In a "home use" purchase, the alcoholic beverages are not to be re-sold to guests or invitees, whether by the individual drink or container, or by the inclusion of the purchase price in an admission fee or other fee or charge.
- (6) The word "quota" as used in this chapter and when used in reference to permits issued by the division means the maximum number of permits that may be issued by the division within the limitations imposed by statutes, laws, and rules.
- (7) The word "renewal" means re-issuance of a liquor permit of the same class to the same permit holder at the same location upon the expiration of an existing permit.
- (8) The term "state gallonage tax" means the sum required by section 4301.12 of the Revised Code to be paid into the state treasury.
- ~~(9) The term "wine case" when used in conjunction with retail wine sales means a container, holding the number of bottles prescribed by the manufacturer of the wine, of the same size and containing either the same or different types and kinds of wine.~~

(B) As used in this chapter, all words and phrases defined in section 4301.01 of the Revised Code shall have the same meaning as defined therein.

(C) Gallons, ounces, and container sizes shall have the same meaning, application, and effect as the nearest metric equivalent unit, as set forth in the rules of the commission and as adopted by the United States department of the treasury.

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**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."

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- (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 tenth 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 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.

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- (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.

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**4301:1-1-46 Miscellaneous restrictions.**

- (A) No beer or intoxicating liquor shall be sold or served to occupants of automobiles, for consumption therein, and no "curb service" shall be furnished by any permit holder.
- (B) No retail permit holder shall sell any alcoholic beverages to other permit holders or any other persons for the purpose of resale. No retail permit holder shall loan, exchange, transfer, allocate, or deliver any alcoholic beverages to another permit holder or to another permit premises. A retail permit holder may transfer alcoholic beverages from a permit premises where the permit is not renewed, the right to sell alcoholic beverages has been cancelled in any manner by law, or the operations have ceased permanently, to another permit premises for which that retail permit holder holds the permit, or to another permit premises for which the retail permit holder receiving the alcoholic beverages has, in the opinion of the superintendent, substantially the same principals as the retail permit holder transferring the alcoholic beverages, but only upon receiving written consent from the division of liquor control. The retail permit holder requesting to transfer the product shall provide a written request for consent to the division, which shall include proof that the retail permit holder offered the wholesale distributor the alcoholic beverages and that the wholesale distributor declined to repurchase the alcoholic beverages, and proof of ownership of the inventory.
- (C) No deliveries of beer, or wine and mixed beverages to retail permit holders shall be made by anyone who is not a bona fide employee of the B-1, B-2, B-4, B-5, A-1, A-2, or A-4 permit holder making the sale, except such deliveries may be made as provided by section 4301.60 of the Revised Code.
- (D) No alcoholic beverage shall be given away with the purchase of merchandise or any thing of value. An alcoholic beverage may be packaged with a nonalcoholic item without increasing the price of the alcoholic beverage.
- (E)
- (1) A retail permit holder shall not be prohibited by this rule, rule 4301:1-1-45 of the Administrative Code, or any other rule of the liquor control commission from conducting a program to prevent alcoholic beverage sales to underage individuals. Under the program, the retail permit holder may give the consumer an item that is not an alcoholic beverage, which costs less than three dollars, for failure on the part of the retail permit holder, their employee, or agent, to require the presentation of identification prior to the consumer's purchase of an alcoholic beverage.
- (2) The retail permit holder shall conduct this program only for the purpose of requiring the presentation of an operator's license, chauffeur's license, or an identification card, issued pursuant to sections 4507.50 to 4507.52 of the Revised Code, showing that the consumer is of legal age to purchase alcoholic beverages.
- ~~(F) Notwithstanding the provisions of rule 4301:1-1-03 of the Administrative Code, A-2, B-2, B-5, and retail permit holders may calculate and advertise retail wine case prices as ten per cent off the retail single bottle minimum price.~~
- ~~(G)~~(F) Prohibition against sales at wholesale to persons who are not retail permit holders.
- (1) No wholesale distributor shall knowingly sell alcoholic beverages at wholesale to a person who is not a retail permit holder.
- (2) A wholesale distributor must verify that the person to whom they are selling alcoholic beverages at wholesale is a retail permit holder and shall be deemed to have knowledge of the fact that the person to whom it sold alcoholic beverages is not a retail permit holder when that person was never issued a retail

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permit or when that person's retail permit was cancelled, revoked, or not renewed by the division of liquor control and evidence of that cancellation, revocation, or non-renewal is made available by the division.

- (3) A wholesale distributor shall be deemed not to have knowledge of the fact that a person to whom it sold alcoholic beverages at wholesale is not a retail permit holder when that person has been granted a stay order by the liquor control commission or a court of competent jurisdiction and the wholesale distributor has not been provided evidence that the stay order has been modified or dissolved by the commission or the court issuing the stay order. Electronic transmission of a notice to all licensed wholesalers shall constitute sufficient evidence of a wholesale distributor's knowledge of the modification or dissolution of a stay order.