

## PROPOSED AMENDMENT

**11 CSR 70-2.190 Unlawful Discrimination and Price Scheduling.** The Division of Alcohol and Tobacco Control is amending sections (3), (4), (5), (7), (9), (10) and (12), and adding new section (2).

*PURPOSE: This amendment provides cleanup of this rule and adds a definition for substantively identical products.*

**(2) For the purpose of this rule, substantively identical products refers to products that are indistinguishable from one another and products where the upc or barcode is the only distinguishing factor.**

**(3) Product Pricing Information.**

(A) The product pricing information is to be made available to retailers five (5) days prior to the last day of the month and include the brand number, brand or trade name, capacity of individual packages, nature of contents, age and proof, the per bottle and per case price, the number of bottles contained in each case, and the size thereof.

(B) Supplemental pricing information is to be made available to retailers when a new product, new size, or new proof is added by a wholesaler during the month and not subject to change before the first of the month when regularly filed product pricing information is effective. A wholesaler is allowed to sell such items to retailers immediately upon production of such supplemental information. Supplemental pricing information includes the brand number, brand or trade name, capacity of individual packages, nature of contents, age and proof, the per bottle and per case price, the number of bottles contained in each case, and the size thereof.

(C) The wholesaler may sell at any price for any item as long as it is sold above their cost and they sell **all substantively identical products** at the same price to all retailers as indicated on their product pricing information.

(D) Close out items should be identified as such on the product pricing information that is made available to retailers at prices which may be below the wholesaler's costs for not less than six (6) consecutive months during which time the wholesaler may not purchase further inventory. The wholesaler should not use close out pricing as an inducement for retailers to purchase other intoxicating liquors.

~~[(3)]~~ **(4) Discounts.**

(A) The wholesaler may grant any discount up to one (1) per centum for quantity of **spirituous** liquor and wine and one (1) per centum for payment on or before a certain date.

(B) Quantity discounts. A quantity discount may be granted only for quantities of two (2) or more. If a price is listed for bottles only, then a quantity discount may be allowed on quantities of two (2) or more bottles. If a price is listed for both bottles and cases, then a quantity discount may be allowed only on quantities of two (2) or more unbroken cases. Quantity discounts may be graduated but not exceed the maximum one percent (1%).

(C) Discounts for time of payment. A discount for time of payment may be granted only for 1) payment for time of delivery, 2) payment on or before ten (10) days from the date of delivery, or 3) payment on or before fifteen (15) days from the date of delivery.

(D) The combination of discounts to be posted on the product pricing information are as follows: No discount, one percent (1%) for time of payment, one percent (1%) for quantity discounts, or one percent (1%) for time of payment and one percent (1%) for quantity.

(E) No person licensed to sell *[intoxicating]* **spirituous** liquor and wine at retail may accept any discount, rebate, free goods, allowances, or other inducement from any wholesalers except the discount for payment and quantity discount on or before a certain date.

*[(4)] (5)* Case Size. For the purpose of this regulation, a case of *[intoxicating]* **spirituous** liquor or a case of wine is declared to be a cardboard, wooden, or other container, containing bottles of equal size filled with *[intoxicating]* **spirituous** liquor or wine of the same brand, age, and proof. The following table depicts the number of bottles considered to be a case of various bottle sizes for both the English and metric systems of measure, for pricing purposes:

Size of Bottle	Number of Bottles per Case
Less than <i>[6.3]</i> <b>8</b> oz.	48, 60, 96, 120, 144, 192, 240
8 oz. up to, but not including, 10 oz.	48
10 oz. up to, but not including, 21 oz.	24
21 oz. up to, but not including, 43 oz.	12
43 oz. up to, but not including, 85 oz.	6
85 oz. up to, but not including, 128 oz.	3, 4, 6
128 oz. or more	2

(A) The Universal Coding of Alcoholic Beverages for Products by container size is to be used to code the bottle size. An item is declared to be either a bottle or a case of *[intoxicating]* **spirituous** liquor or wine scheduled as required;

(B) All sizes less than one-half (1/2) pint or eight (8) ounces under the English system of measure are defined as miniatures. Under the metric system of measure, miniatures are defined as fifty (50) milliliters (1.7 ounces) for spirituous liquors and one hundred (100) milliliters (3.4 ounces) for vinous liquors. Acceptable case sizes for miniatures are 240, 192, 144, 120, 96, 60, and 48 bottles. Miniatures may be sold in only one (1) case size for each bottle size sold; and

(C) If *[an intoxicating]* **a spirituous** liquor or wine product is packaged by the manufacturer in a bottle quantity for that bottle size exceeding one (1) **bottle** but either more or less than the case quantity for the bottle size listed in section (4), a wholesaler may sell that package for a total price that reflects the same per bottle price as the per bottle price in the posted case price, if the wholesaler's invoice specifies the quantity in the package.

*[(6)] (7)* Delivery. Any brand of **spirituous** liquor or wine sold to a retailer is to be shipped to and received by the retailer at the price in effect for that calendar month in which the delivery occurs. Delayed shipment orders may be taken the last five (5) days of the month and delivered in the first five (5) days of the following month.

*[(8)] (9)* Breakage, Samples, Expenses. As part of its regular books and records, each wholesaler licensed to sell *[intoxicating]* **spirituous** liquor or wine is required to keep a monthly record of all allowances for breakage containing the name, address, and license number of the customer, the

amount of breakage allowance, and the date and number of the invoice of sale for which allowance is given. No allowance for breakage may be given unless the broken bottle is returned to the seller within seventy-two (72) hours after delivery. Broken bottles are to be kept available on the wholesaler's licensed premises for inspection by representatives of the supervisor and may not be removed from the licensed premises or destroyed only with permission from the supervisor.

[(9)] **(10)** Posting of Contraband **Spirituos** Liquors and Wines Purchased From Supervisor. Bottles or cases of **spirituous** liquor or wine as described in section (4) which have been declared contraband and purchased by a wholesaler from the supervisor or the officer who seized the same under the provisions of sections 311.820 and 311.840, RSMo or by a wholesaler from a wholesaler who so purchased the same, may be posted by the wholesaler at prices less than other **spirituous** liquors and wines of the same brand, age, and proof. When the **spirituous** liquors and wines are so posted, the pricing is to be accompanied by a writing on which the **spirituous** liquors and wines are exactly described and the quantity(ies) available for purchase set forth and upon sale of all or any part of the quantity a copy of the invoice shall be sent to the supervisor upon the day it is prepared. Only **spirituous** liquors and wines so purchased by a wholesaler may be sold at the posted prices.

[(11)] **(12)** Universal Numeric Codes on Invoices. The Universal Numeric Code for Alcoholic Beverages and Missouri's brand number is to be used to code all wines on all invoices written by any manufacturer, vintner, solicitor, and/or wholesaler licensed by the Division of Alcohol and Tobacco Control of Missouri; this includes invoices written by wholesalers to retail licensee. In addition, the descriptive data for **spirituous** liquors and wines includes the age or vintage, proof or percent of alcohol by weight, class and type, and brand name. Missouri wholesalers are to include brand name, age, and proof for spirituous liquors and vintage for wines on all invoices to retailers when the vintage creates a cost differential for the same type of wine. Any failure of any person, firm, or corporation licensed under any provisions of Chapter 311, RSMo to comply in all respects with the rules and any violation by any licensee of these rules may be deemed to be cause for the revocation or suspension of the license of the offending licensee.

*AUTHORITY: section 311.660, RSMo 2016.\* This version of rule filed Dec. 22, 1975, effective Jan. 1, 1976. Amended: Filed Sept. 30, 1976, effective April 15, 1977. Amended: Filed Jan. 26, 1977, effective July 11, 1977. Amended: Filed Sept. 1, 1977, effective Dec. 11, 1977. Amended: Filed Dec. 6, 1985, effective Feb. 24, 1986. Amended: Filed April 20, 1987, effective July 11, 1987. Amended: Filed Aug. 17, 1999, effective March 30, 2000. Amended: Filed Oct. 10, 2018, effective May 30, 2019. **Amended: Filed May 27, 2022\*\****