

**Title II – DEPARTMENT OF PUBLIC SAFETY
Division 70-Division of Alcohol and Tobacco Control
Chapter 2-Rules and Regulations**

PROPOSED AMENDMENT

11 CSR 70-2.190 Unlawful Discrimination and Price Scheduling. The division is amending sections (1) and (2).

Purpose – To revise this section, which establishes procedures for price posting, deliveries, return of merchandise and discounts, to reflect the elimination of Chapter 312, RSMo, regarding nonintoxicating beer. The Division's name will be changed to Division of Alcohol and Tobacco Control in all applicable sections. In addition, legislation passed in 2009 restructuring the price posting laws will be reflected in these changes. Renumbering will occur to make the regulation easier to follow.

(1) *[Mechanized Product Price Register.*

(A) The Mechanized Product Price Register is a system designed to accept pricing information from wholesalers in a machine readable format at various set times of the month for varying processing cycles. Those transactions are processed into a master file of prices by brand and wholesaler number. Wholesaler transactions shall be submitted on either IBM eighty (80) column cards or a magnetic tape (nine (9) tract, sixteen hundred (1600) bits per inch) which are acceptable to the IBM/370 Mod 145 computer system or a computer system that the supervisor may order. A six (6)-digit brand number for all liquors and wines from the Universal Numeric Coding System for Alcoholic Beverages shall be used to identify all products posted in the Mechanized Product Price Register. Unique wholesaler numbers shall be assigned by the supervisor for individual identification in the register. The Mechanized Product Price Register or commonly known as Master Price Schedule, of all brands of intoxicating liquor and wine containing alcohol in excess of five percent (5%) by weight shall be maintained by the supervisor. This master file shall contain the following information by wholesalers: six (6)- digit brand number and check digit brand name, vendor number, class and type, age, proof and/or percent of alcoholic content by weight, bottle and case prices, discount code and wholesaler posting brand.

(B) The following reports from the Mechanized Product Price Register will be made available to all interested parties on a periodic basis:

1. Master Price Schedule. The master schedule provides a detailed listing of all prices charged for all items sold by each wholesaler;

2. *Cumulative Change Report.* The Cumulative Change Report lists all changes to the master file from the last master schedule printing to the present;
3. *Change Report.* The Change Report lists all changes to master schedules during a given change cycle;
4. *Amendments Report.* The Amendments Report lists all amendments to master schedule items during a given amendment cycle;
5. *Wholesaler Transaction and Report.* This report lists all transactions, by wholesaler, for a given processing cycle; and
6. *Wholesaler/Vendor Report.* This report lists by wholesaler, all vendors and corresponding brands sold by all wholesalers or by certain selected wholesalers, along with pricing information for each item.

(2) Pricing Rules to Prohibit Discrimination.

(A) Supplemental Posting. When a new product is added by a wholesaler, a supplemental posting must be made to the supervisor. New product prices must meet the following criteria:

1. *All wholesalers posting prices for a new brand must first be authorized for that brand by the supervisor. A wholesaler may post his/her prices for a new product at any time during the month, after all brand registration requirements have been met. The supervisor will then issue a letter of approval on which the wholesaler will be required to post the following information: full brand name, vendor name and number, brand number and check digit, class and type, age, proof and/or percent of alcoholic content by weight, bottle price, case price, bottles per case. After the letter is returned to the supervisor by the wholesaler with this information it will be stamped APPROVED or DISAPPROVED and dated. Seven (7) days after this letter has been stamped APPROVED and dated by the supervisor, the product may be sold;*
2. *Any new items in the state, including new products, new sizes or new proofs being posted on supplemental schedules may be posted at any price the wholesaler desires. This category of new items must be posted within the same calendar month. However, a new item on a supplemental schedule that previously has been posted by another wholesaler may not be posted at a price lower than the price currently established by schedules in effect; and*
3. *The price posted in the supplemental schedule shall remain in effect and shall not be subject to change before the first of the month when a regularly filed schedule shall become effective.*

(B) Monthly Price Changes.

1. All wholesalers shall file their monthly price changes in machine readable form with the supervisor or in a form s/he designates on or before the tenth calendar day of each month unless otherwise ordered by him/her. When the tenth day of the month falls on a Sunday or legal holiday, the schedule shall be filed on the next regular business day. These price changes shall be coded to designate that they are changes to existing prices on the master file. In addition, wholesalers may file prices for new products and new sizes which will be coded to designate that they are additions to the master file. Where an item previously has been posted by another wholesaler, a wholesaler may not post a price lower than the price currently established by schedules in effect.

(C) Amendments.

1. Within three (3) days, excluding Sundays and holidays and on a date to be fixed by the supervisor when s/he makes available for inspection the Master Price Schedule or the Cumulative Change Report, a wholesaler may amend his/her filed schedule for sales to a retailer or purchase for a retailer or by a retailer through a wholesaler, in order to meet lower competing prices and discounts for intoxicating liquor or wine of the same brand, trade name, age and proof.

2. All price changes must be only downward. No price changes shall be made upward in amendment processing. Any transaction attempting to lower a price below the lowest scheduled price will be flagged as an error and will be totally rejected.]

This regulation applies to spirituous liquor and wine products containing alcohol in excess of five percent by weight sold by a duly licensed wholesaler to a duly licensed retailer.

(2) Product Pricing Information.

(A) The product pricing information is to be made available to retailers five 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 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 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.

[(D)] **(3) Discounts.**

[1.] **(A)***[The granting of any discount is optional with the seller, but when given must not exceed]* **The wholesaler may grant any discount up to one (1) per centum for quantity of liquor and wine and one (1) per centum for payment on or before a certain date.**

[2.] **(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 *[may]* not exceed the maximum one percent (1%).

[3.] **(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. *[Only one (1) discount may be granted during any one (1) month, except that a wholesaler may amend his/her schedule to meet competing discounts for time of payment.]*

[4.] **(D)** The combination of discounts *[which shall]* **to** be posted on the *[Mechanized Price Register]* **product pricing information** are as follows: No discount, one percent (1%) for time of payment, one percent (1%) for quantity discounts, one percent (1%) for time of payment and one percent (1%) for quantity.

[5.] **(E)** No person licensed to sell intoxicating 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.

[(E)] (4) Case Size. For the purpose of this regulation, a case of intoxicating liquor or a case of wine is declared to be a cardboard, wooden or other container, containing bottles of equal size filled with intoxicating 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 [scheduling] purposes:

Size of Bottle	Number of Bottles per Case
Less than 6.3 oz	48, 60, 96, 120, 144, 192 or 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 and including 128 oz	3, 4 or 6

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

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

[3.] (C) If an intoxicating liquor or wine product is packaged by the manufacturer in a bottle quantity for that bottle size exceeding one but either more or less than the case quantity for the bottle size listed in subsection **[(2)(E)] (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.

[(F)] (5) The price to retailers, except retailers operating railroad cars, *[shall]* **should** include federal custom duties, internal revenue taxes, state excise tax, bottling and handling charges and the cost of delivery to the retailer. The price to retailers operating railroad cars may be scheduled at a price "ex state excise tax," but shall include all other taxes and costs computed in prices to other retailers. No charge(s) *[shall]* **may** be made in addition to the price except that on past due accounts there may be imposed a finance (interest) charge in accord with that permitted by law. Provided, however, that if a wholesaler elects to

impose a finance (interest) charge on past due account the charge shall be of uniform rate to all retailers and *[shall be]* imposed on all retailers who have past due accounts.

[(G)] (6) Delivery. Any brand of liquor or wine sold to a retailer *[must]* **is to** be shipped to and received by the retailer *[in the amount for which the scheduled price set forth on the invoice is in effect]* **at the price in effect for that calendar month in which the delivery occurs. Delayed shipment orders may be taken the last five days of the month and delivered in the first five days of the following month** *[No wholesaler may take an order for delivery in a subsequent month, except that on and after the date on which amended schedules are filed, orders may be taken for delivery in the following month at the price in effect for that month. Orders may not be shipped before the first day of the following month]*.

[(H)] (7) Returns. Merchandise returns exceeding seven (7) days from delivery date *[shall]* **may** not be accepted for return from a retailer, except pursuant to a court order or with prior approval from the supervisor for any of the following reasons:

[1.] (A) The merchandise delivered does not conform to the merchandise ordered, whether an error was made at the time the order was taken or when the merchandise was delivered. Requests to return merchandise delivered in error *[must]* **should** be submitted to the supervisor within thirty (30) days of the original invoice; or

[2.] (B) The retailer is abandoning the retail liquor business.

[(I)] (8) Breakage, Samples, Expenses. As part of its regular books and records, each wholesaler licensed to sell intoxicating liquor or wine *[shall]* **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 *[and the federal strip stamp numbers of each broken bottle]* for which allowance is given. No allowance for breakage *[shall]* **may** be given unless the broken bottle is returned to the seller within seventy-two (72) hours after delivery *[and where the container is required to have a federal strip stamp affixed to the container, the stamp must be intact at the time of return]*. Broken bottles *[shall]* **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 *[without]* **only with** permission from the supervisor.

[(J)] (9) Posting of Contraband Liquors and Wines Purchased From Supervisor. Bottles or cases of liquor or wine as described in subsection **[(2)(E)] (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 [scheduled] **posted** by the wholesaler at prices less than other liquors and wines of the same brand, age and proof. When the liquors and wines are so [scheduled] **posted**, the [schedule] **pricing [shall] is to** be accompanied by a writing on which the 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 liquors and wines so purchased by a wholesaler may be sold at the posted prices.

[(K)] (10) Discriminatory Agreements.

[1.] (A) No person holding a license as a manufacturer- solicitor or out[-]state solicitor of spirituous liquor or wine [shall] **may** enter into or participate in any combination or agreement with any person holding a license as a wholesaler [or *wholesale-solicitor*] for the sale of spirituous liquor or wine which restrict the customers to whom the wholesaler [or *wholesale-solicitor*] may sell merchandise which s/he owns.

[2.] (B) No person holding a license as the wholesaler [or *wholesale-solicitor*] for the sale of spirituous liquor or wine [shall] **may** enter into or participate in any combination or agreement with any person holding a license as a manufacturer- solicitor or outstate solicitor of spirituous liquor or wine, which restricts the customers to whom the wholesaler [or *wholesale-solicitor*] may sell merchandise which s/he owns.

[(L)] (11) Universal Numeric Codes on Invoices. [1.] The Universal Numeric Code for Alcoholic Beverages [shall be used to code all liquors] and Missouri's [six (6)-digit wine code] **brand number [shall] 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 [*Liquor*] **Alcohol and Tobacco** Control of Missouri; this [shall] includes invoices written by wholesalers to retail licensee. [*The brand number to be used concurrent with other descriptive data by Missouri licensed manufacturers, vintners and solicitors is the six (6)-digit number developed by the Distilled Spirits Council of the United States, Inc. and Missouri's six (6)-digit wine code.*] In addition, the descriptive data for liquors and wines [shall] includes the age or vintage, proof or percent of alcohol by weight, class and type and brand name. Missouri wholesalers [shall] **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[s] 311 [and 312], RSMo to comply in all respects with the rules and any violation by any licensee of these rules [shall] **may** be deemed to be cause for the revocation or suspension of the license of the offending licensee.

AUTHORITY: section 311.660, RSMo [1994] **2018**.* 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 October 10, 2018.**

*Original authority: 311.660, RSMo 1939, amended 1989.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Alcohol and Tobacco Control at 1738 East Elm Street, Lower Level in Jefferson City, Mo 65101 or by facsimile at 573-526-4540, or via email at Karen.Dorton@dps.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*