



# Common Sense Initiative

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## Business Impact Analysis

Agency, Board, or Commission Name: Ohio Liquor Control Commission

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Regulation/Package Title (a general description of the rules' substantive content):

2023 Amended Rules

Rule Number(s): 4301:1-1-03; 4301:1-1-22; 4301:1-1-24; 4301:1-1-33; 4301:1-1-43; and 4301:1-1-62

Date of Submission for CSI Review: 12/4/23

Public Comment Period End Date: 12/12/23

Rule Type/Number of Rules:

New/\_\_\_ rules

No Change/\_\_\_ rules (FYR? \_\_\_)

Amended/ 6 rules (FYR? Y)

Rescinded/\_\_\_ rules (FYR? \_\_\_)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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### **Reason for Submission**

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

**Which adverse impact(s) to businesses has the agency determined the rule(s) create?**

**The rule(s):**

- a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☐ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

### **Regulatory Intent**

2. **Please briefly describe the draft regulation in plain language.**  
*Please include the key provisions of the regulation as well as any proposed amendments.*

4301:1-1-03 Wine requirements: This rule sets forth the requirements for pricing and selling wine by manufacturers, suppliers, importers, bottlers, wholesale distributors and retail permit holders in the state of Ohio, as part of the state implemented controlled system of pricing. It also ensures that wine is offered for sale at a price that will not encourage excessive consumption and provides for consistent prices, mandatory markups and price schedules.

Proposed Amendment: The proposed amendments to paragraphs (C)(2) through (7) eliminate reference to retail permit holders and specific types of liquor permits to account for the growing number of liquor permit holders authorized to make retail sales of alcohol including manufacturers and wholesale distributors. The rule is applicable to all tiers of Ohio's three-tier system. An additional amendment to paragraph (C)(8)(b) would include Class D-5 types of liquor permit holders who have carryout wine privileges to the list of permit holders authorized to conduct close-out sales of wine.

4301:1-1-22 Consent for importing alcoholic beverages for resale in Ohio: This rule requires consent by the Division of Liquor Control for importing alcoholic beverages into Ohio. It maintains the consistency and integrity of Ohio's three-tier system: manufacturers, wholesalers, and retailers. The rule also ensures that taxes are collected, that alcohol sales are not made to minors, and the quality of products imported for public consumption.

Proposed Amendment: The proposed amendment to paragraph (B) would clarify that B-2a permit holders who ship wine into Ohio are exempt from having to consign and deliver wine to an Ohio wholesale distributor.

4301:1-1-24 Miscellaneous beer, wine, and mixed beverage requirements: Rule 24 outlines the requirements for securing and maintaining a Division of Liquor Control issued license to distribute beer, wine, and mixed beverages in Ohio. It also ensures the qualifications for distributors of beer, wine, and mixed beverages, serves to protect the public, and authorizes the Commission to suspend or revoke a permit for a violation of the rules.

Proposed Amendment: The proposed amendment to paragraph (B) would substitute the word “other” for “retail” to account for the growing number of liquor permit holders authorized to make retail sales.

4301:1-1-33 Consumer tasting activities and sampling at retail permit premises: This rule sets forth the requirements for Consumer Product Instruction and Consumer Product Tastings (Bar Spending) conducted by a manufacturer, supplier, broker, wholesale distributor, or solicitor at a retail permit premises. It also sets the parameters for enforcement by the Ohio Department of Public Safety, Investigative Unit or Division of Liquor Control.

Proposed Amendment: The amendment to paragraphs (A), (B), and (C) of this rule proposes to strike any reference to on-premises consumption to be consistent with statutes that authorize manufacturers, suppliers, brokers, wholesale distributors, or their registered solicitors to conduct consumer product tasting and instruction on retail premises not having general on-premises consumption privileges. The amendment would align the rule with statutes.

4301:1-1-43 Furnishing signs, fixtures, equipment, advertising materials, and advertising specialties, return of merchandise; limitation thereon: prohibited practices and prohibition of cash deposit or prepayment: Rule 43 describes limitations on the furnishing of signs, equipment, advertising, as well as prohibited practices related to cash deposits or prepayment for alcoholic beverages. The rule also provides guidance for when a manufacturer, supplier, or wholesale distributor may accept the return of alcoholic beverages from a retail permit holder.

Proposed Amendment: A proposed amendment submitted by the Wholesale Beer and Wine Association of Ohio would increase from three to ten dollars the cost of certain trinkets to the manufacturer or wholesale distributor that may be given to retail permit holders free of charge. An additional amendment to paragraph (B)(2) proposes to strike any reference limiting the quantity and cost of glassware that a manufacturer or supplier of alcohol may provide a retail permit holder free of charge. The 133<sup>rd</sup> Ohio General Assembly passed legislation addressing this same subject matter and thus, language is no longer necessary in the rule.

4301:1-1-62 Inspection of permit premises – hindering or assaulting forbidden: This rule grants Division of Liquor Control Compliance Officers, Department of Public Safety Enforcement Agents and any officer of the law immediate access to a liquor permit premises at all times with proper identification and for a lawful purpose. It also protects these officials from assault or interference during an inspection or investigation.

Proposed Amendment: The proposed amendment would substitute the word “agent” for “officer” to more accurately reflect the title given to these Division of Liquor Control employees and to harmonize the rule with terminology used in the statutes.

**3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

<u>Rule Number</u>	<u>Amplifies</u>	<u>Statutory Authority</u>
4301:1-1-03	4301.13	4301.03
4301:1-1-22	4301.03	4301.03
4301:1-1-24	4301.03, 4301.13	4301.03
4301:1-1-33	4303.251	4301.03, 4303.251
<u>Rule Number</u>	<u>Amplifies</u>	<u>Statutory Authority</u>
4301:1-1-43	4301.22, 4301.24	4301.03
4301:1-1-62	4301.03, 4301.66	4301.03

**4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**  
*If yes, please briefly explain the source and substance of the federal requirement.*

No and No.

**5. If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

N/A

**6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

These rules reflect the policy and intent of the Commission to protect public health and safety, to maintain effective control over the manufacture, sale and distribution of alcoholic beverages, and to prevent abuses caused by the unregulated sale of such products. Alcoholic beverages are unique products that require strict regulation to promote temperance by preventing consumption by underage persons and by discouraging abusive consumption by adults; to promote orderly markets by requiring transparent, accountable and stable distribution and pricing practices; and to prevent unfair competition.

**7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

The general provisions in these rules are already implemented, and active state supervision already exists. The Division of Liquor Control (DOLC) implements the permitting process, monitors the sale and distribution of alcoholic beverages in Ohio, and may initiate actions of ‘administrative’ nature. The Department of Public Safety, Ohio Investigative Unit (OIU) also investigates and may initiate enforcement actions for violations of these provisions. Data related to consumption, sales, and violations, as well as related sanctions are routinely collected and reported. The Commission can measure the success of these regulations and Ohio’s regulated pricing structure by examining the existing compliance-related data. The cost-benefit of non-compliance by the regulated community is significant because the Commission may suspend or revoke an entity’s liquor license for violations of state rules and regulations.

**8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

No

**Development of the Regulation**

**9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

*If applicable, please include the date and medium by which the stakeholders were initially contacted.*

The Commission initially sought public comment regarding rules under five-year review on October 25, 2022 by posting a Notice to the Commission’s website and by sending an email blast to a comprehensive list of stakeholders, including representatives from industry associations, such as the Wholesale Beer and Wine Association of Ohio, the Ohio Licensed Beverage Association, the Ohio Restaurant Association, the Ohio Council of Retail Merchants, the Ohio Grocers Association, the Ohio Wine Producers Association, Ohio Craft Brewers Association, Southern Wine and Spirits, the Distilled Spirits Council of the United

States, Ohio Association of Chiefs of Police, the Drug Free Action Alliance, and the Ohio Township Association, permit holders, permit holders' legal counsel, and government entities such as the Departments of Agriculture, Commerce, and Taxation. The Commission also solicited comments from the Attorney General's Office, Charitable Law Liquor/Gaming Units, the Department of Public Safety, Ohio Investigative Unit, and the Department of Commerce, Division of Liquor Control as the agencies directly impacted by the Commission rules.

The Commission sought additional written comments from stakeholders and invited public testimony at the Commission's public hearings on December 8, 2022, February 9, 2023, March 9, 2023, June 15, 2023, September 14, 2023, and October 12, 2023. All stakeholder comments and proposals, and Notices of Commission hearings are posted to the Commission's website.

**10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

The Commission received comment without any opposition from the Ohio Department of Commerce, Division of Liquor Control updating rule language to account for the growing number of liquor permit holders authorized to make retail sales and to update vocabulary used in the rules to be consistent with those used in the statutes. Many of the Division's proposed changes have been incorporated into the proposed amendments.

The Commission also received comment without opposition from the Wholesale Beer and Wine Association of Ohio (WBWAO) proposing to have Rule 43 amended to increase the cost of certain items that manufacturers and wholesalers are authorized to provide retail permit holders, free of charge, from three dollars to ten dollars per item. The proposed change has been incorporated into Rule 43.

No stakeholders have objected to the final proposed amendments to these rules.

**11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

No scientific data was used.

**12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives? *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.***

The Commission did not consider alternative regulations as the current regulations are meeting the state's intended policy goals.

**13. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

The Commission coordinated with the Department of Commerce – Division of Liquor Control, the Department of Public Safety – Ohio Investigative Unit, and the Attorney General's Office – Liquor Unit, and confirms no duplication has occurred.

**14. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

The provisions are currently in effect and do not require any change in order to implement existing regulations. The rules impact all Ohio liquor permit holders in each tier of the system (manufacturers, distributors, retailers) and are entirely consistent with the broader policy goals of the three-tier system of alcohol beverage regulatory control. Any updates would be made available to various stakeholders and interested parties via email blast and posting to the Commission's website.

**Adverse Impact to Business**

**15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:**

**a. Identify the scope of the impacted business community, and**

The potential scope is all classes of liquor permit holders – manufacturers, distributors, and retailers.

**b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a representative business. Please include the source for your information/estimated impact.*

No new costs or fees are being implemented with these rules.

Each alcohol manufacturer, distributor, and retailer are required to comply with the applicable regulations to ensure public health and safety within establishments manufacturing, distributing, selling and serving alcoholic beverages. While the Commission does not have data to provide a specific quantified potential impact for

reasonable compliance costs associated with the rules, in general, the Commission can fine, suspend, or revoke an entity's license for violations of Ohio laws and regulations.

- 16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

No, the proposed changes to the rules will not reduce any regulatory burden that may exist.

- 17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

Regulating the manufacture, distribution, retail sale and service of alcoholic beverages in Ohio has been longstanding. The three-tier system is designed to provide a balanced, transparent, and accountable method of alcohol sales and for allowing entities and individuals to obtain and maintain liquor permits. The regulatory intent of the rules justify any potential adverse impact because the sale of alcoholic beverages is a unique industry that requires strict regulation for the health, safety, and protection of the public. The state has a well-recognized and compelling interest in promoting the safe and temperate consumption of alcohol.

### **Regulatory Flexibility**

- 18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

No, the rule is intended to create a level playing field for all market participants, regardless of size.

- 19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

Ohio Revised Code 119.14 is not applicable to these rules since there is no penalty associated with the paperwork necessary pursuant to the rules.

- 20. What resources are available to assist small businesses with compliance of the regulation?**

The Ohio Liquor Control Commission –

Website at: <http://lcc.ohio.gov>

Building location: 77 S. High Street, 18<sup>th</sup> Floor, Columbus, OH 43215

Telephone: 614-466-3132

The Commission Quarterly Public Hearings – March, June, September and December

The Division of Liquor Control Offices –

Website at: <http://www.com.ohio.gov/liqr>

Building location: 6606 Tussing Road, Reynoldsburg, OH 43068

Telephone: 614-644-2360

The Ohio Department of Public Safety, Ohio Investigative Unit –

Alcohol Server Knowledge (ASK) Program, free for permit holders and their employees

Website at: <http://oiu.ohio.gov>

Building location: 1970 West Broad Street, Room 429, Columbus, OH 43223

Telephone: 614-644-2415

Industry provided resources available to permit holders and their employees include the following alcohol training programs:

TIPS Alcohol Training (Training for Intervention Procedures)

TAM Server Training (Techniques of Alcohol Management)

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 agency 4301 of the Administrative Code, as provided by the laws of this state.

(C) Minimum price: This paragraph 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 per cent to the

"wholesale invoice cost," including freight and taxes, except that B-5 permit holders may sell to B-2 or B-5 permit holders at no less than the "wholesale invoice cost."

- (c) ~~Retail permit holders and A-1-A permit~~ 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 per cent 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 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 per cent over the minimum retail invoice cost.
- (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 wine 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 [Class D-5 type of](#) 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.

4301:1-1-22

**Consent for importing alcoholic beverages for resale in Ohio.**

- (A) No alcoholic beverages shall be imported into the state of Ohio for resale except upon the written consent of the division. Application for such consent shall be upon forms provided by the division. Consent must be granted by the division prior to said importation. The division shall not grant consent to any party if consent has already been granted to any other party, and is currently in effect. The division shall not grant consent to any supplier to import alcoholic beverages in any calendar year unless the supplier files an affidavit with the division stating that said supplier will comply with all laws of the state of Ohio and rules of the commission concerning alcoholic beverages. Violation of any of the laws or rules may be cause for suspension or revocation of the authorization to import by the commission.
- (B) All alcoholic beverages imported into this state for purposes of re-sale to retail permit holders, except those sold by a B-2a permit holder, must be consigned and delivered to the warehouse of a wholesale distributor.

4301:1-1-24

**Miscellaneous beer, wine, and mixed beverage requirements.**

This rule is promulgated pursuant to the provisions of section 4301.13 of the Revised Code to regulate and stabilize the sale and distribution of beer, wine, and mixed beverages in Ohio.

- (A) The division shall not issue or renew a B-1, B-2, B-3, B-4, or B-5 permit unless at all times throughout the permit year, the applicant:
- (1) Leases or owns warehouse space. Such space shall be sufficient to store at one time a stock of beer, wine, or mixed beverages equal to ten per cent or more of the wholesale distributor's annual case volume of beer, wine, or mixed beverage sales to retail permit holders;
  - (2) Leases or owns delivery equipment;
  - (3) Maintains brand representation with at least one beer, wine, or mixed beverage manufacturer; and
  - (4) Maintains sales of beer, wine, or mixed beverages to retail permit holders within the applicant's assigned sales area or territory, making sales to at least ten per cent of the retail permit holders in said area, with separate sales to retail permit holders accounting for at least ninety per cent of the gallonage handled by the applicant.
- (B) The division shall not issue or renew a B-1, B-2, B-3, B-4, or B-5 permit to any person who does not in good faith actually carry on or intend to carry on a bona fide beer, wine, or mixed beverage wholesale distributor business by sale to ~~retail~~ other permit holders. Failure by a wholesale distributor to actively and in good faith engage in the wholesale distributor business for a period in excess of thirty days shall be prima facie evidence that said wholesale distributor is not actively and in good faith engaging in said wholesale distributor business.
- (C) No retail permit holder shall have any financial interest, directly or indirectly by stock ownership or through interlocking directors in a corporation, or otherwise, in the establishment, maintenance, or promotion of a B-1, B-2, B-3, B-4, or B-5 permit holder.
- (D) The commission may suspend or revoke the license or authorization to import or operate of any manufacturer, supplier, importer, bottler, wholesale distributor, or retail permit holder in Ohio for a violation of these rules or any part thereof.

4301:1-1-33

**Consumer tasting activities and sampling at retail permit premises.**

(A) The following definitions apply to this rule:

- (1) "Consumer Product Instruction", means a pre-scheduled organized event during which a manufacturer, supplier, broker, wholesale distributor, or their registered solicitor provides the public with one or more alcoholic beverages for the purpose of providing consumer instruction on the quality and characteristics of the beverage or beverages provided.
- (2) "Sample Serving"; sometimes referred to as "Trade Spending" or "Bar Spending"; means an alcoholic beverage which is provided by a manufacturer, supplier, broker, wholesale distributor or their registered solicitors to one or more customers in a retail permit premises ~~licensed for on-premises consumption~~, when the beverage is not provided for the purpose of "Consumer Product Instruction."

(B) A manufacturer, supplier, broker, wholesale distributor, or their registered solicitor may conduct "Consumer Product Instruction" at a retail permit premises ~~licensed for on-premises consumption~~ during normal business hours, but not to exceed two hours in length, subject to the following requirements:

- (1) The alcoholic beverages featured in the "Consumer Product Instruction" must be products:
  - (a) That are registered for sale in Ohio,
  - (b) That the permit holder is authorized to sell ~~for on-premises general consumption~~ pursuant to its liquor permit,
  - (c) That the permit holder has purchased lawfully, and,
  - (d) That the permit holder has in stock.
- (2) The manufacturer, supplier, broker, wholesale distributor, or their registered solicitor shall purchase the alcoholic beverage used in the "Consumer Product Instruction" from the retail permit holder. The price paid for the alcoholic beverage shall not exceed the price listed on the retail permit holder's schedule of prices, as required under rule 4301:1-1-50 of the Administrative Code.
- (3) A consumer may be furnished up to a total of two servings of the below

beverages as part of a "Consumer Product Instruction" event, and each serving shall be limited to the following quantities:

- (a) Spirituous liquor: Not more than 1.5 ounces,
  - (b) Mixed beverages: Not more than four ounces,
  - (c) Wine: Not more than four ounces, and,
  - (d) Beer: Not more than twelve ounces.
- (4) No manufacturer, supplier, broker, wholesale distributor, or their registered solicitor, or any permit holder shall identify a retail permit premises in any off-premises advertising for any "Consumer Product Instruction."
- (5) No manufacturer, supplier, broker, wholesale distributor, or their registered solicitor shall compensate or agree to compensate the permit holder, nor shall the permit holder accept or agree to accept compensation for the granting of permission to hold or for the performance of "Consumer Product Instruction."
- (C) In addition to conducting "Consumer Product Instruction," a manufacturer, supplier, broker, wholesale distributor, or their registered solicitor may provide customers in a retail permit premises ~~licensed for on-premises consumption~~ with "Sample Servings" of the manufacturer's, supplier's, broker's or wholesale distributor's products, subject to the following requirements:
- (1) The provision of a "Sample Serving" is not contingent upon the purchase of any other alcoholic beverage.
  - (2) The "Sample Serving" must be a product:
    - (a) That is registered for sale in Ohio,
    - (b) That the permit holder is authorized to sell ~~for on-premises general consumption~~ pursuant to its liquor permit,
    - (c) That the permit holder has purchased lawfully, and,
    - (d) That the permit holder has in stock.

- (3) The manufacturer, supplier, broker, wholesale distributor, or their registered solicitor shall purchase the "Sample Serving" from the retail permit holder. The price paid for the "Sample Serving" shall not exceed the price listed on the retail permit holder's schedule of prices, as required under rule 4301:1-1-50 of the Administrative Code.
- (4) A consumer may be furnished up to a total of two "Sample Servings" of the below beverages during a twenty-four hour period, and each "Sample Serving" shall be limited to the following quantities:
  - (a) Spirituous liquor: Not more than 1.5 ounces,
  - (b) Mixed beverages: Not more than four ounces,
  - (c) Wine: Not more than four ounces, and,
  - (d) Beer: Not more than twelve ounces.
- (D) The manufacturer, supplier, broker, wholesale distributor or their registered solicitor and the retail permit holder or their agent and/or employee shall be responsible for any violations of Chapters 4301. and 4303. of the Revised Code, or rules promulgated thereunder in engaging in the activities authorized by this rule.

4301:1-1-43

**Furnishing signs, fixtures, equipment, advertising materials, and advertising specialties, return of merchandise: limitations thereon: prohibited practices and prohibition of cash deposit or prepayment.**

This rule reflects the policy and intent of the commission to maintain effective control over the sale and distribution of alcoholic beverages and to prevent abuses caused by the disorderly and unregulated sale of such products. Alcoholic beverages are a unique product that require strict regulation to promote temperance by preventing consumption by underage persons and by discouraging abusive consumption by adults, promote orderly markets by requiring transparent, accountable and stable distribution and the prevention of unfair competition and facilitate the collection of taxes related to the sale and consumption of such products.

(A)

- (1) No retail permit holder shall acquire by purchase, either directly or indirectly, or by any means whatsoever, any signs, fixtures, furniture, or other equipment used in connection with the conduct of the retail business from any manufacturer or wholesale distributor of alcoholic beverages at a cost less than the full cost to the manufacturer or wholesale distributor. No manufacturer or wholesale distributor of alcoholic beverages shall sell or furnish, either directly or indirectly, or by any means whatsoever, any signs, fixtures, furniture, or other equipment used in connection with the operation of a retail permit holder's business at a cost less than the full cost to the manufacturer or wholesale distributor, except as otherwise provided in sections 4301.22 and 4301.24 of the Revised Code, rule 4301:1-1-44 of the Administrative Code, and this rule.
- (2) No retail or wholesale permit holder shall accept any premiums, gifts, discounts based on quantity of sales or any other reason, cash discount sales, rebates, or kickbacks, either in money, merchandise, or thing of value, from any manufacturer or wholesale distributor of alcoholic beverages. No manufacturer or wholesale distributor of alcoholic beverages shall offer or give to any retail or wholesale permit holder any premiums, gifts, discounts based on quantity of sales or any other reason, cash discount sales, rebates, or kickbacks, either in money, merchandise, or thing of value.
- (3) A sales or incentive program may be conducted by the owner of the brand name or trademark, or an authorized supplier of alcoholic beverages, on an interstate, national, or statewide basis, so long as that program includes an award, payment, or reduction of price on future purchases to a wholesale permit holder or their employee, and may be based on the sales of the product.

- (4) No retail permit holder shall solicit, for their own benefit, donations of money, merchandise, thing of value, or credit from any wholesale distributor or manufacturer of alcoholic beverages. No retail permit holder shall sell, for their own benefit, tickets to parties, picnics, entertainment, or similar events to any wholesale distributor or manufacturer of alcoholic beverages. No retail permit holder shall become a member of or pay dues to any organization of manufacturers or wholesale distributors.
- (5) No wholesale distributor or manufacturer of alcoholic beverages shall solicit, for their own benefit, donations of money, merchandise, or thing of value from, or give credit to, any retail permit holder. No wholesale distributor or manufacturer of alcoholic beverages shall sell, for their own benefit, tickets to parties, picnics, entertainment, or similar events to any retail permit holder.
  - (a) No wholesale distributor of alcoholic beverages shall become a member of or pay dues to any organization of retail permit holders.
  - (b) A manufacturer may become a member of or pay dues to any statewide or national organization of retail permit holders.
  - (c) A manufacturer or supplier may participate in retail permit holder association conventions, retail trade shows, and meetings. A manufacturer or supplier may:
    - (i) Display its products at a convention or trade show;
    - (ii) Rent display booth space if the rental fee is not excessive and is the same as that paid by all exhibitors;
    - (iii) Provide its own hospitality, which is independent from association-sponsored activities;
    - (iv) Purchase tickets to functions and pay registration fees if the payments or fees are not excessive and are the same as those paid by all exhibitors; and
    - (v) Make payments for advertisements in programs and brochures issued by retail permit holder associations at a convention or trade show if the payments are not excessive and are the same as those paid by all exhibitors.

(B) No manufacturer or wholesale distributor of alcoholic beverages shall furnish advertising specialties or utilitarian specialties to any retail permit holder at less than their full cost, including glassware or other containers intended for the serving of alcohol beverages, except that:

- (1) Bottle or can openers, key chains, beads, bottle or can holders, buttons, novelty hats, lapel pins, calendars, and other similar items intended for use by consumers and pouring spouts, wine lists, and shelf stickers which bear a brand name or logo for any type of alcoholic beverage, may be furnished by the manufacturer, supplier, or wholesale distributor free of charge to any retail permit holder. The cost of each item shall not exceed ~~three~~ ten dollars per item.
- (2) Trays, bar caddys, bar mats, matches, crumbers, stir sticks, menu cards, paper coasters, foam scrapers, olive picks, back bar display pieces, lighters, cigar cutters, T-shirts, hats, wine bottle seals, buckets, glassware or other containers intended for the serving of alcohol beverages, and other similar items, which bear a brand name or logo for any type of alcoholic beverage, may be furnished by the manufacturer or supplier free of charge to any retail permit holder. The cost of each item shall not exceed twenty-five dollars per item and at no cost to the wholesale permit holder. ~~However, no manufacturer or supplier shall furnish to an individual retail permit holder more than twenty-five dollars worth of glassware or other containers intended for the serving of alcohol beverages at one time, and shall not furnish glassware to an individual retail permit holder more than twice per year.~~
- (3) Temporary display racks, clocks, and price boards of any type may be furnished directly by the manufacturer or supplier, without expense to the wholesale distributor, free of charge to any retail permit holder if they bear a brand name and the cost of any such item furnished does not exceed three hundred dollars per item. Said clocks and price boards shall not be considered to be electric or neon signs under paragraph (G) of rule 4301:1-1-44 of the Administrative Code, provided that they are not displayed in the show windows of a retail permit premises.
- (4) Signs, banners, posters, placards, designs, mirrors, devices, including illuminated devices, decorations, graphic displays, or other similar items bearing advertising and for use in the windows or elsewhere in the interior of a retail establishment, may be furnished free of charge to a retail permit holder by a manufacturer, supplier, importer, or wholesale distributor, provided that the manufacturer, supplier, importer, or wholesale distributor shall not directly or indirectly pay or credit the retail permit holder for displaying such items or for any expense incidental to their operation. Such

items may also include the brand name, price, and the retail permit holder's name, address, slogan, marking, or other logo.

(5) A manufacturer or wholesale distributor may render to a retailer such incidental services as are mutually beneficial to the merchandising of their product, and are not otherwise prohibited by law.

(a) The rearranging or resetting of all or part of a retail permit premises by an individual manufacturer, supplier, or wholesale distributor is not hereby authorized.

(b)

(i) The manufacturer, wholesale distributor, or retail permit holder initiating a set must give written notice of the date and time of the set and the name of their contact person to all A or B permit holders supplying product to the retail permit holder at least twenty-four hours prior to a scheduled set of the premises.

(ii) The manufacturer, wholesale distributor, or retail permit holder initiating a reset must give written notice of the date and time of the reset, and the name of their contact person to all A or B permit holders supplying product to the retail permit holder at least five days, not including Saturday or Sunday, prior to a scheduled reset of the premises.

(iii) The written notice may be delivered in person, via mail, or via facsimile. No notice is required when a set or reset involves alcoholic beverages supplied by only a single A or B permit holder.

(c) During a set or reset, an A or B permit holder is prohibited from arranging any brands of alcoholic beverages other than their own brands, or affixing price stickers or any other markers to individual containers.

(d) Set of a retail permit holder's premises or a display in a retail permit holder's premises.

(i) For purposes of this rule, the word "set" means the creation of a display area for alcoholic beverages within a retail permit premises. A set occurs either when a new location is established

by a retail permit holder or a new display is established by an A or B permit holder in a retail permit holder's premises.

- (ii) During a set, A or B permit holders may: design their own outpost, end cap, bulk aisle display, or other similar display, in the space assigned to them by the retail permit holder; place price signs on a display they create; or remove alcoholic beverages from the retail permit holder's storage area to the display area to be used in the creation of the display.
- (e) Reset of a retail permit holder's premises or a display in a retail permit holder's premises.
  - (i) For purposes of this rule, the word "reset" means the rearrangement of alcoholic beverages in a display area within a retail permit premises. A reset may be initiated by a retail permit holder or an A or B permit holder that supplies alcoholic beverages to the retail permit holder.
  - (ii) During a reset, an A or B permit holder is prohibited from accepting for return or exchange from the retail permit holder, or returning to the retail permit holder's storage area, any alcoholic beverages that will not fit in the area assigned by the retail permit holder for the reset.
- (f) For purposes of this rule, "stocking" of alcoholic beverages mean the refilling or replenishment of empty or partially empty shelves or displays. A and B permit holders are prohibited from stocking alcoholic beverages in any retail permit premises, except as provided for in paragraph (B)(2)(d)(ii) of this rule.
- (g) For purposes of this rule, "rotation" of or "rotating" alcoholic beverages means the rearrangement of alcoholic beverages within a pre-assigned space, moving the older containers to the front and the newer containers to the back, to ensure that the older containers sell first. A and B permit holders may rotate alcoholic beverages that they supplied to a retail permit holder within shelves, end caps, display areas, or storage rooms. A and B permit holders are prohibited from moving alcoholic beverages from one area to another, i.e. from storage room to end cap. Where end caps or other displays are used, A and B permit holders are permitted to move alcoholic beverages from within an area, such as from one sales area to another sales area, i.e. from end cap to shelf, but only to ensure

that the older containers on the sales floor sell first.

- (6) The division of liquor control may allow packaging of spirituous liquor with nonalcoholic items without increasing the price of the spirituous liquor.
  - (7) A manufacturer or supplier may give their own logo- or brand-identified items, which have a cost of less than twenty-five dollars per item, directly to consumers on a retail permit premises.
  - (8) Utilitarian display enhancers, whether brand identified or not, which cost two hundred dollars or less, may be provided free of charge by manufacturers or suppliers to retail permit holders for use in alcoholic beverage displays on the retail permit premises. All utilitarian display enhancers must be returned to the manufacturer, supplier, or their agent, that furnished them when the display is taken down.
- (C) No manufacturer or wholesale distributor of alcoholic beverages shall sell or deliver to any retail permit premises any alcoholic beverages that the retail permit holder is not authorized to resell by law.
- (D)
- (1) No wholesale distributor of alcoholic beverages may sell or deliver to another wholesale distributor of alcoholic beverages any alcoholic beverages that the wholesale distributor, to whom said alcoholic beverages are sold or delivered, is not authorized to resell by law and by written agreement with the manufacturer, the supplier authorized by the manufacturer to import such alcoholic beverages into Ohio, or pursuant to section 4301.241 of the Revised Code.
  - (2) When alcoholic beverages are imported from without the state of Ohio, the wholesale distributor receiving said alcoholic beverages, including B-2 permit holders receiving alcoholic beverages from B-5 permit holders, must have authorization from the manufacturer of the product or from the supplier that the manufacturer has authorized to import such product in Ohio.
  - (3) The division shall not grant consent to import for, or approve the registration of, any brand of beer or intoxicating liquor until the supplier files the appropriate forms with the division. Such filing shall consist of the filing of the applications for supplier and label registration and territory designation forms with the division by the supplier. In addition, the division of liquor control shall not grant consent to import or approve the registration of any brand of

beer or intoxicating liquor to any party if consent to import or registration for such brand has already been granted to any other party and is currently in effect. The division shall not grant consent to import, or approve the registration or accept a territory designation form if it would allow any A or B permit holder to distribute the same brand or brands of beer or intoxicating liquor within the same sales area or territory assigned to another A or B permit holder by the manufacturer or the supplier authorized by the manufacturer to import such products in Ohio.

- (a) Upon the appointment or change of appointment of the supplier by a manufacturer, the supplier shall immediately provide the division of liquor control with evidence of written authorization from the manufacturer that it represents that brand or those brands of beer or intoxicating liquor in Ohio.
  - (b) Failure on the part of any supplier to provide the division with evidence of the manufacturer's authorization, or to discontinue shipping upon termination of any authorization, shall be cause for the division to cite the supplier before the commission for suspension or revocation of that supplier's registration in Ohio.
- (4) No wholesale distributor shall handle or deliver any brand of alcoholic beverage that has been introduced for sale or otherwise acquired for sale in the state of Ohio after November 1, 1985, in any sales area or territory that has not been assigned by the manufacturer or the supplier authorized by such manufacturer to import the brand or brands into Ohio. The manufacturer or supplier shall file with the division a description of the designated sales area or territory, with a copy sent to the affected wholesale distributor.
- (E) No manufacturer, supplier, or wholesale distributor of alcoholic beverages shall accept the return of or repurchase any alcoholic beverages from any retail permit holder, and no manufacturer or supplier shall accept the return of or repurchase any alcoholic beverages from any wholesale distributor, except as follows:
  - (1) The manufacturer, supplier, or wholesale distributor may, but shall not be required to, repurchase from a retail permit holder any alcoholic beverages when the retail permit holder's permit has been revoked, not renewed, or the right to sell the alcoholic beverages has been canceled in any manner by law or by action of the manufacturer or supplier, provided that the alcoholic beverages are sealed and intact.
  - (2)

- (a) The manufacturer, supplier, or wholesale distributor may, but shall not be required to, replace with the same or similar alcoholic beverages any alcoholic beverages when the container or labels have deteriorated or become damaged, or when a package or product is discontinued by a manufacturer. Any alcoholic beverages that are being replaced shall be replaced with a package or product of comparable price.
  - (b) When any alcoholic beverages, in the opinion of the person supplying said beverages, are unpalatable or are about to become unpalatable, such person may replace said beverages with the same or similar alcoholic beverages.
  - (c) When any alcoholic beverages are delivered in error, the manufacturer, supplier, or wholesale distributor may pick up the alcoholic beverages within seven days, not including Saturday or Sunday, from the original date of delivery.
  - (d) Except for unpalatable alcoholic beverages, it is further provided that no manufacturer or wholesale distributor shall repurchase or replace any alcoholic beverages in the possession of a retail permit holder unless the contents are sealed and intact, and were originally sold by the manufacturer or wholesale distributor, or their immediate predecessor.
- (F) No provision of this rule shall be construed to affect or modify the provisions of sections 4301.22 or 4301.24 of the Revised Code or rule 4301:1-1-44 of the Administrative Code. Violations of this rule shall be grounds for revoking or suspending any permit or permits, and in the event the person violating said rule is a manufacturer or supplier located outside of Ohio, the violation of this rule shall subject such manufacturer or supplier to a suspension or revocation of the consent to import into this state.
- (G) No A or B permit holder may accept a cash deposit or any form of prepayment from a retail permit holder, which cash deposit or prepayment is to be credited against future deliveries of alcoholic beverages, except where said cash payment is in the exact amount of a specific order to be shipped upon receipt of payment. No retail permit holder shall offer a cash deposit or prepayment except as provided herein.
- (H)
- (1) No manufacturer, supplier, or their employees who are currently registered solicitors pursuant to Chapters 4301. and 4303. of the Revised Code and rule 4301-3-01 of the Administrative Code, shall sell or offer for sale to any

wholesale distributor, and no wholesale distributor shall purchase or receive from any manufacturer or supplier, or their employees who are currently registered solicitors pursuant to Chapters 4301. and 4303. of the Revised Code and rule 4301-3-01 of the Administrative Code, any alcoholic beverages except for cash upon receipt of such alcoholic beverages in saleable condition and upon receipt of the sales invoice. The determination of saleable condition by the wholesale distributor must occur within five days, not including Saturday or Sunday, of receipt of the alcoholic beverages.

- (2) No wholesale distributor shall sell or offer to sell to any retail permit holder, and no retail permit holder shall purchase or receive from any wholesale distributor, any alcoholic beverage except for cash upon receipt of such alcoholic beverage.
- (I) Any permit holder who pays the application processing fee, permit fee, or renewal permit fee to the division, or who pays for alcoholic beverages from a manufacturer, supplier, or wholesale distributor, with a check that is not honored for payment by the permit holder's financial institution, shall be subject to rejection of its application, or suspension or revocation of its permit by the commission, or administrative citation by the division.
- (J)
  - (1) No wholesale permit holder shall sell any brand of alcoholic beverages to any retail permit holder, for resale at retail, if the retail permit premises are located outside the wholesale permit holder's exclusive sales area or territory, without first receiving consent from the division of liquor control and the manufacturer or supplier of such alcoholic beverages.
  - (2) No retail permit holder shall purchase any brand of alcoholic beverages from any wholesale permit holder, for resale at retail, if the retail permit premises are located outside the wholesale permit holder's exclusive sales area or territory, except as provided for in this rule.
- (K) Depletion allowance programs are prohibited.
- (L) Wholesale distributors may furnish temporary draft equipment to any retail permit holder, who is authorized to sell beer for on-premises consumption, for a period not to exceed seven days and not more than once per month per retail permit holder if a fair market rental is paid by the retail permit holder.

4301:1-1-62

**Inspection of permit premises - hindering or assaulting  
forbidden.**

A liquor permit holder, their agent, or employee shall, upon presentation of credentials by a compliance ~~officer~~ agent of the division of liquor control, enforcement agent of the department of public safety, or any officer of the law, at all times, immediately admit such compliance ~~officer~~ agent, enforcement agent, or officer to the permit premises for any lawful purpose.

No liquor permit holder shall personally or by an agent or employee assault a compliance ~~officer~~ agent of the division of liquor control, enforcement agent of the department of public safety, or officer of the law, or incite an assault by others upon such compliance ~~officer~~ agent, enforcement agent, or officer, or allow patrons or others to interfere with an inspection or investigation of the permit premises.

PROPOSED AMENDMENTS  
SUBMITTED BY THE  
DIVISION OF LIQUOR  
CONTROL



Department  
of Commerce

Division of Liquor Control

Sheryl Maxfield, Director

Mike DeWine, Governor  
Jon Husted, Lt. Governor

**MEMORANDUM**

TO: Ron O'Brien, Chair, Liquor Control Commission  
James E. Carnes, Vice Chair, Liquor Control Commission  
Mike Stinziano, Member, Liquor Control Commission  
Sarah Creedon, Executive Director, Liquor Control Commission  
Dominic Panzera, Assistant Director, Liquor Control Commission

FROM: James V. Canepa, Superintendent, Division of Liquor Control

DATE: November 28, 2022

RE: Comments and Proposals for Commission Rules

~~~~~

On behalf of the Division of Liquor Control (Division), I would like to thank you for giving us the opportunity to participate through comments in the Ohio Liquor Control Commission's (Commission) 2022 rule review. The Division's recommendations and comments are submitted in accordance with Ohio Administrative Code 4301:1-1-66. Attached to the Division's e-mail transmission of this memorandum are the Division's proposed amendments in Word format.

The Division's proposed amendments are summarized below.

- 4301:1-1-03 The Division recommends these amendments to the minimum pricing requirements to account for the growing number of permit holders selling at retail. The current language implies that only retail permit holders make sales to customers at retail.
- 4301:1-1-22 The Division recommends a notation in division (B) of this rule which acknowledges that suppliers with B-2a, S-1, and S-2 permits may by-pass a wholesaler.
- 4301:1-1-24 The Division recommends the indicated single word substitution in order to better effectuate the purpose of the rule.
- 4301:1-1-33 The Division recommends the indicated deletions in order to be consistent with R.C. 4303.251(B). Also, the Division points out a minor typographical error in the second sentence of subdivision (C)(3) and recommends that the period which is located before the word "Administrative" be moved to the end of the sentence.
- 4301:1-1-43 The Division recommends the excision of the final sentence in subdivision (B)(2) because it is not fully consistent with the recently enacted R.C. 4301.246.
- 4301:1-1-49 The Division recommends the addition of new permits A-2f, A-3a, A-5, F-10, and F-11 to those identified in division (B) of this rule. Also, the Division points out a

minor typographical error in subdivision (B)(3) and recommends that a period be added to the end of the sentence.

4301:1-1-56 The Division proposes the elimination of this rule because recent amendments to R.C. 4301.22(A)(3) make this rule unnecessary.

4301:1-1-62 The Division recommends changing “compliance officer” to “compliance agent,” to be consistent with recent statutory changes.

If you have any questions about the Division's recommendations or comments, please do not hesitate to contact me at (614) 644-2472.

cc: Sharon Mull, Chief Counsel, Division of Liquor Control  
Abby Schafer, Legislative Director, Ohio Department of Commerce  
Joseph Schmansky, AAG, Liquor Unit, Charitable Law-Liquor/Gaming Unit, OAG  
Anne Vitale, Associate Legal Counsel, Ohio Department of Public Safety

Proposed Amendments to LCC Rules 3, 22, 24, 33, 43, 49, 56, 62

## 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 this chapter, as provided by the laws of this state.

**(C) Minimum price:** This paragraph 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 per cent to the "wholesale invoice cost," including freight and taxes, except that B-5 permit holders may sell to B-2 or B-5 permit holders at no less than the "wholesale invoice cost".

**(c)** ~~Retail permit holders and A-1-A p~~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 per cent 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 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 per cent over the minimum retail invoice cost.

- (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 wine 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 Class D-5 type of 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.

4301:1-1-22. Consent for importing alcoholic beverages for resale in Ohio.

**(A)** No alcoholic beverages shall be imported into the state of Ohio for resale except upon the written consent of the division. Application for such consent shall be upon forms provided by the division. Consent must be granted by the division prior to said importation. The division shall not grant consent to any party if consent has already been granted to any other party, and is currently in effect. The division shall not grant consent to any supplier to import alcoholic beverages in any calendar year unless the supplier files an affidavit with the division stating that said supplier will comply with all laws of the state of Ohio and rules of the commission concerning alcoholic beverages. Violation of any of the laws or rules may be cause for suspension or revocation of the authorization to import by the commission.

**(B)** All alcoholic beverages imported into this state for purposes of re-sale to retail permit holders, except those sold by a B-2a, S-1, or S-2 permit holder, must be consigned and delivered to the warehouse of a wholesale distributor.

4301:1-1-24. Miscellaneous beer, wine, and mixed beverage requirements.

This rule is promulgated pursuant to the provisions of section 4301.13 of the Revised Code to regulate and stabilize the sale and distribution of beer, wine, and mixed beverages in Ohio.

**(A)** The division shall not issue or renew a B-1, B-2, B-3, B-4, or B-5 permit unless at all times throughout the permit year, the applicant:

- (1)** Leases or owns warehouse space. Such space shall be sufficient to store at one time a stock of beer, wine, or mixed beverages equal to ten per cent or more of the wholesale distributor's annual case volume of beer, wine, or mixed beverage sales to retail permit holders.
- (2)** Leases or owns delivery equipment.
- (3)** Maintains brand representation with at least one beer, wine, or mixed beverage manufacturer; and
- (4)** Maintains sales of beer, wine, or mixed beverages to retail permit holders within the applicant's assigned sales area or territory making sales to at least ten per cent of the retail permit holders in said area, with separate sales to retail permit holders accounting for at least ninety per cent of the gallonage handled by the applicant.

**(B)** The division shall not issue or renew a B-1, B-2, B-3, B-4, or B-5 permit to any person who does not in good faith actually carry on or intend to carry on a bona fide beer, wine, or mixed beverage wholesale distributor business by sale to ~~retail~~ other permit holders. Failure by a wholesale distributor to actively and in good faith engage in the wholesale distributor business for a period in excess of thirty days, shall be prima facie evidence that said wholesale distributor is not actively and in good faith engaging in said wholesale distributor business.

**(C)** No retail permit holder shall have any financial interest, directly or indirectly by stock ownership or through interlocking directors in a corporation, or otherwise, in the establishment, maintenance, or promotion of, a B-1, B-2, B-3, B-4, or B-5 permit holder.

**(D)** The commission may suspend or revoke the license or authorization to import or operate of any manufacturer, supplier, importer, bottler, wholesale distributor, or retail permit holder in Ohio for a violation of these rules or any part thereof.

O.A.C. 4301:1-1-33. Consumer tasting activities and sampling at retail permit premises.

**(A)** The following definitions apply to this rule:

**(1)** “Consumer Product Instruction”, means a pre-scheduled organized event during which a manufacturer, supplier, broker, wholesale distributor, or their registered solicitor provides the public with one or more alcoholic beverages for the purpose of providing consumer instruction on the quality and characteristics of the beverage or beverages provided.

**(2)** “Sample Serving<sub>1</sub>”, sometimes referred to as “Trade Spending” or “Bar Spending<sub>1</sub>”, means an alcoholic beverage which is provided by a manufacturer, supplier, broker, wholesale distributor or their registered solicitors to one or more customers in a retail permit premises ~~licensed for on-premises consumption~~, when the beverage is not provided for the purpose of “Consumer Product Instruction.”

**(B)** A manufacturer, supplier, broker, wholesale distributor, or their registered solicitor may conduct “Consumer Product Instruction” at a retail permit premises ~~licensed for on-premises consumption~~ during normal business hours, but not to exceed two hours in length, subject to the following requirements:

**(1)** The alcoholic beverages featured in the “Consumer Product Instruction” must be products:

- (a)** That are registered for sale in Ohio,
- (b)** That the permit holder is authorized to sell ~~for on-premises general consumption~~ pursuant to its liquor permit,
- (c)** That the permit holder has purchased lawfully, and,
- (d)** That the permit holder has in stock.

**(2)** The manufacturer, supplier, broker, wholesale distributor, or their registered solicitor shall purchase the alcoholic beverage used in the “Consumer Product Instruction” from the retail permit holder. The price paid for the alcoholic beverage shall not exceed the price listed on the retail permit holder’s schedule of prices, as required under rule 4301:1-1-50 of the Administrative Code.

**(3)** A consumer may be furnished up to a total of two servings of the below beverages as part of a Consumer Product Instruction event, and each serving shall be limited to the following quantities:

- (a)** Spirituous liquor: Not more than 1.5 ounces,
- (b)** Mixed beverages: Not more than four ounces,
- (c)** Wine: Not more than four ounces, and,
- (d)** Beer: Not more than twelve ounces.

**(4)** No manufacturer, supplier, broker, wholesale distributor, or their registered solicitor, or any permit holder shall identify a retail permit premises in any off-premises advertising for any “Consumer Product Instruction.”

**(5)** No manufacturer, supplier, broker, wholesale distributor, or their registered solicitor shall compensate or agree to compensate the permit holder, nor shall the permit holder accept or agree to accept compensation for the granting of permission to hold or for the performance of "Consumer Product Instruction."

**(C)** In addition to conducting "Consumer Product Instruction," a manufacturer, supplier, broker, wholesale distributor, or their registered solicitor may provide customers in a retail permit premises ~~licensed for on-premises consumption~~ with "Sample Servings" of the manufacturer's, supplier's, broker's or wholesale distributor's products, subject to the following requirements:

**(1)** The provision of a "Sample Serving" is not contingent upon the purchase of any other alcoholic beverage.

**(2)** The "Sample Serving" must be a product:

**(a)** That is registered for sale in Ohio,

**(b)** That the permit holder is authorized to sell ~~for on-premises general consumption~~ pursuant to its liquor permit,

**(c)** That the permit holder has purchased lawfully, and,

**(d)** That the permit holder has in stock.

**(3)** The manufacturer, supplier, broker, wholesale distributor, or their registered solicitor shall purchase the "Sample Serving" from the retail permit holder. The price paid for the "Sample Serving" shall not exceed the price listed on the retail permit holder's schedule of prices, as required under rule 4301:1-1-50 of the ~~Administrative Code~~.

**(4)** A consumer may be furnished up to a total of two "Sample Servings" of the below beverages during a twenty four hour period, and each "Sample Serving" shall be limited to the following quantities:

**(a)** Spirituous liquor: Not more than 1.5 ounces,

**(b)** Mixed beverages: Not more than four ounces,

**(c)** Wine: Not more than four ounces, and,

**(d)** Beer: Not more than twelve ounces.

**(D)** The manufacturer, supplier, broker, wholesale distributor or their registered solicitor and the retail permit holder or their agent and/or employee shall be responsible for any violations of Chapters 4301. and 4303. of the Revised Code, or rules promulgated thereunder in engaging in the activities authorized by this rule.

4301:1-1-43. Furnishing signs, fixtures, equipment, advertising materials, and advertising specialties, return of merchandise: limitations thereon: prohibited practices and prohibition of cash deposit or prepayment.

This rule reflects the policy and intent of the commission to maintain effective control over the sale and distribution of alcoholic beverages and to prevent abuses caused by the disorderly and unregulated sale of such products. Alcoholic beverages are a unique product that require strict regulation to: promote temperance by preventing consumption by underage persons and by discouraging abusive consumption by adults, promote orderly markets by requiring transparent, accountable and stable distribution and the prevention of unfair competition and facilitate the collection of taxes related to the sale and consumption of such products.

**(A)**

**(1)** No retail permit holder shall acquire by purchase, either directly or indirectly, or by any means whatsoever, any signs, fixtures, furniture, or other equipment used in connection with the conduct of the retail business from any manufacturer or wholesale distributor of alcoholic beverages at a cost less than the full cost to the manufacturer or wholesale distributor. No manufacturer or wholesale distributor of alcoholic beverages shall sell or furnish, either directly or indirectly, or by any means whatsoever, any signs, fixtures, furniture, or other equipment used in connection with the operation of a retail permit holder's business at a cost less than the full cost to the manufacturer or wholesale distributor, except as otherwise provided in sections 4301.22 and 4301.24 of the Revised Code, rule 4301:1-1-44 of the Administrative Code, and this rule.

**(2)** No retail or wholesale permit holder shall accept any premiums, gifts, discounts based on quantity of sales or any other reason, cash discount sales, rebates, or kickbacks, either in money, merchandise, or thing of value, from any manufacturer or wholesale distributor of alcoholic beverages. No manufacturer or wholesale distributor of alcoholic beverages shall offer or give to any retail or wholesale permit holder any premiums, gifts, discounts based on quantity of sales or any other reason, cash discount sales, rebates, or kickbacks, either in money, merchandise, or thing of value.

**(3)** A sales or incentive program may be conducted by the owner of the brand name or trademark, or an authorized supplier of alcoholic beverages, on an interstate, national, or statewide basis, so long as that program includes an award, payment, or reduction of price on future purchases to a wholesale permit holder or their employee, and may be based on the sales of the product.

**(4)** No retail permit holder shall solicit, for their own benefit, donations of money, merchandise, thing of value, or credit from any wholesale distributor or manufacturer of alcoholic beverages. No retail permit holder shall sell, for their own benefit, tickets to parties, picnics, entertainment, or similar events to any wholesale distributor or manufacturer of alcoholic beverages. No retail permit holder shall become a member of or pay dues to any organization of manufacturers or wholesale distributors.

**(5)** No wholesale distributor or manufacturer of alcoholic beverages shall solicit, for their own benefit, donations of money, merchandise, or thing of value from, or give credit to, any retail permit holder. No wholesale distributor or manufacturer of alcoholic beverages shall

sell, for their own benefit, tickets to parties, picnics, entertainment, or similar events to any retail permit holder.

- (a)** No wholesale distributor of alcoholic beverages shall become a member of or pay dues to any organization of retail permit holders.
- (b)** A manufacturer may become a member of or pay dues to any statewide or national organization of retail permit holders.
- (c)** A manufacturer or supplier may participate in retail permit holder association conventions, retail trade shows, and meetings. A manufacturer or supplier may:
  - (i)** Display its products at a convention or trade show;
  - (ii)** Rent display booth space if the rental fee is not excessive and is the same as that paid by all exhibitors;
  - (iii)** Provide its own hospitality, which is independent from association sponsored activities;
  - (iv)** Purchase tickets to functions and pay registration fees if the payments or fees are not excessive and are the same as those paid by all exhibitors; and
  - (v)** Make payments for advertisements in programs and brochures issued by retail permit holder associations at a convention or trade show if the payments are not excessive and are the same as those paid by all exhibitors.

**(B)** No manufacturer or wholesale distributor of alcoholic beverages shall furnish advertising specialties or utilitarian specialties to any retail permit holder at less than their full cost, including glassware or other containers intended for the serving of alcohol beverages, except that:

- (1)** Bottle or can openers, key chains, beads, bottle or can holders, buttons, novelty hats, lapel pins, calendars, and other similar items intended for use by consumers and pouring spouts, wine lists, and shelf stickers which bear a brand name or logo for any type of alcoholic beverage, may be furnished by the manufacturer, supplier, or wholesale distributor free of charge to any retail permit holder. The cost of each item shall not exceed three dollars per item.
- (2)** Trays, bar caddys, bar mats, matches, crumbers, stir sticks, menu cards, paper coasters, foam scrapers, olive picks, back bar display pieces, lighters, cigar cutters, Tshirts, hats, wine bottle seals, buckets, glassware or other containers intended for the serving of alcohol beverages, and other similar items, which bear a brand name or logo for any type of alcoholic beverage, may be furnished by the manufacturer or supplier free of charge to any retail permit holder. The cost of each item shall not exceed twenty-five dollars per item and at not cost to the wholesale permit holder. ~~However, no manufacturer or supplier shall furnish to an individual retail permit holder more than twenty-five dollars worth of glassware or other containers intended for the serving of alcohol beverages at one time, and shall not furnish glassware to an individual retail permit holder more than twice per year.~~
- (3)** Temporary display racks, clocks, and price boards of any type may be furnished directly by the manufacturer or supplier, without expense to the wholesale distributor, free of charge to any retail permit holder if they bear a brand name and the cost of any such

item furnished does not exceed three hundred dollars per item. Said clocks and price boards shall not be considered to be electric or neon signs under paragraph (G) of rule 4301:1-1-44 of the Administrative Code, provided that they are not displayed in the show windows of a retail permit premises.

**(4)** Signs, banners, posters, placards, designs, mirrors, devices, including illuminated devices, decorations, graphic displays, or other similar items bearing advertising and for use in the windows or elsewhere in the interior of a retail establishment, may be furnished free of charge to a retail permit holder by a manufacturer, supplier, importer, or wholesale distributor, provided that the manufacturer, supplier, importer, or wholesale distributor shall not directly or indirectly pay or credit the retail permit holder for displaying such items or for any expense incidental to their operation. Such items may also include the brand name, price, and the retail permit holder's name, address, slogan, marking, or other logo.

**(5)** A manufacturer or wholesale distributor may render to a retailer such incidental services as are mutually beneficial to the merchandising of their product, and are not otherwise prohibited by law.

**(a)** The rearranging or resetting of all or part of a retail permit premises by an individual manufacturer, supplier, or wholesale distributor is not hereby authorized.

**(b)**

**(i)** The manufacturer, wholesale distributor, or retail permit holder initiating a set must give written notice of the date and time of the set and the name of their contact person to all A or B permit holders supplying product to the retail permit holder at least twenty-four hours prior to a scheduled set of the premises.

**(ii)** The manufacturer, wholesale distributor, or retail permit holder initiating a reset must give written notice of the date and time of the reset, and the name of their contact person to all A or B permit holders supplying product to the retail permit holder at least five days, not including Saturday or Sunday, prior to a scheduled reset of the premises.

**(iii)** The written notice may be delivered in person, via mail, or via facsimile. No notice is required when a set or reset involves alcoholic beverages supplied by only a single A or B permit holder.

**(c)** During a set or reset, an A or B permit holder is prohibited from arranging any brands of alcoholic beverages other than their own brands, or affixing price stickers or any other markers to individual containers.

**(d) Set of a retail permit holder's premises or a display in a retail permit holder's premises.**

**(i)** For purposes of this rule, the word "set" means the creation of a display area for alcoholic beverages within a retail permit premises. A set occurs either when a new location is established by a retail permit holder or a new display is established by an A or B permit holder in a retail permit holder's premises.

**(ii)** During a set, A or B permit holders may: design their own outpost, end cap, bulk aisle display, or other similar display, in the space assigned to them by the

retail permit holder; place price signs on a display they create; or remove alcoholic beverages from the retail permit holder's storage area to the display area to be used in the creation of the display.

**(e) Reset of a retail permit holder's premises or a display in a retail permit holder's premises.**

**(i)** For purposes of this rule, the word "reset" means the rearrangement of alcoholic beverages in a display area within a retail permit premises. A reset may be initiated by a retail permit holder or an A or B permit holder that supplies alcoholic beverages to the retail permit holder.

**(ii)** During a reset, an A or B permit holder is prohibited from accepting for return or exchange from the retail permit holder, or returning to the retail permit holder's storage area, any alcoholic beverages that will not fit in the area assigned by the retail permit holder for the reset.

**(f)** For purposes of this rule, "stocking" of alcoholic beverages mean the refilling or replenishment of empty or partially empty shelves or displays. A and B permit holders are prohibited from stocking alcoholic beverages in any retail permit premises, except as provided for in paragraph (B)(2)(d)(ii) of this rule.

**(g)** For purposes of this rule, "rotation" of or "rotating" alcoholic beverages means the rearrangement of alcoholic beverages within a pre-assigned space, moving the older containers to the front and the newer containers to the back, to ensure that the older containers sell first. A and B permit holders may rotate alcoholic beverages that they supplied to a retail permit holder within shelves, end caps, display areas, or storage rooms. A and B permit holders are prohibited from moving alcoholic beverages from one area to another, i.e. from storage room to end cap. Where end caps or other displays are used, A and B permit holders are permitted to move alcoholic beverages from within an area, such as from one sales area to another sales area, i.e. from end cap to shelf, but only to ensure that the older containers on the sales floor sell first.

**(6)** The division of liquor control may allow packaging of spirituous liquor with nonalcoholic items without increasing the price of the spirituous liquor.

**(7)** A manufacturer or supplier may give their own logo- or brand-identified items: which have a cost of less than twenty-five dollars per item, directly to consumers on a retail permit premises.

**(8)** Utilitarian display enhancers, whether brand identified or not, which cost two hundred dollars or less, may be provided free of charge by manufacturers or suppliers to retail permit holders for use in alcoholic beverage displays on the retail permit premises. All utilitarian display enhancers must be returned to the manufacturer, supplier, or their agent, that furnished them when the display is taken down.

**(C)** No manufacturer or wholesale distributor of alcoholic beverages shall sell or deliver to any retail permit premises any alcoholic beverages that the retail permit holder is not authorized to resell by law.

**(D)**

**(1)** No wholesale distributor of alcoholic beverages may sell or deliver to another wholesale distributor of alcoholic beverages any alcoholic beverages that the wholesale distributor, to whom said alcoholic beverages are sold or delivered, is not authorized to resell by law and by written agreement with the manufacturer, the supplier authorized by the manufacturer to import such alcoholic beverages into Ohio, or pursuant to section 4301.241 of the Revised Code.

**(2)** When alcoholic beverages are imported from without the state of Ohio, the wholesale distributor receiving said alcoholic beverages, including B-2 permit holders receiving alcoholic beverages from B-5 permit holders, must have authorization from the manufacturer of the product, or from the supplier that the manufacturer has authorized to import such product in Ohio.

**(3)** The division shall not grant consent to import for, or approve the registration of, any brand of beer or intoxicating liquor until the supplier files the appropriate forms with the division. Such filing shall consist of the filing of the applications for supplier and label registration and territory designation forms with the division by the supplier. In addition, the division of liquor control shall not grant consent to import or approve the registration of any brand of beer or intoxicating liquor to any party if consent to import or registration for such brand has already been granted to any other party and is currently in effect. The division shall not grant consent to import, or approve the registration or accept a territory designation form if it would allow any A or B permit holder to distribute the same brand or brands of beer or intoxicating liquor within the same sales area or territory assigned to another A or B permit holder by the manufacturer or the supplier authorized by the manufacturer to import such products in Ohio.

**(a)** Upon the appointment or change of appointment of the supplier by a manufacturer, the supplier shall immediately provide the division of liquor control with evidence of written authorization from the manufacturer that it represents that brand or those brands of beer or intoxicating liquor in Ohio.

**(b)** Failure on the part of any supplier to provide the division with evidence of the manufacturer's authorization, or to discontinue shipping upon termination of any authorization, shall be cause for the division to cite the supplier before the commission for suspension or revocation of that supplier's registration in Ohio.

**(4)** No wholesale distributor shall handle or deliver any brand of alcoholic beverage that has been introduced for sale or otherwise acquired for sale in the state of Ohio after November 1, 1985, in any sales area or territory that has not been assigned by the manufacturer or the supplier authorized by such manufacturer to import the brand or brands into Ohio. The manufacturer or supplier shall file with the division a description of the designated sales area or territory, with a copy sent to the affected wholesale distributor.

**(E)** No manufacturer, supplier, or wholesale distributor of alcoholic beverages shall accept the return of or repurchase any alcoholic beverages from any retail permit holder, and no manufacturer or supplier shall accept the return of or repurchase any alcoholic beverages from any wholesale distributor, except as follows:

**(1)** The manufacturer, supplier, or wholesale distributor may, but shall not be required to, repurchase from a retail permit holder any alcoholic beverages when the retail permit

holder's permit has been revoked, not renewed, or the right to sell the alcoholic beverages has been canceled in any manner by law or by action of the manufacturer or supplier, provided that the alcoholic beverages are sealed and intact.

**(2)**

**(a)** The manufacturer, supplier, or wholesale distributor may, but shall not be required to, replace with the same or similar alcoholic beverages any alcoholic beverages when the container or labels have deteriorated or become damaged, or when a package or product is discontinued by a manufacturer. Any alcoholic beverages that are being replaced shall be replaced with a package or product of comparable price.

**(b)** When any alcoholic beverages, in the opinion of the person supplying said beverages, are unpalatable or are about to become unpalatable, such person may replace said beverages with the same or similar alcoholic beverages.

**(c)** When any alcoholic beverages are delivered in error, the manufacturer, supplier, or wholesale distributor may pick up the alcoholic beverages within seven days, not including Saturday or Sunday, from the original date of delivery.

**(d)** Except for unpalatable alcoholic beverages, it is further provided that no manufacturer or wholesale distributor shall repurchase or replace any alcoholic beverages in the possession of a retail permit holder unless the contents are sealed and intact, and were originally sold by the manufacturer or wholesale distributor, or their immediate predecessor.

**(F)** No provision of this rule shall be construed to affect or modify the provisions of sections 4301.22 or 4301.24 of the Revised Code or rule 4301:1-1-44 of the Administrative Code. Violations of this rule shall be grounds for revoking or suspending any permit or permits, and in the event the person violating said rule is a manufacturer or supplier located outside of Ohio, the violation of this rule shall subject such manufacturer or supplier to a suspension or revocation of the consent to import into this state.

**(G)** No A or B permit holder may accept a cash deposit or any form of prepayment from a retail permit holder, which cash deposit or prepayment is to be credited against future deliveries of alcoholic beverages, except where said cash payment is in the exact amount of a specific order to be shipped upon receipt of payment. No retail permit holder shall offer a cash deposit or prepayment except as provided herein.

**(H)**

**(1)** No manufacturer, supplier, or their employees who are currently registered solicitors pursuant to Chapters 4301. and 4303. of the Revised Code and rule 4301-301 of the Administrative Code, shall sell or offer for sale to any wholesale distributor, and no wholesale distributor shall purchase or receive from any manufacturer or supplier, or their employees who are currently registered solicitors pursuant to Chapters 4301. and 4303. of the Revised Code and rule 4301-3-01 of the Administrative Code, any alcoholic beverages except for cash upon receipt of such alcoholic beverages in saleable condition and upon receipt of the sales invoice. The determination of saleable condition by the wholesale distributor must occur within five days, not including Saturday or Sunday, of receipt of the alcoholic beverages.

**(2)** No wholesale distributor shall sell or offer to sell to any retail permit holder, and no retail permit holder shall purchase or receive from any wholesale distributor, any alcoholic beverage except for cash upon receipt of such alcoholic beverage.

**(I)** Any permit holder who pays the application processing fee, permit fee, or renewal permit fee to the division, or who pays for alcoholic beverages from a manufacturer, supplier, or wholesale distributor, with a check that is not honored for payment by the permit holder's financial institution, shall be subject to rejection of its application, or suspension or revocation of its permit, by the commission, or administrative citation by the division.

**(J)**

**(1)** No wholesale permit holder shall sell any brand of alcoholic beverages to any retail permit holder, for resale at retail, if the retail permit premises are located outside the wholesale permit holder's exclusive sales area or territory, without first receiving consent from the division of liquor control and the manufacturer or supplier of such alcoholic beverages.

**(2)** No retail permit holder shall purchase any brand of alcoholic beverages from any wholesale permit holder, for resale at retail, if the retail permit premises are located outside the wholesale permit holder's exclusive sales area or territory, except as provided for in this rule.

**(K)** Depletion allowance programs are prohibited.

Wholesale distributors may furnish temporary draft equipment to any retail permit holder, who is authorized to sell beer for on-premises consumption, for a period not to exceed seven days and not more than once per month per retail permit holder if a fair market rental is paid by the retail permit holder.

O.A.C. 4301:1-1-62. Inspection of permit premises - hindering or assaulting forbidden.

A liquor permit holder, their agent, or employee shall, upon presentation of credentials by a compliance ~~officer~~ agent of the division of liquor control, enforcement agent of the department of public safety, or any officer of the law, at all times, immediately admit such compliance ~~officer~~ agent, enforcement agent, or officer to the permit premises for any lawful purpose.

No liquor permit holder shall personally or by an agent or employee assault a compliance ~~officer~~ agent of the division of liquor control, enforcement agent of the department of public safety, or officer of the law, or incite an assault by others upon such compliance ~~officer~~ agent, enforcement agent, or officer, or allow patrons or others to interfere with an inspection or investigation of the permit premises.

PROPOSED AMENDMENT  
TO RULE 43 SUBMITTED BY  
THE WHOLESALE BEER  
AND WINE ASSOCIATION  
OF OHIO



## WHOLESALE BEER & WINE ASSOCIATION OF OHIO

37 W. BROAD STREET / SUITE 1170 / COLUMBUS, OHIO 43215  
614-224-3500 • 800-282-7639  
wbwao.org

June 29, 2023

VIA HAND DELIVERY AND EMAIL

Ms. Sarah Creedon  
Executive Director  
Liquor Control Commission  
77 South High Street, 18<sup>th</sup> Floor  
Columbus, Ohio 43215

Re: Proposed Amendment to LCC Rule 43

Dear Ms. Creedon,

On behalf of the Board of Directors and members of the Wholesale Beer and Wine Association of Ohio, this letter serves to respectfully request the Commission's consideration of a small change to LCC Rule 43 (B)(1). As we testified previously at several of the public hearings held this year by the Commission, we have been carefully considering requesting such a change. The proposed amended rule is attached and is quite straightforward. What we are asking the Commission to consider is an increase of the value of the items covered in Rule 43 (B) (1), the so-called "trinket" rule, from the current three dollar limit to ten dollars.

The impetus for this request stems from the fact that the permissible value of these items was last increased from two dollars to three dollars in 2007. In the sixteen years that have elapsed since then increased costs, other effects of inflation and new concepts for such logoed items have prompted our members to suggest that it is reasonable to now suggest an increase in the allowable amount per item from three dollars to ten dollars.

I am also copying via email Mr. Dom Panzera of your staff, Ms. Sharon Mull at the Division of Liquor Control, Legal Section, Ms. Anne Vitale of the Ohio Department of Public Safety, Investigative Unit and Mr. Joe Schmansky in the Office of the Attorney General, Liquor Unit in order to comply with the provisions of Rule 66.

Thank you for your cooperation and assistance in sharing this suggestion with the Commission. Please let me know if I can provide any further information at this time.

Sincerely,

TJB

**Rule 4301:1-1-43 | Furnishing signs, fixtures, equipment, advertising materials, and advertising specialties, return of merchandise: limitations thereon: prohibited practices and prohibition of cash deposit or prepayment.**

Ohio Administrative Code / 4301:1 / Chapter 4301:1-1 | General Provisions

**Effective:** August 27, 2007    **Promulgated Under:** 119.03

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This rule reflects the policy and intent of the commission to maintain effective control over the sale and distribution of alcoholic beverages and to prevent abuses caused by the disorderly and unregulated sale of such products. Alcoholic beverages are a unique product that require strict regulation to promote temperance by preventing consumption by underage persons and by discouraging abusive consumption by adults, promote orderly markets by requiring transparent, accountable and stable distribution and the prevention of unfair competition and facilitate the collection of taxes related to the sale and consumption of such products.

(A)

(1) No retail permit holder shall acquire by purchase, either directly or indirectly, or by any means whatsoever, any signs, fixtures, furniture, or other equipment used in connection with the conduct of the retail business from any manufacturer or wholesale distributor of alcoholic beverages at a cost less than the full cost to the manufacturer or wholesale distributor. No manufacturer or wholesale distributor of alcoholic beverages shall sell or furnish, either directly or indirectly, or by any means whatsoever, any signs, fixtures, furniture, or other equipment used in connection with the operation of a retail permit holder's business at a cost less than the full cost to the manufacturer or wholesale distributor, except as otherwise provided in sections 4301.22 and 4301.24 of the Revised Code, rule 4301:1-1-44 of the Administrative Code, and this rule.

(2) No retail or wholesale permit holder shall accept any premiums, gifts, discounts based on quantity of sales or any other reason, cash discount sales, rebates, or kickbacks, either in money, merchandise, or thing of value, from any manufacturer or wholesale distributor of alcoholic beverages. No manufacturer or wholesale distributor of alcoholic beverages shall offer or give to any retail or wholesale permit holder any premiums, gifts, discounts based on quantity of sales or any other reason, cash discount sales, rebates, or kickbacks, either in money, merchandise, or thing of value.

(3) A sales or incentive program may be conducted by the owner of the brand name or trademark, or an authorized supplier of alcoholic beverages, on an interstate, national, or statewide basis, so long as that program includes an award, payment, or reduction of price on future purchases to a wholesale permit holder or their employee, and may be based on the sales of the product.

(4) No retail permit holder shall solicit, for their own benefit, donations of money, merchandise, thing of value, or credit from any wholesale distributor or manufacturer of alcoholic beverages. No retail permit holder shall sell, for their own benefit, tickets to parties, picnics, entertainment, or similar events to any wholesale distributor or manufacturer of alcoholic beverages. No retail permit holder shall become a member of or pay dues to any organization of manufacturers or wholesale distributors.

(5) No wholesale distributor or manufacturer of alcoholic beverages shall solicit, for their own benefit, donations of money, merchandise, or thing of value from, or give credit to, any retail permit holder. No wholesale distributor or manufacturer of alcoholic beverages shall sell, for their own benefit, tickets to parties, picnics, entertainment, or similar events to any retail permit holder.

(a) No wholesale distributor of alcoholic beverages shall become a member of or pay dues to any organization of retail permit holders.

(b) A manufacturer may become a member of or pay dues to any statewide or national organization of retail permit holders.

(c) A manufacturer or supplier may participate in retail permit holder association conventions, retail trade shows, and meetings. A manufacturer or supplier may:

(i) Display its products at a convention or trade show;

(ii) Rent display booth space if the rental fee is not excessive and is the same as that paid by all exhibitors;

(iii) Provide its own hospitality, which is independent from association-sponsored activities;

(iv) Purchase tickets to functions and pay registration fees if the payments or fees are not excessive and are the same as those paid by all exhibitors; and

(v) Make payments for advertisements in programs and brochures issued by retail permit holder associations at a convention or trade show if the payments are not excessive and are the same as those paid by all exhibitors.

(B) No manufacturer or wholesale distributor of alcoholic beverages shall furnish advertising specialties or utilitarian specialties to any retail permit holder at less than their full cost, including glassware or other containers intended for the serving of alcohol beverages, except that:

(1) Bottle or can openers, key chains, beads, bottle or can holders, buttons, novelty hats, lapel pins, calendars, and other similar items intended for use by consumers and pouring spouts, wine lists, and shelf stickers which bear a brand name or logo for any type of alcoholic beverage, may be furnished by the manufacturer, supplier, or wholesale distributor free of charge to any retail permit holder. The cost of each item shall not exceed ~~three~~ ten dollars per item.

(2) Trays, bar caddys, bar mats, matches, crumbers, stir sticks, menu cards, paper coasters, foam scrapers, olive picks, back bar display pieces, lighters, cigar cutters, T-shirts, hats, wine bottle seals, buckets, glassware or other containers intended for the serving of alcohol beverages, and other similar items, which bear a brand name or logo for any type of alcoholic beverage, may be furnished by the manufacturer or supplier free of charge to any retail permit holder. The cost of each item shall not exceed twenty-five dollars per item and at no cost to the wholesale permit holder. However, no manufacturer or supplier shall furnish to an individual retail permit holder more than twenty-five dollars worth of glassware or other containers intended for the serving of alcohol beverages at one time, and shall not furnish glassware to an individual retail permit holder more than twice per year.

(3) Temporary display racks, clocks, and price boards of any type may be furnished directly by the manufacturer or supplier, without expense to the wholesale distributor, free of charge to any retail permit holder if they bear a brand name and the cost of any such item furnished does not exceed three hundred dollars per item<sup>1</sup>. Said clocks and price boards shall not be considered to be electric or neon signs under paragraph (G) of rule 4301:1-1-44 of the Administrative Code, provided that they are not displayed in the show windows of a retail permit premises.

(4) Signs, banners, posters, placards, designs, mirrors, devices, including illuminated devices, decorations, graphic displays, or other similar items bearing advertising and for use in the windows or elsewhere in the interior of a retail establishment, may be furnished free of charge to a retail permit holder by a manufacturer, supplier, importer, or wholesale distributor, provided that the manufacturer, supplier, importer, or wholesale distributor shall not directly or indirectly pay or credit the retail permit holder for displaying such items or for any expense incidental to their operation. Such items may also include the brand name, price, and the retail permit holder's name, address, slogan, marking, or other logo.

(5) A manufacturer or wholesale distributor may render to a retailer such incidental services as are mutually beneficial to the merchandising of their product, and are not otherwise prohibited by law.

(a) The rearranging or resetting of all or part of a retail permit premises by an individual manufacturer, supplier, or wholesale distributor is not hereby authorized.

(b)

(i) The manufacturer, wholesale distributor, or retail permit holder initiating a set must give written notice of the date and time of the set and the name of their contact person to all A or B permit holders supplying product to the retail permit holder at least twenty-four hours prior to a scheduled set of the premises.

(ii) The manufacturer, wholesale distributor, or retail permit holder initiating a reset must give written notice of the date and time of the reset, and the name of their contact person to all A or B permit holders supplying product to the retail permit holder at least five days, not including Saturday or Sunday, prior to a scheduled reset of the premises.

(iii) The written notice may be delivered in person, via mail, or via facsimile. No notice is required when a set or reset involves alcoholic beverages supplied by only a single A or B permit holder.

(c) During a set or reset, an A or B permit holder is prohibited from arranging any brands of alcoholic beverages other than their own brands, or affixing price stickers or any other markers to individual containers.

(d) Set of a retail permit holder's premises or a display in a retail permit holder's premises.

- (i) For purposes of this rule, the word "set" means the creation of a display area for alcoholic beverages within a retail permit premises. A set occurs either when a new location is established by a retail permit holder or a new display is established by an A or B permit holder in a retail permit holder's premises.
- (ii) During a set, A or B permit holders may: design their own outpost, end cap, bulk aisle display, or other similar display, in the space assigned to them by the retail permit holder; place price signs on a display they create; or remove alcoholic beverages from the retail permit holder's storage area to the display area to be used in the creation of the display.
- (e) Reset of a retail permit holder's premises or a display in a retail permit holder's premises.
- (i) For purposes of this rule, the word "reset" means the rearrangement of alcoholic beverages in a display area within a retail permit premises. A reset may be initiated by a retail permit holder or an A or B permit holder that supplies alcoholic beverages to the retail permit holder.
- (ii) During a reset, an A or B permit holder is prohibited from accepting for return or exchange from the retail permit holder, or returning to the retail permit holder's storage area, any alcoholic beverages that will not fit in the area assigned by the retail permit holder for the reset.
- (f) For purposes of this rule, "stocking" of alcoholic beverages mean the refilling or replenishment of empty or partially empty shelves or displays. A and B permit holders are prohibited from stocking alcoholic beverages in any retail permit premises, except as provided for in paragraph (B)(2)(d)(ii) of this rule.
- (g) For purposes of this rule, "rotation" of or "rotating" alcoholic beverages means the rearrangement of alcoholic beverages within a pre-assigned space, moving the older

containers to the front and the newer containers to the back, to ensure that the older containers sell first. A and B permit holders may rotate alcoholic beverages that they supplied to a retail permit holder within shelves, end caps, display areas, or storage rooms. A and B permit holders are prohibited from moving alcoholic beverages from one area to another, i.e. from storage room to end cap. Where end caps or other displays are used, A and B permit holders are permitted to move alcoholic beverages from within an area, such as from one sales area to another sales area, i.e. from end cap to shelf, but only to ensure that the older containers on the sales floor sell first.

(6) The division of liquor control may allow packaging of spirituous liquor with nonalcoholic items without increasing the price of the spirituous liquor.

(7) A manufacturer or supplier may give their own logo- or brand-identified items, which have a cost of less than twenty-five dollars per item, directly to consumers on a retail permit premises.

(8) Utilitarian display enhancers, whether brand identified or not, which cost two hundred dollars or less, may be provided free of charge by manufacturers or suppliers to retail permit holders for use in alcoholic beverage displays on the retail permit premises. All utilitarian display enhancers must be returned to the manufacturer, supplier, or their agent, that furnished them when the display is taken down.

(C) No manufacturer or wholesale distributor of alcoholic beverages shall sell or deliver to any retail permit premises any alcoholic beverages that the retail permit holder is not authorized to resell by law.

(D)

(1) No wholesale distributor of alcoholic beverages may sell or deliver to another wholesale distributor of alcoholic beverages any alcoholic beverages that the wholesale distributor, to whom said alcoholic beverages are sold or delivered, is not authorized to

resell by law and by written agreement with the manufacturer, the supplier authorized by the manufacturer to import such alcoholic beverages into Ohio, or pursuant to section 4301.241 of the Revised Code.

(2) When alcoholic beverages are imported from without the state of Ohio, the wholesale distributor receiving said alcoholic beverages, including B-2 permit holders receiving alcoholic beverages from B-5 permit holders, must have authorization from the manufacturer of the product or from the supplier that the manufacturer has authorized to import such product in Ohio.

(3) The division shall not grant consent to import for, or approve the registration of, any brand of beer or intoxicating liquor until the supplier files the appropriate forms with the division. Such filing shall consist of the filing of the applications for supplier and label registration and territory designation forms with the division by the supplier. In addition, the division of liquor control shall not grant consent to import or approve the registration of any brand of beer or intoxicating liquor to any party if consent to import or registration for such brand has already been granted to any other party and is currently in effect. The division shall not grant consent to import, or approve the registration or accept a territory designation form if it would allow any A or B permit holder to distribute the same brand or brands of beer or intoxicating liquor within the same sales area or territory assigned to another A or B permit holder by the manufacturer or the supplier authorized by the manufacturer to import such products in Ohio.

(a) Upon the appointment or change of appointment of the supplier by a manufacturer, the supplier shall immediately provide the division of liquor control with evidence of written authorization from the manufacturer that it represents that brand or those brands of beer or intoxicating liquor in Ohio.

(b) Failure on the part of any supplier to provide the division with evidence of the manufacturer's authorization, or to discontinue shipping upon termination of any authorization, shall be cause for the division to cite the supplier before the commission for suspension or revocation of that supplier's registration in Ohio.

(4) No wholesale distributor shall handle or deliver any brand of alcoholic beverage that has been introduced for sale or otherwise acquired for sale in the state of Ohio after November 1, 1985, in any sales area or territory that has not been assigned by the manufacturer or the supplier authorized by such manufacturer to import the brand or brands into Ohio. The manufacturer or supplier shall file with the division a description of the designated sales area or territory, with a copy sent to the affected wholesale distributor.

(E) No manufacturer, supplier, or wholesale distributor of alcoholic beverages shall accept the return of or repurchase any alcoholic beverages from any retail permit holder, and no manufacturer or supplier shall accept the return of or repurchase any alcoholic beverages from any wholesale distributor, except as follows:

(1) The manufacturer, supplier, or wholesale distributor may, but shall not be required to, repurchase from a retail permit holder any alcoholic beverages when the retail permit holder's permit has been revoked, not renewed, or the right to sell the alcoholic beverages has been canceled in any manner by law or by action of the manufacturer or supplier, provided that the alcoholic beverages are sealed and intact.

(2)

(a) The manufacturer, supplier, or wholesale distributor may, but shall not be required to, replace with the same or similar alcoholic beverages any alcoholic beverages when the container or labels have deteriorated or become damaged, or when a package or product is discontinued by a manufacturer. Any alcoholic

beverages that are being replaced shall be replaced with a package or product of comparable price.

(b) When any alcoholic beverages, in the opinion of the person supplying said beverages, are unpalatable or are about to become unpalatable, such person may replace said beverages with the same or similar alcoholic beverages.

(c) When any alcoholic beverages are delivered in error, the manufacturer, supplier, or wholesale distributor may pick up the alcoholic beverages within seven days, not including Saturday or Sunday, from the original date of delivery.

(d) Except for unpalatable alcoholic beverages, it is further provided that no manufacturer or wholesale distributor shall repurchase or replace any alcoholic beverages in the possession of a retail permit holder unless the contents are sealed and intact, and were originally sold by the manufacturer or wholesale distributor, or their immediate predecessor.

(F) No provision of this rule shall be construed to affect or modify the provisions of sections 4301.22 or 4301.24 of the Revised Code or rule 4301:1-1-44 of the Administrative Code. Violations of this rule shall be grounds for revoking or suspending any permit or permits, and in the event the person violating said rule is a manufacturer or supplier located outside of Ohio, the violation of this rule shall subject such manufacturer or supplier to a suspension or revocation of the consent to import into this state.

(G) No A or B permit holder may accept a cash deposit or any form of prepayment from a retail permit holder, which cash deposit or prepayment is to be credited against future deliveries of alcoholic beverages, except where said cash payment is in the exact amount of a specific order to be shipped upon receipt of payment. No retail permit holder shall offer a cash deposit or prepayment except as provided herein.

(H)

(1) No manufacturer, supplier, or their employees who are currently registered solicitors pursuant to Chapters 4301. and 4303. of the Revised Code and rule 4301-3-01 of the Administrative Code, shall sell or offer for sale to any wholesale distributor, and no wholesale distributor shall purchase or receive from any manufacturer or supplier, or their employees who are currently registered solicitors pursuant to Chapters 4301. and 4303. of the Revised Code and rule 4301-3-01 of the Administrative Code, any alcoholic beverages except for cash upon receipt of such alcoholic beverages in saleable condition and upon receipt of the sales invoice. The determination of saleable condition by the wholesale distributor must occur within five days, not including Saturday or Sunday, of receipt of the alcoholic beverages.

(2) No wholesale distributor shall sell or offer to sell to any retail permit holder, and no retail permit holder shall purchase or receive from any wholesale distributor, any alcoholic beverage except for cash upon receipt of such alcoholic beverage.

(I) Any permit holder who pays the application processing fee, permit fee, or renewal permit fee to the division, or who pays for alcoholic beverages from a manufacturer, supplier, or wholesale distributor, with a check that is not honored for payment by the permit holder's financial institution, shall be subject to rejection of its application, or suspension or revocation of its permit by the commission, or administrative citation by the division.

(J)

(1) No wholesale permit holder shall sell any brand of alcoholic beverages to any retail permit holder, for resale at retail, if the retail permit premises are located outside the wholesale pennit holder's exclusive sales area or territory, without first receiving consent from the division of liquor control and the manufacturer or supplier of such alcoholic beverages.

(2) No retail permit holder shall purchase any brand of alcoholic beverages from any wholesale permit holder, for resale at retail, if the retail permit premises are located outside the wholesale permit holder's exclusive sales area or territory, except as provided for in this rule.

(K) Depletion allowance programs are prohibited.

(L) Wholesale distributors may furnish temporary draft equipment to any retail permit holder, who is authorized to sell beer for on-premises consumption, for a period not to exceed seven days and not more than once per month per retail permit holder if a fair market rental is paid by the retail permit holder.

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## Supplemental Information

**Authorized By:** 4301.03

**Amplifies:** 4301.22, 4301.24

**Five Year Review Date:** 7/27/2023

**Prior Effective Dates:** 7/1/1974, 11/1/1985, 5/16/1988, 7/10/1995, 9/1/1997, 6/20/2002, 6/4/2004