

## 204 CMR: ALCOHOLIC BEVERAGES CONTROL COMMISSION

### 204 CMR 6.00: PRICE POSTING (WHOLESALERS)

#### Section

- 6.01: Definitions
- 6.02: Application
- 6.03: Posting
- 6.04: Discounts
- 6.05: Amendments
- 6.06: Records
- 6.07: Severability

#### 6.01: Definitions

Net Price: means the price of an item to the retailer after all discounts have been applied.

Specialized Publication: means a publication (journal, magazine or other periodical) which specializes in issues relating to the alcoholic beverages industry, and which publishes wholesalers' monthly price lists.

#### 6.02: Application

The provisions of 204 CMR 6.00 shall be deemed to be a condition of a wholesaler's license to sell alcoholic beverages to a retailer.

#### 6.03: Posting

(1) For purposes of 204 CMR 6.03, "item" shall mean a case of distilled spirits product identified by brand or trade name and by the name of the distiller, size of containers, age and proof (if stated on the label), and number of containers in the case; or a case of wine identified by brand or trade name; or a case malt beverages identified by brand or trade name.

(2) No wholesaler shall sell to any retailer, and no retailer shall purchase from any wholesaler, any brand of alcoholic beverages unless a price list shall have been furnished by the wholesaler to the retailer and the original of such price list shall have been filed with the Commission, in the manner hereinafter provided.

(3) A copy of each wholesaler's price list shall be furnished to each retailer prior to the month in which the prices and discounts set forth in such price list are to be effective. The original of the price list shall be filed with the Commission no later than 5:00 p.m. on or before the fifth day of each month and only those prices and discounts set forth therein, or amended in accordance with the provisions of 204 CMR 6.05, shall become effective on the first day of the calendar month following the filing of such price list and shall be in effect for that calendar month only. A new complete price list shall be filed by wholesalers each month.

(a) When the fifth day of the month falls on a Saturday, Sunday or legal holiday, the price list shall be filed with the Commission no later than 5:00 p.m. on the next business day.

(b) Price schedules which are not filed within the time limits stated above shall be rejected by the Commission and the wholesaler's price list then in effect shall be the price list effective for the next 30 day period.

(c) Prices of new items may be filed with the Commission at any time.

(4) Each price list shall identify the wholesaler filing it by name, address and license number and shall be in the form prescribed by the Commission.

6.03: continued

(5) Each price list shall contain, with respect to each item, the exact brand or trade name, size of containers, nature of contents, age and proof (if stated on the label), number of containers in a case, price of a container, all discounts and net price of the item to retailers.

(a) Discounts shall be stated in American monetary terms only.

(b) All prices and discounts shall be individual for each item and not in combination with any other item.

(c) All of the foregoing information shall be set forth in the body of the price list, in columns immediately adjacent to the listing of the individual item to which it relates.

(6) A wholesaler shall be deemed to be in compliance with the requirement of furnishing his price list to each retailer whether he uses the direct mail method or causes his prices to be published, within the time prescribed for the filing of such price list with the Commission, in a specialized trade publication approved by the Commission.

6.04: Discounts

(1) For purposes of 204 CMR 6.04, an item of distilled spirits shall be deemed to be different from another item if the name of the distiller, or if the nature of the contents is different even if the brand or trade name is the same; and an item of wine or malt beverages shall be deemed to be different from another item if the brand or trade name is different (wine) or if the name of the brewer is different (malt beverages).

(2) Except as otherwise provided in 204 CMR 6.04(5), discounts may be offered by wholesalers to retailers only on the basis of quantities of each item purchased and/or on the basis of time of payment.

(3) Quantity Discounts

(a) Distilled Spirits: Wholesalers of distilled spirits may offer to retailers discounts based on the number of items of distilled spirits purchased. Any such quantity discount offered by a wholesaler to a retailer shall apply to items of individual products and not to a combination of items.

(b) Malt Beverages: Wholesalers of malt beverages may offer to retailers discounts based on the number of items of malt beverages purchased. Any such quantity discount offered by a wholesaler to a retailer shall apply to items of individual products and not to a combination of items.

(c) Wines: Wholesalers of wines may offer to retailers discounts based on the number of items of wine purchased, whether or not such items of wine are purchased in combination.

(4) Time of Payment Discounts: Wholesalers may offer to retailers discounts for payments made within ten days from the date of delivery which shall be clearly stated on the invoice.

(5) Other Discounts

(a) Cumulative Discounts: Notwithstanding the provisions of 204 CMR 6.04(2), within the same calendar month period during which prices and discounts are effective, a wholesaler may allow a retailer to accumulate his total purchases of items for purposes of obtaining a maximum quantity discount, provided that the wholesaler shall keep accurate records of all transactions resulting in the cumulative discount.

(b) Pick-up Discounts: Notwithstanding the provisions of 204 CMR 6.04(2), a wholesaler may offer a retailer a reasonable discount, not to exceed one percent, if the retailer picks up items ordered from the wholesaler at the wholesaler's warehouse.

## 204 CMR: ALCOHOLIC BEVERAGES CONTROL COMMISSION

### 6.05: Amendments

- (1) Between the fifth and 15th day of the month prior to the effective date of the price filing, a wholesaler may amend his price filing to meet a specific lower price, or a specific greater discount for any individual item filed by any other wholesaler. However, under no circumstances may such amendment(s) cause the amending wholesaler's "net price" to be lower than the lowest "net price" filed by any other wholesaler for the same item.
- (2) When an amendment is made, the entire page on which the amendment appears shall be filed with the Commission and the page shall indicate the name of the single wholesaler whose prices or discounts are being met and the individual item(s) affected.
- (3) Amendments to price lists must be received at the Commission no later than 5:00 p.m. on the 15th day of the month preceding the effective date of such price lists. When the 15th day of the month falls on a Saturday, Sunday or legal holiday, amendments shall be filed no later than 5:00 p.m. on the next business day.
- (4) The Commission shall reject any amendment not made in accordance with the provisions of 204 CMR 6.05.

### 6.06: Records

Wholesalers shall keep accurate records of all transactions governed by 204 CMR 6.00, and shall make such records available for inspection by agents or representatives of the Commission.

### 6.07: Severability

The provisions of 204 CMR 6.00 are severable, and if any provision or the application thereof is held by a court of competent jurisdiction to be invalid, such invalidity shall not affect any other provision of 204 CMR 6.00.

## REGULATORY AUTHORITY

204 CMR 6.00: M.G.L. c. 6, §§ 43 and 44; M.G.L. c. 138, § 25A.

NON-TEXT PAGE