

**DEPARTMENT OF STATE
OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER
900 Trade Practices for Suppliers, Wholesales, and Retailers**

**Rule 904 (Formerly Rule 29) Publication of Prices and Post-offs By Importers
(a.k.a."Wholesalers")**

1.0 Applicability

This regulation shall govern the procedure by which all licensed wholesalers notice prices, post-offs, and quantity discounts of alcoholic liquor offered for sale to licensed Delaware retailers. The sale of all alcoholic liquor in Delaware by wholesalers to retailers must conform to the provisions of this regulation. In addition, this regulation shall govern the procedure by which records relating to post-offs and quantity discounts are maintained.

2.0 Definitions

"Designated Publication" means the single publication agreed to be used by a majority of the licensed Delaware Wholesalers for the compilation of monthly price lists for all alcoholic liquor prices, post-offs, and quantity discounts offered for sale to Delaware licensed retailers. In the absence of a clear majority voting to change the existing publication, the publication will remain the publication that is in effect at the time of the vote.

"Monthly Price List" means the monthly price listing prepared by, or on behalf of, a Delaware licensed wholesaler for all alcoholic liquor prices, post-offs, and quantity discounts offered for sale to Delaware licensed retailers. The monthly price list shall contain the presumptive price, but may be superseded by any subsequent updated notification issued by the wholesaler, provided the DATE and the Commissioner are notified of the updated listing.

"Post-Off" means a reduction in the price regularly charged by wholesalers, as published to the trade, which is sold by wholesalers to licensed retailers.

"Price" means the amount of money given or set as consideration for the sale of a specified order of alcoholic liquor.

"Quantity Discount" means a reduction in the price regularly charged by wholesalers, as published to the trade, which is sold by wholesalers to licensed retailers and is based on whole or in part on the quantity of alcoholic liquor purchased.

"Retailer" means all establishments licensed by the Commission to sell alcoholic liquor directly to the public.

"Updated Notification" means notification of changes to prices, post-offs and quantity discounts made after the submission of the monthly Price List to the designated publication.

"Wholesaler" means licensed Delaware Importer (a.k.a."wholesaler").

3.0 Procedures for Providing Notice of Prices, Post-Offs, and Quantity Discounts

- 3.1 Every wholesaler shall prepare a monthly price list of all alcoholic products they intend to offer for sale during the next month. This monthly price list shall include regular prices, as well as post-offs and quantity discounts, if offered. The monthly price list shall be printed in a publication designated by a majority of licensed Delaware Wholesalers not less than five (5) business days prior to the end of the preceding month.
- 3.2 A copy of the monthly price list shall also be filed with DATE (via hard copy and/or electronically) when submitted to the designated publication. The prices stated therein shall be the "presumptive price," subject to change, revision, substitution, or addition in accordance with the updated notification procedures set forth herein.
- 3.3 In the event of a change in the price from that set forth in the monthly price list, the wholesaler shall provide Updated Notification, to all licensed retailers, and to the Division (via hard copy and/or electronically (including e-mail)) Updated Notification shall be made by a wholesaler to all licensed retailers via a recorded message, accessible through a toll-free "800" number, which can be accessed by any licensed retailer 24 hours a day to obtain information regarding current pricing of items being offered by the wholesaler. The "800" number will be updated every Monday by 10:00 A.M.: provided however, notwithstanding anything in this regulation to the contrary, that any wholesaler may change prices at any time by mailing a pricing announcement to all retailers

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and the Division by U.S. mail. In the event of a conflict between the recorded message and the mailed notice, the lower price will control. In addition, the wholesaler shall advise the Division of prices offered in the "800" number at the time any change is made to the recorded message.

- 3.4 Upon Petition of an interested party, the Commissioner may approve an alternative procedure(s) for providing notice of prices, post-offs and quantity discounts where the petitioner demonstrates that (1) the alternative method is technologically feasible, (2) will provide sufficient notice of prices, post-offs and quantity discounts to Delaware retailers and to DATE, and (3) will not harm the public interest.

4.0 Procedures for Providing Notice of Prices for New Products

- 4.1 Prices of new brands, types, or sizes shall be effective after the wholesaler has given the required notice in writing to the trade industry, as follows:
- 4.1.1 By mailing a pricing announcement directly to all retail licensees of the trade and DATE by United States mail, or
 - 4.1.2 By inclusion of prices in the monthly price list submitted to the designated publication as heretofore described, or
 - 4.1.3 By including notice thereof in the form of Updated Notification, as described in subsection 3.3 above.
- 4.2 Newly listed or changed prices shall continue from their effective date until changed by the wholesaler in accordance with the procedures established by this regulation. The duration of the prices set for post-offs and quantity discounts of new products shall be the effective dates listed in the new product pricing announcement, the monthly price list, and/or in the Updated Notification.
- 4.3 Alternative methods for providing notice of prices for new products may be approved by the Commissioner in the same manner set forth in subsection 3.4 of this regulation.

5.0 Duty of Wholesalers to Fill Orders

- 5.1 The procedure and regulations for licensed wholesalers who offer post-offs or quantity discounts to licensed retailers shall be as follows:
- 5.1.1 Licensed wholesalers shall not discriminate among licensed retailers in filling orders for post-offs or quantity discounts.
 - 5.1.2 Licensed wholesalers must honor the orders placed by licensed retailers for post-offs and quantity discounts in the sequential order in which they are placed, unless excused from doing so by the Commissioner upon proof of good cause.
 - 5.1.3 If a licensed wholesaler is unable to fill the first order of a retailer for a post off or quantity discount due to the depletion of its stock, the retailer shall have the option of having the order filled at the same price offered during the post-off or quantity discount period when stock is next available, or of purchasing a suitable substitute product of comparable value if the wholesaler chooses to offer a substitute product.
 - 5.1.4 Licensed wholesalers shall deliver all alcoholic liquor products offered for sale as post-offs or quantity discounts to the purchasing licensed retailer within five (5) working days, not including weekends or legal holidays, of the last date that the post-off or quantity discount is offered.
 - 5.1.5 Notwithstanding anything within this regulation to the contrary, offers of distressed items in quantities of more than 10 cases shall be made on a "first come/first serve" basis, subject to the requirement that Updated Notification of such post-off be given. Distressed items, excluding beer, in quantities of 10 cases or less shall not be subject to the Updated Notification requirements of these regulations and may be offered for sale to any retail licensee at the licensed wholesaler's discretion. For purposes of this subsection: 1) a distressed item is an alcoholic beverage product subject to close-out and/or expiration, and 2) "first come/first serve" means that orders for alcoholic beverage products are filled in the sequential order by which the orders are received by the wholesaler.

6.0 Procedure for Recording the Sale of Alcoholic Liquor by Wholesalers

- 6.1 Every sale of alcoholic liquor, including post-offs, quantity discounts, and otherwise reduced prices, shall be recorded by the licensed wholesaler on a written invoice or bill of sale containing at a minimum the following:
- 6.1.1 Name of the wholesaler
 - 6.1.2 Name of the retailer
 - 6.1.3 Date of sale

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6.1.4 Quantity of alcoholic liquor sold

6.1.5 Price of alcoholic liquor sold

6.1.6 Brand

6.1.7 Size of container

6.1.8 Date of delivery

- 6.2 The regular price of alcoholic liquor sold at post-off, quantity discount, or discount pursuant to subsection 5.1.4 above shall also be stated on the bill of sale or invoice, as well as the basis for the discount. All credit(s) associated with the sale of alcoholic liquor must be stated or affixed to the original bills of sale or invoices retained by the licensed retailer and wholesaler.

7.0 Tie-In Sales

A requirement by a wholesaler that a retailer purchase one product in order to purchase another is prohibited. This prohibition includes combination sales if one or more products may be purchased only in combination with other products and not individually. However, a wholesaler is not prohibited from selling at a special combination price two or more kinds or brands of products to a retailer, provided: (a) the retailer has the option of purchasing either or both products at the usual price, and (b) the retailer is not required to purchase any product he or she does not want. As to (a) and (b) above, wholesaler licensees shall not be required to sell or deliver beer to a retail licensee in quantities of less than five (5) cases.

8.0 Consortium Buying

- 8.1 Nothing in this regulation shall be deemed to preclude a wholesaler of alcoholic liquor licensed by the Delaware Alcoholic Beverage Control Commissioner from publishing or offering a discount, based upon the quantity of product purchased, to a pool, cooperative, or consortium of two or more licensed retailers, provided that the billing, shipment, transportation, and storage of all related alcoholic liquor conforms with state law and the regulations of the Commissioner. Similarly nothing in this regulation shall be deemed to require a wholesaler of alcoholic liquor to offer post-offs or quantity discounts.
- 8.2 The delivery of all alcoholic liquor purchased by a pool, cooperative, or consortium of retailers, to its members, must be made by the holder of a license issued by the Commissioner to deliver alcoholic liquor, as required by 4 Del.C. § 701.

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