

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

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 item¹. 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.

Supplemental Information

Authorized By: 4301.03

Amplifies: 4301.22, 4301.24

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