**18 DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES**

**553 BUREAU OF ALCOHOLIC BEVERAGES AND LOTTERY OPERATIONS**

**Chapter 2: PRICING OF SPIRITS**

**SUMMARY**: This rule establishes the wholesale and retail price-setting policy with respect to the sale of spirits in the State of Maine. This rule also establishes the discount rate (wholesale price) for agency liquor stores.

I. **Definitions**

 As used in this Rule, unless otherwise indicated, the following words and phrases are defined as follows:

A. **Agency liquor store**. “Agency liquor store” means a person who is licensed by the Bureau to sell spirits for off-premise consumption. Agency liquor stores are the sole source of spirit sales to on-premise licensees.

B. **Bureau**. “Bureau” means the Bureau of Alcoholic Beverages and Lottery Operations within the Department of Administrative and Financial Services.

C. **Commission**. “Commission” means the State Liquor and Lottery Commission established by 5 M.R.S §12004-G, sub-§14.

D. **Director**. “Director” means the Director of the Bureau of Alcoholic Beverages and Lottery Operations.

E. **Line extension**. “Line extension” means the introduction of an additional bottle size of a currently approved spirits product or the introduction of an additional flavor in the same size of a currently approved spirits product.

F. **List price**. “List price” means the regular retail price of spirits products as approved by the Commission.

G. **NABCA**. “NABCA” means the National Alcohol Beverage Control Association which is a trade association representing eighteen (18) jurisdictions known as “control jurisdictions.” Control jurisdictions regulate the wholesale and retail sale and distribution of alcohol within those jurisdictions.

H. **Premises**. “Premises” means all parts of the contiguous real estate occupied by a person licensed in any way by the Bureau over which that person has direct or indirect control or interest, that the person uses in the operation of a business licensed by the Bureau and that has been approved by that department as proper places for the exercise of a licensed privilege. Premises includes the places defined in 28-A M.R.S §2, sub-§24, ¶¶A and B.

I. **Special price**. “Special price” means a temporary reduction of a list price for a specific spirits product as approved by the Director.

J. **Spirits or Spirits Product(s)**. “Spirits” or “Spirits Product(s)” means any liquor produced by distillation or, if produced by any other process, strengthened or fortified by the addition of distilled spirits of any kind. Spirits does not include low-alcohol spirits products as that term is defined in 28-A M.R.S§2, sub-§16-A or fortified wine as that term is defined in 28-A M.R.S. §2, sub-§11-B.

K. **State's Spirits Distribution Contractor**. “State's Spirits Distribution Contractor” means an entity or entities contracted by the State to distribute spirits to establishments licensed by the Bureau to sell liquor for off-premise consumption. The State's Spirits Distribution Contractor is prohibited from selling spirits directly to establishments licensed by the Bureau to sell spirits for on-premise consumption.

L. **Supplier**. “Supplier” means a person who distills, rectifies, brews, ferments, bottles, or otherwise produces spirits.

M. **Supplier’s Representative**. “Supplier’s Representative” means a person or group, licensed as a sales representative in the State of Maine, contracted by a supplier to be the sole representative of the supplier's product at the retail and wholesale level.

N. **Vendor of record**. “Vendor of record” means the “primary source of supply,” as that term is defined in 28-A M.R.S §1451, sub-§3.

II. **Pricing**

 All final list and special pricing decisions shall be made solely by the Director in accordance with this Rule and Title 28-A of Maine law. Final list pricing decisions by the Director are subject to the approval of the Commission.

1. **Pricing of New Spirits Products**
2. After the Commission has approved a new spirits product for listing, the Director shall propose a price for the spirits product subject to the approval of the Commission for that spirits product.
3. The Director shall establish the list price of new spirits products and may take into account any of the following factors:

a. The NABCA price exchange book;

b. The NABCA retail price index;

c. New England control states' current retail pricing;

d. Costs of similar products in an applicable category and sold in Maine;

e. Whether a product is a line extension;

f. Whether a spirits product has an acceptable gross profit margin;

g. The cost of product, including freight, supplier's insurance, applicable bailment, and other similar charges;

h. Agency store profit margin; and

i. Price point adjustments.

3. Retail price points for products packaged at 375 milliliter or larger shall be limited to the following values: $XX.49 or $xx.99. Retail price points for products under 375 milliliter shall be limited to the following values: $XX.29; $XX.49; $XX.79 or $XX.99.

 **B. List Price Changes**

1. List price change requests may be submitted to the Director by suppliers, suppliers’ representatives, or vendors of record.

2. Review of list price change requests shall be completed quarterly by the Director and approved by the Commission, with any price changes effective by the first day of the following months: February, May, August, and November.

3. All requests for list price changes must be submitted in a form or format as prescribed by the Director at least ninety (90) days prior to the first of each month in which a price change, if approved, would be effective.

4. List prices may be reviewed monthly by the Director, regardless of whether a request has been made. The Director will notify suppliers, suppliers’ representatives or vendors of record of any price changes initiated under this subsection at least sixty (60) days in advance of the effective date of any change.

 5. The following process shall occur with respect to list price decisions:

a. Prior to rendering final decisions on list prices, the Director shall make a preliminary decision on list prices being considered.

b. Notice of the Director's preliminary decision on list prices shall be given to suppliers, supplier’s representatives, vendors of record, or other stakeholders, any of whom may comment on the Director's preliminary decision. Notice may be given by the Director electronically or in hardcopy. All comments concerning the Director's preliminary decision about list prices must be submitted in writing within ten (10) days of the notice.

c. After receiving and reviewing comments submitted pursuant to paragraph b of this subsection, the Director shall issue final decisions on any list prices within fifteen (15) days of the close of the comment period.

d. At its next scheduled meeting, the Commission will consider any of the Director's decisions on list prices and determine whether to approve or disapprove the Director's final price decisions.

1. If any of the Director’s price change decisions are not approved by the Commission, the list price will not be changed and subsequent change requests may be submitted during the next pricing cycle as set forth in these Rules.
2. The Commission's determination of whether to approve or disapprove the Director's list price change decisions is final.

 C. **Special Pricing**

1. Suppliers, supplier’s representatives or vendors of record may request, in writing, special pricing for products packaged at 375 milliliter and higher to the Director.
2. All requests and recommendations must be made sixty (60) days prior to the requested effective date of the proposed special price.
3. The Director's decision on special price requests and recommendations is final.
4. All cost-sharing decisions related to special pricing shall be authorized solely at the discretion of the Director. Only the State shall participate in cost-sharing with the suppliers, suppliers’ representatives or vendors of record.
5. Special pricing of spirits products may also be initiated by the Director at the Director’s discretion.
6. In making a special pricing decision, the Director may consider any of the following factors:

a. Whether the subject spirits product has been out of stock ninety (90) days prior to the special price request;

b. Performance of the subject spirits product if the spirits product has been specially priced previously;

c. The amount of cost-sharing between the supplier, supplier’s representative or vendors of record and the State;

d. Seasonal and promotional factors; and

e. Any of the criteria listed in section II(A)(2) of these Rules.

III. **Agency Liquor Store Profit Margin**

 A. **Minimum Discounts.** Agency liquor stores must purchase spirits products from the State. The State will sell spirits products to agency liquor stores at wholesale prices (discount off retail prices) based on the retail prices of spirits products as follows:

1. For spirits products at a retail price of $24.99 or less, the discount rate is twelve percent (12%) of the list price; and
2. For spirits products at a retail price of $25.00 or more, the discount rate is fourteen percent (14%) of the list price.

 B. **Growth Incentive**. BABLO seeks the support of agency liquor stores to achieve its volume recovery/growth objective. To reward this support, the Bureau will increase Minimum Discounts as follows:

1. To be eligible for a growth incentive, the growth of nine (9) liter cases must meet or exceed a minimum total growth rate of 4.5% (four and ½ percent). Growth of less than 4.5% (four and ½ percent) over the previous year would not produce a discount increase.
2. The growth achieved in any year will increase the discount rate starting the following year. FY15 is year one and performance that year would earn the discount rate increase, if achieved, starting in FY16.
3. The discount rate increase would increase as follows for growth:
4. For growth of nine (9) liter cases of 4.5% (four and ½ percent), the discount rate increases by 0.75% (¾ of one percent);
5. For growth of nine (9) liter cases of 5% (five percent), the discount rate increases by 1.00% (one percent);
6. For growth of nine (9) liter cases of 5.5% (five and ½ percent), the discount rate increases by 1.75% (one and ¾ percent); or
7. For growth of nine (9) liter cases of 6.0% (six), the discount rate increases by 2.50% (two and ½ percent).
8. If the gross profit of the spirits business increases more than 10% in any year, the discount rate will be increased by 1.00%. This increase is in addition to the increase described in B.3 of this subparagraph.
9. All discount increases achieved as described in this section would continue each year but would be capped when the total discount rate reaches eighteen percent (18%).
10. Once the discount rate is increased pursuant to subparagraph B.3 and/or B.4, it would not be decreased by the Bureau absent a change in rule or statute.
11. Growth incentives apply to all agency liquor stores equally.

STATUTORY AUTHORITY: 28-A M.R.S.A. §88

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