

204 CMR: ALCOHOLIC BEVERAGES CONTROL COMMISSION

204 CMR 2.00: REGULATIONS OF THE ALCOHOLIC BEVERAGES CONTROL COMMISSION

Section

- 2.01: Licenses and Permits
- 2.02: Price Lists
- 2.03: Advertising
- 2.04: Sales
- 2.05: Licensed Premises
- 2.06: Labels and Containers
- 2.07: Substitution of Beverages
- 2.08: Inducements
- 2.09: Monthly Reports
- 2.10: Liquor Purchase Identification Cards
- 2.11: Radius Measurement: M.G.L. c. 138, § 15A and 16C
- 2.13: Notice of Credit Delinquency
- 2.15: Commercial Clubs
- 2.16: Cover Charge
- 2.17: Transportation of Alcoholic Beverages by a Holder of a Certificate of Compliance
- 2.18: Resealing of Partially Consumed Bottles of Wine
- 2.19: Labeling of Ingredients, Purity and Quality of Alcoholic Beverages
- 2.20: Insurance Plans by Certain License Holders

2.01: Licenses and Permits

- (1) Every applicant for a license or permit, either individually or as a member of a partnership or association, shall furnish proof of his citizenship by production of a certificate of birth, naturalization or as a registered voter.
- (2) Every application for a license or permit made by an individual shall be signed by the applicant therefor, who shall give his or her full name and home address.
- (3) Every application for a license or permit made by a partnership shall state the full names and home addresses of all the members of the partnership and shall be signed by a majority thereof.
- (4) Every application for a license or permit made by an association shall be signed by a majority of the members of the governing body thereof, who shall state their full names and home addresses.
- (5) Every applicant for a license or permit required by the provisions of M.G.L. c. 110, § 5, to file a certificate stating the real name of a person conducting a business, shall file with his application a certified copy thereof.
- (6) Every application for a license or permit made by a corporation shall state the full names and home addresses of the president, treasurer, clerk and secretary, directors and manager or other principal representative of the corporation. It shall be signed by some officer duly authorized by a vote of its board of directors or other similar board. A copy of such vote certified by the clerk or secretary of the corporation, together with a copy of the certificate of its organization, shall accompany the application. A copy of the vote appointing its manager or other principal representative shall also accompany the application.
- (7) All applications for licenses and permits shall be made upon blanks furnished by the licensing authorities, shall be fully answered in detail and shall be typewritten or legibly written in ink. Applications written in pencil, in whole or in part, will not be accepted.
- (8) All applications shall be made under the penalties of perjury and any false statement contained in any application shall be a cause or ground for refusing to grant the license or permit or for suspending, canceling or revoking a license or permit already granted.

2.01: continued

(9) Every application made to local licensing authorities which in any way has to do with a license for the sale of alcoholic beverages, other than an application for the straight renewal of such license, shall be filed in duplicate and one copy thereof shall accompany notice of any favorable action taken thereon by the said authorities when the same shall be forwarded to the Commission. In the case of an application upon which adverse or no action is taken by such authorities, the duplicate copy shall not be forwarded to the Commission, except upon request, following the filing of an appeal with respect thereto.

(10) Every license or storage permit shall be displayed on the premises covered by the license or permit, in a conspicuous place where it can easily be read. Every salesman permit shall at all times be carried on the person of the holder of the permit while he is engaged in the solicitation of orders for alcoholic beverages.

2.02: Price Lists

(1) Hotels, Restaurants, Taverns and Clubs may keep posted in each room where any alcoholic beverages are sold a price list of such beverages. Wherever a price list is posted all sales of alcoholic beverages shall be made at the prices stated on the current posted price list.

(2) No licensee shall print, post, publish or use any false or fictitious price list; nor shall any invoice given or accepted by any licensee contain any statement which falsely indicates prices, discounts, or terms of sale; nor shall there be inserted in any invoice given or accepted by any licensee any statement which makes the invoice a false record, wholly or in part, of the transaction represented therein; nor shall there be withheld from any invoice given or accepted by any licensee any statements which properly should be included therein, so that in the absence of such statements the invoice does not truly reflect the transaction involved.

2.03: Advertising

(1) The use of any advertising matter of an improper or objectionable nature is prohibited. The use of recipe books or pamphlets for mixed drinks, which contain obscene or suggestive toasts or other offensive matter, is prohibited.

(2) No licensee shall use, or permit to be used, any advertising matter which is false or untrue in any particular. Any advertising matter which directly, or by ambiguity or omission tends to deceive or to create a misleading impression shall be deemed to be false or untrue.

(3) No signs or other printed matter advertising any brand or kind of alcoholic beverages shall be displayed on the exterior or interior of any licensed premises wherein such beverages are not regularly and usually kept for sale.

(4) No licensee shall make or permit to be made by his agent or employee, any false or misleading statement concerning any other licensee, his products, or the conduct of his business.

(5) The use of vehicles equipped with either radio or loud speakers for the advertising of alcoholic beverages is prohibited. The use of radio or loud speaker equipment in any licensed premises for the purpose of attracting attention to the sale of alcoholic beverages therein is also prohibited.

2.04: Sales

(1) No holder of a license issued under M.G.L. c. 138, § 15 shall sell or offer to sell any alcoholic beverages at a price less than invoiced cost. Cost is defined as net cost appearing on the invoice for said alcoholic beverage. The use of any device, promotion or scheme which results in the sale of alcoholic beverages at less than invoiced cost is prohibited.

2.04: continued

(2) Donations of alcoholic beverages by licensees for the purpose of having the same used as prizes in any game of chance are prohibited.

(3) No licensee shall buy or sell, or offer or contract to buy or sell, any alcoholic beverages on consignment or under conditional sale or with the privilege of return or on any basis otherwise than a sale or purchase in good faith. 204 CMR 2.00 shall not prohibit the return, or acceptance of the return, of alcoholic beverages for ordinary and usual commercial reasons arising after the merchandise has been sold.

(4) No Hotel, Restaurant, Club, Tavern or "Package Goods" Store shall buy, or contract to buy, any alcoholic beverages from any Manufacturer or Wholesaler and Importer on consignment or under conditional sale or with the privilege of return or on any basis otherwise than a sale in good faith; provided, that 204 CMR 2.00 shall not prohibit the return of alcoholic beverages for ordinary and usual commercial reasons arising after the alcoholic beverages have been purchased.

2.05: Licensed Premises

(1) Slot machines or any other devices which furnish anything besides merchandise of a quantity and quality commensurate with the price deposited therein are prohibited on licensed premises. Gambling of any sort, except those games of chance authorized by the Legislature and/or local licensing authorities, shall not be permitted on any license premises.

(2) No licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to take place in or on the licensed premises. The licensee shall be responsible therefor, whether present or not.

(3) The person in charge of any vehicle used for the delivery of alcoholic beverages or alcohol shall carry an invoice or sales slip, stating the names and addresses of the purchaser and seller, the date and the amount of the purchase, and also itemizing the number of the various kinds of containers and the kinds, quantities and brands of alcoholic beverages or alcohol.

(4) Manufacturers and Wholesalers and Importers, may sell and deliver alcoholic beverages to other licensees on any day except Sunday, the last Monday in May, Thanksgiving day or Christmas day or on the day following when Christmas day occurs on a Sunday.

(5) "Package Goods" Store licensees shall not permit any alcoholic beverages to be consumed on their licensed premises, except as authorized by M.G.L. c. 138, § 15.

(6) "Package Goods" Store licensees shall not sell alcoholic beverages, other than wines and malt beverages, in individual containers of over one gallon capacity.

(7) No Club licensed to sell alcoholic beverages shall use any signs, printed matter or other means publicly to advertise the sale of alcoholic beverages. This shall not prohibit the use of reasonable and proper signs relating to alcoholic beverages within the licensed premises.

(8) All premises covered by a license or storage permit shall be kept in a clean and sanitary condition at all times.

No service of alcoholic beverages shall be made to any person in a Hotel, Restaurant, Tavern or Club in a glass or any other container which has not been thoroughly cleansed and properly sterilized prior to such service.

Hotels, Restaurants, Taverns and Clubs, licensed to sell alcoholic beverages, shall be provided with an adequate supply of running hot and cold water and soap and towels, at all times readily accessible, to thoroughly cleanse the hands of persons employed in such licensed premises.

All glasses, dishes, silverware and other utensils used in such licensed places for service of food or alcoholic beverages shall be thoroughly cleansed after service to each patron and subjected for at least five minutes to the germicidal action of clean water heated to and maintained at a minimum of 160°F.

2.05: continued

Equally effective methods of germicidal action by the use of heat, hot water, steam or mechanical devices may be substituted.

After being cleansed and sterilized glasses, dishes, silverware and other utensils shall be packed or stored or arranged in such manner as not to become contaminated before again being used.

(9) Hotels, Restaurants, Taverns and Clubs shall have adequate and suitable toilet facilities which shall be conveniently located and properly lighted.

(10) Hotels, Restaurants, Clubs, Taverns, and "Package Goods" Stores shall keep their licensed premises adequately and properly lighted at all times in a manner satisfactory to the Licensing Authorities.

(11) All pipes, coils, hose, faucets and other appliances used in the drawing of draught beer shall be thoroughly cleansed and flushed at least twice in each week, and shall be kept in a clean and sanitary condition at all times.

2.06: Labels and Containers

(1) Every manufacturer licensed by the Commission shall place on the brand labels all information required by federal regulations.

(2) Every Wholesaler and Importer who blends, rectifies or bottles any alcoholic beverages purchased in bulk shall place on the brand labels the number of the license issued by the Commission, and also the number of the Federal Rectifier's Permit, if any.

(3) One label on every bottle, jug or other container of alcoholic beverages manufactured, blended, rectified or compounded by any Manufacturer or Wholesaler and Importer, shall state the quantity of such alcoholic beverages in the manner prescribed by the Federal Government, as far as applicable.

(4) One label on every bottle, jug or other container of alcoholic beverages blended, rectified or compounded by any Manufacturer or Wholesaler and Importer, shall state the exact ingredients of the alcoholic beverages so blended, rectified or compounded in the manner prescribed by the Federal Government.

(5) One label on every bottle, jug or other container of American type whiskey, other than corn or blended whiskey, offered by any Manufacturer or Wholesaler and Importer for intra-state sale solely within this Commonwealth, shall state the period of time during which after distillation and before bottling such whiskey was aged in charred oak barrels, and shall also state whether such barrels were new or re-used.

(6) One label on every bottle, jug or other container of American type corn whiskey, other than a blend, offered by any Manufacturer or Wholesaler and Importer for intra-state sale solely within this Commonwealth, shall state the period of time during which after distillation and before bottling such whiskey was aged in oak barrels.

(7) Any Manufacturer or Wholesaler and Importer who specially bottles any alcoholic beverages for a Retailer shall state on the brand labels that the beverages were bottled for the said Retailer.

(8) All Manufacturers and Wholesalers and Importers shall conform to all the Regulations issued by the Federal Government in connection with the Standards of Identity and the Standards of Fill, as far as they may be applicable.

(9) No false, deceptive or misleading statement shall be made or used, or shall be permitted to be made or used, by any licensee on any label on any keg, cask, barrel, bottle or other container of any alcoholic beverages.

204 CMR: ALCOHOLIC BEVERAGES CONTROL COMMISSION

2.06: continued

(10) No licensee shall imitate or forge the brand, label, copyright or trade mark of any other licensee of this Commonwealth or any other state or country.

(11) Wholesalers and Importers shall use only such barrels, kegs, cases or other containers as are furnished by the Manufacturers, except where other containers are permitted to be used bearing such seals or other evidence of the identity and origin of the contents as are approved by the Commission.

(12) No licensee shall deface, mar, obliterate, remove or cover any brand or label on any keg, cask, barrel, bottle or other container, except as may be required by Federal Regulation. No licensee shall buy, sell, exchange or traffic in any such containers without consent of the owner thereof.

(13) No licensee shall refuse to redeem any barrel, keg, bottle, case or other container upon which a deposit has been made, provided it is returned in good order and condition, reasonable wear and tear only excepted. 204 CMR 7.00 shall apply only to the original parties to the contract.

(14) No licensee shall use or keep in his possession, without the consent of the owner, any barrel, keg, bottle, case or other container bearing the mark or brand of such owner.

2.07: Substitution of Beverages

The substitution of any alcoholic beverages of a kind or brand different from that ordered by a purchaser is prohibited unless it is done with the consent of the person or licensee making the purchase.

2.08: Inducements

(1) No licensee shall directly or indirectly give or permit to be given money or any other thing of substantial value in any effort to induce any person to persuade or influence any other person to purchase, or contract for the purchase of any particular brand or kind of alcoholic beverages, or to persuade or influence any person to refrain from purchasing, or contracting for the purchase of any particular brand or kind of alcoholic beverages.

(2) No licensee shall directly or indirectly receive or otherwise accept an inducement prohibited under 204 CMR 2.08(1).

2.09: Monthly Reports

All holders of Storage Permits issued under the provisions of M.G.L. c. 138, § 20 shall file monthly reports with the Commissioner of Revenue within ten days after the first day of each calendar month. These reports shall show the kinds and quantities of alcoholic beverages shipped from the premises included within the Storage Permit during the previous month. The reports shall be made on forms furnished by the Commissioner.

2.10: Liquor Purchase Identification Cards

(204 CMR 2.10, governing liquor purchase identification cards in accordance with the provisions of M.G.L. c. 138, § 34B.)

(1) Face Side of Card. On the face side of the card there shall appear an imprint of the State Seal and the language, "Commonwealth of Massachusetts" on the top line, and immediately underneath, in a bold type, the words, "Liquor Purchase Identification Card." There shall also appear in the respective spaces provided,

- (a) the full and proper name of the holder,
- (b) the residence,

2.10: continued

(c) the card shall also bear an attestation by a person duly authorized by the issuing licensing authority stating that the holder "has furnished satisfactory evidence to the undersigned of having attained the age of 21" prior to the issuance of the card. The applicant shall submit with his application either a Certificate of Birth, a Certificate of Naturalization, or a Certificate of Voter Registration (or a certified copy thereof), together with a personal photograph of 1½" x 1½" dimension,

(d) a statement of the holder's date of birth, age, and place of birth.

It is also encumbered upon the duly authorized person issuing a Liquor Purchase Identification Card to determine that the birth certificate, voting certificate or other evidence submitted as a proof of age, be carefully scrutinized and determine it to be in proper order.

The municipality wherein a card is issued shall also be indicated, as well as the date of issuance, and the holder's signature.

A photograph of the holder shall be securely attached in the area designated on the face side of the card; the size of said photograph should be approximately 1½" x 1½". (Directly under the photograph the words, "See reverse side" shall appear).

The following layout is an example of the procedure desired in the above paragraphs for the face side of the card.

(2) Example

COMMONWEALTH OF MASSACHUSETTS
LIQUOR PURCHASE IDENTIFICATION CARD

STATE SEAL

This is to certify that _____
who resides at _____
has furnished satisfactory evidence to the under- signed of having attained
the age of twenty-one.

_____ Date of Birth Age Place of Birth

Holder's
Photograph
1½" x 1½"

_____ Licensing Authority

City _____

Town _____

Attest _____

(Duly Authorized Signature)

_____ (Date of issuance)

SEE REVERSE SIDE

_____ (Holder's signature)

(3) Reverse Side of Card. On the reverse side of the card the following language shall be printed thereon:

- (a) "It may be legally used only by its valid holder,"
- (b) "This card expires five years from the date of issuance,"

2.10: continued

(c) "M.G.L. c. 138, § 34B, as inserted by the provisions of St. 1964, c. 735, provides in part that 'Any person who transfers, alters or defaces any such card, or who uses or carries a false identification card, or uses the identification card of another, or furnishes false information in obtaining such card, shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$200 or by imprisonment for not more than three months'... 'Nothing in this section shall affect the criminal liability of a person licensed under this chapter in delivering or selling alcoholic beverages or alcohol to a minor.' "

All cards are to be numbered consecutively by the licensing authority and a record kept of the respondent holder of the assigned number. The position for card numbers shall be placed in the lower right hand side of card.

There shall appear on the reverse side of the card an affixed seal of the municipality in which the card is issued.

(4) Example.

This card expires five years from the date of issuance. It may be legally used only by its valid holder.

M.G.L. c. 138, § 34B, as inserted by the provisions of St. 1964, § 735, provides in part that "Any person who transfers, alters or defaces any such card, or who uses or carries a false identification card, or uses the identification card of another, or furnishes false information in obtaining such card, shall be guilty of a misdemeanor and shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than three months"... "Nothing in this section shall affect the criminal liability of a person licensed under this chapter in delivering or selling alcoholic beverages or alcohol to a minor."

(Affix seal of municipality this side of card.)

Card No. _____

(5) Card Specifications

Size: 3¾" wide x 2½" high

Stock: White Index Bristol Time Card

or equal. Black Print

(basis 20 x 24¾ - 117/M)

LAMINATION: 15 gauge on each side of card (or a suitable tamper-proof protective covering that will also securely contain the photograph; do-it-yourself lamination material is available in most office supply stores and 5 & 10¢ stores; you would also find available 2½" Scotch brand magic mending tape).

2.11: Radius Measurement

In determining for the purpose of M.G.L. c. 138, § 15A the radius between a church, school or hospital and a premises licensed or to be licensed, or for the purposes of M.G.L. c. 138, § 16C the radius between a church or school and such premises, the distance shall be measured in a straight line from the nearest point of the church, school or hospital building to the nearest point of such premises.

2.13: Notice of Credit Delinquency

(1) The Commission shall make available for use of licensees forms for notification of credit delinquency, notification of credit delinquency beyond 210 days, notification of delinquent's payment in full, notification of a delinquent's default check, and request for inspection of delinquent list. Any notifications by use of other than such forms need not be recognized by the Commission.

2.13: continued

(2) The delinquent list shall be available for inspection by any licensee or his authorized agent on the premises of the Commission during regular business hours upon the signing of a licensee of a request for inspection of the delinquent list. The publication of said list with the name and address of a delinquent licensee shall constitute the posting by the Commission, and said delinquent list so published and available for inspection shall constitute notice to all licensees of the filing of the name of a licensee on the delinquent list and the removal of the name of a delinquent from such list.

(3) Within four days after receipt of a notice of delinquency, the licensee who has received said notice may deliver to the Commission in writing a notice of protest setting forth with particularity the reason or reasons consistent with M.G.L. c. 138, § 25 why said licensee should not be placed on the delinquent list. The licensee who has extended credit may within four days after receipt of a copy of the protest file with the Commission in writing any objection to the protest. If it appears from the protest and any objection to the protest that there is no genuine issue of fact, the Commission as soon as practicable will determine whether or not the licensee should be placed on the delinquent list. If from the protest and objection there is a genuine issue of fact, the Commission shall afford parties an opportunity to be heard before placing a licensee on the delinquent list.

(4) If a licensee who has filed a notice of delinquency, resulting in a licensee being placed on the delinquent list, fails thereafter to notify the Commission of the discharge of indebtedness as required by M.G.L. c. 138, § 25, the delinquent licensee may file with the Commission in writing a request for discharge setting forth all relevant facts. If the licensee who has filed the notice of delinquency does not thereafter file in writing an objection to the request for discharge within two days after receipt of a copy of the request for discharge, the Commission will strike the name of the licensee from the delinquent list forthwith. If within two days the Commission receives an objection to the request for discharge which raises a genuine dispute of a relevant fact, the Commission shall as soon as practicable afford the parties an opportunity to be heard before determining whether or not the name of the licensee shall be struck from the delinquent list.

(5) Any indebtedness may not be considered discharged unless the creditor has received an amount equivalent to the outstanding indebtedness by cash, bank, cashier's, or certified check, or its equivalent, or a check which after deposit has become "final" (as that term is used under the uniform commercial code), or a return of merchandise. All checks received in payment shall be deposited by the creditor before the close of banking as of the next business day following receipt of any check.

(6) If through error or mistake the name of a licensee appears on the delinquent list not as a result of a notice of delinquency, the licensee may deliver a notice in writing to the Commission of that fact and the Commission will thereafter and forthwith strike the name of the licensee from the delinquent list.

(7) Copies of all notices delivered to the Commission will simultaneously be mailed to the licensee extending credit or the delinquent or proposed delinquent as the case may be by certified mail, return receipt requested, and the licensee delivering said notice shall certify to the Commission notification of that fact.

(8) The parties may attach to any notice of protest, objection to notice of protest, request for discharge of indebtedness such documents, affidavits and legal memoranda as may be relevant and helpful to the Commission. All statements of fact, exhibits and documents shall have attached thereto an affidavit of the person having personal knowledge of the facts attesting to the accuracy and authenticity of the same.

(9) Any licensee who has been posted as delinquent prior to the adoption of 204 CMR 2.16(1) through 2.16(9) may protest that posting as provided therein within ten days of the adoption of 204 CMR 2.16(1) through 2.19(9).

2.13: continued

(10) A service bureau or interested person may obtain from the Commission delinquency notices filed by wholesalers on a daily basis.

A service bureau shall compile on a daily basis all delinquency notices and prepare therefrom a daily delinquency list which shall not be published or circulated and shall have no legal effect until certified by the Commission. The Commission shall certify on a daily basis the delinquency list prepared by a service bureau in accordance with these procedures on the condition that such delinquency list shall be made available to any wholesaler or retail licensee who may request a copy of same upon payment of such charge as may be reasonably assessed by the service bureau for the preparation, printing, and distribution of such lists. Copies of delinquency lists may also be obtained at the office of the Commission.

Any protest by either a wholesaler or a retailer relating to the appearance of a retailer on the list, or the failure of a retailer to be placed on the list, shall be filed with the Commission which shall, pursuant to statute and applicable regulations, adjudicate the protest and direct the service bureau to delete or add such retailer to the delinquency list in accordance with its decision. The service bureau shall under no circumstances entertain any protest relative to the status of any retailer on a delinquency list and shall make changes in a delinquency list only in accordance with directives from the Commission.

The delinquency list prepared in accordance with these standards shall be in two parts:

(a) A list shall be prepared and filed daily with the Commission for the sole use of the Commission which will contain the following information:

1. the assigned code number of each delinquent retailer.
2. the name and address of each delinquent retailer.
3. the number of consecutive days that a retailer has been delinquent.
4. the name of each wholesaler posting each retailer delinquent.

(b) A delinquency list which shall be printed and circulated to every wholesaler and retailer on a weekly basis in accordance with the third paragraph herein which shall contain all of the information set forth in item 204 CMR 2.13(10)(a)1. through 3. This list shall be available in two forms:

1. a list organized alphabetically by all retail licensees.
2. a list broken down alphabetically by cities and towns.

The service bureau shall prepare on a daily basis and shall offer to every wholesaler and retailer in accordance with the provisions of the third paragraph herein a list of daily additions and deletions only, which list shall contain the same information as required by 204 CMR 2.13(10)(a)1. through 3.

2.15: Commercial Clubs

(1) A Commercial Club is a holder of a Restaurant license under M.G.L. c. 138, § 12, who has been granted written permission by the Local Licensing Authorities and the Commission to restrict admission to the licensed premises to persons who have paid an annual membership fee.

(2) A licensee may request, by application, written permission of the Local Licensing Authorities and the Commission to operate as a Commercial Club.

(3) Said application shall set forth the requirements for membership.

(4) Membership may not be denied on the basis of race, color, creed, place of national origin or sex.

2.16: Cover Charge

(1) The posting of a "cover charge" shall be made in accordance with M.G.L. c. 140, § 183D. Said "cover charge" shall not be collected in advance of gaining entrance to the licensed premises, and can only be charged upon a written or printed receipt, permanently recorded and numbered seriatim, presented to each individual customer or group of customers. Records of such receipts shall be kept by the licensee for a period not less than two years. For the purposes of 204 CMR 2.00, the term "cover charge" shall include all admission fees or admission charges, except that the sign required to be posted under M.G.L. c. 140, § 183D shall, in the case of an admission fee or charge, be posted on the outside of the licensed premises. Nothing in 204 CMR 2.00 shall be construed to prohibit advanced ticket sales by any licensee under M.G.L. c. 138, § 12.

2.16: continued

(2) No minimum charge for the purchase of alcoholic beverages or minimum alcoholic beverage drinking requirement shall be imposed upon any customer of a section twelve licensee. Any such licensee who charges a minimum charge for food and/or non-alcoholic beverages in accordance with the requirements of M.G.L. c. 140, § 183D shall include a specific statement in the posting required therein that there is no minimum charge for alcoholic beverages. Said minimum charge shall not be collected in advance of gaining entrance to licensed premises and can only be charged upon a written or printed receipt permanently recorded and numbered seriatim, presented to each individual customer or group of customers. No licensee shall impose a minimum charge for food and/or non-alcoholic beverages upon any customer who incurs charges for alcoholic beverages equal to or greater than the posted minimum charge for food and/or non-alcoholic beverages.

2.17: Transportation of Alcoholic Beverages by a Holder of a Certificate of Compliance

(1) A holder of a certificate of compliance under M.G.L. c. 138, § 18B may transport alcoholic beverages through any warehouse of a holder of a permit under M.G.L. c. 138, § 20A.

(2) All transportation of alcoholic beverages authorized by 204 CMR 2.17 shall be in vehicles licensed or permitted under M.G.L. c. 138, § 22.

(3) All alcoholic beverages transported by a holder of a certificate of compliance under M.G.L. c. 138, § 18B and traveling through any warehouse of a holder of a permit under M.G.L. c. 138, § 20A shall be owned by the certificate of compliance holder.

(4) No sale of alcoholic beverages may be made to a person or entity at a warehouse of a holder of a permit under M.G.L. c. 138, § 20A. For purposes of 204 CMR 2.17, a "sale" occurs when an order is taken and/or payment is made for alcoholic beverages.

(5) No licensee, except a licensee under M.G.L. c. 138, § 18, may take delivery of alcoholic beverages at a warehouse of a holder of a permit under M.G.L. c. 138, § 20A.

(6) Any holder of a certificate of compliance under M.G.L. c. 138, § 18B, or any licensee or permittee, by using a warehouse of a holder of a permit under M.G.L. c. 138, § 20A under the authority of 204 CMR 2.17, consents to inspection of such facility by the commission, its agents or employees, or any peace officer, to the same extent as consent is given for inspection of licensed premises under M.G.L. c. 138, §§ 56, 63 or 63A.

(7) Each holder of a certificate of compliance under M.G.L. c. 138, § 18B who transports alcoholic beverages through any warehouse operated by a holder of a permit under M.G.L. c. 138, § 20A shall file with the Commission monthly reports of all alcoholic beverages transported through each warehouse. Each report shall be filed with the Commission on or before 5:00 P.M. of the 15th day of the month. When the 15th day of the month falls on a Saturday, Sunday or legal holiday, the report shall be filed with the Commission no later than 5:00 P.M. on the next business day. Each report shall be on a form prescribed by the Commission and shall contain a full and complete description of the quantity of alcoholic beverages transported into the premises covered by the M.G.L. c. 138, § 20A permit, the quantity of alcoholic beverages shipped from the premises covered by the M.G.L. c. 138, § 20A permit to a destination outside Massachusetts, the quantity of alcoholic beverages shipped from the premises covered by the M.G.L. c. 138, § 20A permit to a licensee under M.G.L. c. 138, § 18 inside Massachusetts, the identity and location of the licensee under M.G.L. c. 138, § 18 to whom alcoholic beverages were shipped, and the quantity of alcoholic beverages remaining in transit at the premises covered by the M.G.L. c. 138, § 20A permit. A full and complete description of the alcoholic beverages shall contain identification, in the case of distilled spirits, by brand or trade name and by the name of the distiller, size of containers and nature of contents, in the case of malt beverages, by brand or trade name, in the case of wine, by brand or trade name.

204 CMR: ALCOHOLIC BEVERAGES CONTROL COMMISSION

2.17: continued

(8) Each holder of a certificate of compliance who transports alcoholic beverages through any warehouse under the authority of 204 CMR 2.17 shall pay an annual fee of \$1,000.00 to the Commission. Said fee shall be paid in addition to any fee paid for the certificate of compliance issued under M.G.L. c. 138, § 18B. Said fee shall be paid pursuant to 204 CMR 2.17 for each certificate of compliance that transports alcoholic beverages through each warehouse of a holder of a permit under M.G.L. c. 138, § 20A.

(9) The provisions of 204 CMR 2.17 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 2.17.

2.18: Resealing of Partially Consumed Bottles of Wine

(1) No holder of a hotel, restaurant, tavern, club, or war veterans' organization license issued pursuant to the provisions of M.G.L. c. 138, § 12 shall permit a patron to retain and take off the licensed premises so much of a bottle of wine purchased by that patron with a meal and not totally consumed by that patron during the meal, except when the bottle of wine is resealed in compliance with 204 CMR 2.18.

(2) Only one partially consumed bottle of wine per patron may be resealed and removed from the hotel, restaurant, tavern, club, or war veterans' organization's licensed premises pursuant to 204 CMR 2.18.

(3) A receipt that prominently displays the date of the purchase of the meal must be furnished to the patron. The receipt must show both the purchase of the meal and the purchase of the bottle of wine.

(4) Before permitting the carry out of a bottle of wine pursuant to 204 CMR 2.18, the hotel, restaurant, tavern, club, or war veterans' organization licensee or its employees must:

- (a) securely reseat the bottle of wine;
- (b) place the resealed bottle in a one-time-use tamper-proof transparent bag that insures that the patron cannot gain access to the bottle while in transit after the bag is sealed;
- (c) securely seal the bag; and
- (d) affix the receipt to the sealed bag.

(5) For the purpose of 204 CMR 2.18, the word "meal" shall mean the purchase by one person of a diversified selection of food which ordinarily is classified as an "entree" or "main course" which ordinarily cannot be consumed without the use of tableware and which cannot be conveniently consumed while standing or walking or the purchase by two or more persons of a diversified selection of food which is priced at more than \$20.00 and ordinarily cannot be consumed without the use of tableware and which cannot be conveniently consumed while standing or walking.

(6) The provisions of 204 CMR 2.18 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 2.18.

2.19: Labeling of Ingredients, Purity and Quality of Alcoholic Beverages

(1) No alcoholic beverages shall be sold, exposed for sale, kept for sale, stored, or transported within Massachusetts or imported into or exported from Massachusetts or manufactured with intent to sell in Massachusetts, if the alcoholic beverages contain caffeine as an added ingredient.

(2) No malt beverages shall be sold, exposed for sale, kept for sale, stored, or transported within Massachusetts or imported into or exported from Massachusetts or manufactured with intent to sell in Massachusetts, if the malt beverages contain guarana, taurine, ginkgo biloba, ginseng or other herbal stimulant or chemical stimulant substances as an added ingredient.

2.19: continued

- (3) No alcoholic beverages sold, exposed for sale, kept for sale, stored, or transported within Massachusetts or imported into or exported from Massachusetts or manufactured with intent to sell in Massachusetts, shall be labeled or in any manner display the term "malt beverage" or "malt beverages" on any label or container if the contents contain guarana, taurine, ginkgo biloba, ginseng or other herbal stimulant or chemical stimulant substances as an added ingredient. No substance that is a natural constituent of one or more of the ingredients of that beverage shall be construed to be an added ingredient.
- (4) No alcoholic beverages that contain guarana, taurine, ginkgo biloba, ginseng or other herbal stimulant or chemical stimulant substances as an added ingredient shall be sold, exposed for sale, kept for sale, stored, or transported within Massachusetts or imported into or exported from Massachusetts or manufactured with intent to sell in Massachusetts in any container that cannot be resealed after being opened to permit consumption in more than one sitting, without the express written permission of the Commission.
- (5) Any alcoholic beverages including malt beverages that as of November 18, 2010 contain caffeine as an added ingredient are hereby deemed to be adulterated. No adulterated alcoholic beverages may be sold in Massachusetts by any licensee, permittee or holder of a certificate of compliance.
- (6)(a) Any alcoholic beverages deemed to be adulterated under 204 CMR 2.19 shall be returned on or before 5:00 P.M. Friday, December 3, 2010, by the retailer possessing them to the licensee who sold those beverages, at the sole cost of the licensee who sold those beverages.
- (b) Each such licensee who sold those beverages shall accept returns from the retailer on or before the seller's next delivery to that retailer. Each such seller shall report in writing to the Commission any retailer who fails to return on demand by the seller any alcoholic beverages deemed adulterated under 204 CMR 2.19.
- (c) Each retailer shall pay in full any outstanding invoices for such beverages sold on or before November 18, 2010. Any invoice not paid in full will be deemed to be delinquent. All delinquencies shall be posted by the selling licensee as required by law.
- (7) Any alcoholic beverages declared to be adulterated under 204 CMR 2.19 shall be returned on or before 5:00 P.M. Friday, December 17, 2010, by the wholesaler possessing them to the licensee or holder of a certificate of compliance who sold those beverages, at the sole cost of the licensee or certificate holder who sold those beverages. Each wholesaler shall pay in full any outstanding invoices for such beverages sold on or before November 18, 2010.
- (8) Any holder of a certificate of compliance who sold alcoholic beverages declared to be adulterated under 204 CMR 2.19 shall accept all returns of such beverages on or before 5:00 P.M. Friday, December 17, 2010 at their sole cost. Any holder of a certificate of compliance that fails to comply with 204 CMR 2.19 shall have its certificate suspended for at least six months.
- (9) The provisions of 204 CMR 2.19 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 2.19.

2.20: Insurance Plans by Certain License Holders

The provisions of M.G.L. c. 138, § 15 that addresses insurance shall not be construed or interpreted to apply to, or be applied to, qualifying employee benefit plans under the Employee Retirement Income Security Act of 1974 (ERISA), Pub. L. 93-406, 88 Stat. 829 (Sept. 2, 1974), as codified at 18 U.S.C. § 1001 *et seq.*

REGULATORY AUTHORITY

204 CMR 2.00: M.G.L. c. 10, §§ 70, 71, 72; c. 30A and c. 138, §§ 12, 24.