

ALCOHOLIC BEVERAGES CONTROL COMMISSION
EMERGENCY REGULATION

204 C.M.R. 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.
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 C.M.R. 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 C.M.R. 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 C.M.R. 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 C.M.R. 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 C.M.R. 2.19 shall have its certificate suspended for at least 6 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.

REGULATORY AUTHORITY M.G.L. c. 10, §§ 70, 71, 72; c. 138, §§ 1,24.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman _____

Susan Corcoran, Commissioner _____

Robert Cronin, Commissioner _____

Dated at Boston, Massachusetts this 18th day of November 2010.

I hereby approve the promulgation of 204 C.M.R. 2.19 as an emergency regulation.

Timothy P. Cahill, Treasurer and Receiver General
Dated at Boston, Massachusetts this 18th day of November 2010.