



Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
239 Causeway Street
Boston, MA 02114
Telephone: (617) 727-3040
Fax: (617) 727-1258

Timothy P. Cahill
Treasurer and Receiver General

Kim S. Gainsboro
Chairman

MEMORANDUM

To: Members of the Alcoholic Beverages Industry in Massachusetts
From: Kim S. Gainsboro, Chairman
Date: November 19, 2010
RE: BANNED Alcoholic Beverages Under 204 CMR 2.19

A. On November 18, 2010 at 1:46 p.m., the Alcoholic Beverages Control Commission promulgated an emergency regulation that took effect immediately that BANS for sale in Massachusetts any alcoholic beverages that contain CAFFEINE as an added ingredient.

B. The emergency regulation also requires a MANDATORY RECALL of BANNED PRODUCTS.

C. Only caffeine that is added as an ingredient is subject to this ban.

D. This list of BANNED PRODUCTS was last updated on: 11/19/2010 3:38 PM.

E. The ABCC has identified the following products in Massachusetts to be subject to the ban.

1. 808.
Apple, and
Mango Beat Flavors
(identified for sale in MA.)
2. FOUR LOKO.
Blue/Raspberry,
Fruit Punch,
Cranberry Lemonade,
Grape,
Lemon Lime,
Lemonade,
Orange,
UVA,
Watermelon Flavors
(identified for sale in MA).
3. JOOSE.
Dragon,
Fruit Punch,

Green Apple,
Strawberry Kiwi,
Lemon Tea,
Iced Tea,
Mamba,
Orange,
Raspberry Lemonade,
Watermelon,
Jungle, and
Panther Flavors
(identified for sale in MA.)

4. MOONSHOT aka MOONSHOT 69.

This product list will be updated as further determinations are made.

Emergency Regulation Prohibiting the Sale of Alcoholic Beverages that Contain Caffeine

The Massachusetts Alcoholic Beverages Control Commission today, November 18, 2010, filed an emergency regulation prohibiting the sale of alcoholic beverages that contain caffeine as an added ingredient. The regulation goes into effect immediately.

This means that alcoholic beverages that contain caffeine as an added ingredient, including Four Loko, must be removed from store shelves in Massachusetts today. The regulation follows a ruling yesterday by the U.S. Food and Drug Administration that alcoholic drinks that contain added caffeine pose a public health risk.

The FDA ruling clearly states that these beverages are unsafe. Beginning today, all retailer and other businesses licensed by the Alcoholic Beverages Control Commission are prohibited from selling, storing, importing or transporting these products in Massachusetts.

The Alcoholic Beverages Control Commission is declaring that alcoholic beverages with added caffeine are adulterated under state law. These products must be taken off the shelf immediately. Wholesalers must retrieve these products at or before their next delivery to retail licensees.

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.