

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

LIQUOR CONTROL COMMISSION

BEER

(By authority conferred on the liquor control commission by section 215(1) of 1998 PA 58, MCL 436.1215(1), and Executive Reorganization Order No. 2011-4, MCL 445.2030)

R 436.1601 Definitions.

Rule 1. The terms defined in R 436.1001 have the same meanings when used in these rules.

History: 1979 AC; 1989 AACS.

R 436.1603 Rescinded.

History: 1979 AC; 1989 AACS.

R 436.1605 Equipment.

Rule 5. A brewer shall possess the necessary equipment for a satisfactory operation, which shall be maintained in good working order and in a sanitary condition.

History: 1979 AC; 1989 AACS.

R 436.1607 Agricultural product compliance with law.

Rule 7. Agricultural products processed by a brewer shall comply with state laws and rules of the Michigan department of agriculture.

History: 1979 AC; 1989 AACS.

R 436.1609 Outstate sellers of beer.

Rule 9. (1) A person shall be the holder of the required basic permit or be a brewer or outstate seller of beer doing business under an approved brewer's notice issued under the federal alcohol administration act of 1935, 27 U.S.C. §201 et seq., and the regulations thereunder, being 27 C.F.R., part 1, subpart C, and part 25, subpart G, before being issued an outstate seller of beer license. The provisions of 27 C.F.R., part 1, subpart C, and part 25, subpart G, are adopted by reference in these rules. Copies of the adopted provisions may be obtained from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402. The cost at the time of adoption of these rules is \$23.00. Copies of these provisions may also be obtained from the Liquor Control Commission, Department of Commerce, Secondary Complex, 7150 Harris Drive, P.O. Box 30005, Lansing, Michigan 48909, at cost.

(2) An outstate seller of beer license shall be issued to the following entities pursuant to these rules and the act:

(a) A person located in the United States who imports and sells beer made in a foreign country in this state.

(b) A manufacturer located outside this state, but in the United States, that manufactures and packages its own beer.

(c) A person located in the United States who purchases beer from a manufacturer of beer located outside of this state, but in the United States, if the amount of beer imported into this state by that person is 5,000 barrels or less per calendar year. In addition, a person who is issued an outstate seller of beer license under the provisions of this subdivision shall be designated by the manufacturer of beer

as its sole and exclusive sales agent in Michigan for a brand or brands of beer produced by that manufacturer and shall be responsible for the quality of beer shipped into and sold in this state.

History: 1979 AC; 1989 AACS.

R 436.1611 Labels and advertising.

Rule 11. (1) The sale of beer is prohibited in this state unless all of the following provisions are complied with:

(a) The beer is packaged, marked, branded, and labeled in accordance with these rules.

(b) The beer label truthfully describes the contents of the container in accordance with these rules and the federal alcohol administration act of 1935, 27 U.S.C., §201 et seq., and the regulations thereunder, being 27 C.F.R. part 7, subpart C. The provisions of 27 C.F.R. part 7, subpart C, are adopted by reference in these rules. Copies of the adopted provisions may be obtained either from the Superintendent of Documents, United States Government Printing Office (GPO), Washington, DC 20402, or from the gpo website at <http://bookstore.gpo.gov> at a cost of \$37.00 each as of the time of adoption of these rules, or free of charge from the gpo website at <http://www.gpoaccess.gov/cfr/>. Copies of these provisions may also be obtained from the Liquor Control Commission, Department of Licensing and Regulatory Affairs, Secondary Complex, 7150 Harris Drive, P.O. Box 30005, Lansing, Michigan 48909, at a cost of \$43.00 each as of the time of adoption of these rules.

(c) The beer has received a registration number from the commission and has been approved for sale by the commission.

(2) A brewer, outstate seller of beer, or wholesaler responsible for labeling shall furnish proof, upon request, that valid certificates of approval for the label have been obtained from the United States bureau of alcohol, tobacco, and firearms and are unrevoked under the provisions of the federal labeling requirements.

(3) A retail licensee shall place a removable tap marker or sign on a draft beer dispenser. The cost of a tap marker or sign is subject to commission orders.

History: 1979 AC; 1989 AACS; 1998-2000 AACS; 2011 AACS.

R 436.1613 Gifts of beer and consumption on licensed premises.

Rule 13. (1) A manufacturer may give away beer only for consumption on the licensed premises.

(2) A wholesaler shall not give away beer or allow consumption of beer on the licensed premises.

(3) A tap room maintained by a brewer who is not a microbrewer for dispensing or serving alcoholic beverages shall be closed to the public at 2 a.m. daily and shall not open before 7 a.m. the following day or before noon on Sunday.

History: 1979 AC; 1989 AACS; 1998-2000 AACS.

R 436.1615 Sales and transportation by manufacturers; warehouse licensees.

Rule 15. (1) A brewer shall sell in Michigan only beer which is produced by it on its licensed premises.

(2) A brewer or outstate seller of beer shall not have beer produced or placed in containers by another brewer or outstate seller of beer for sale in this state without a prior written order of approval by the commission.

History: 1979 AC; 1989 AACS.

R 436.1617 Sales and shipments by outstate sellers of beer.

Rule 17. A person shall not sell, ship, import, or deliver beer into this state unless the beer is sold, shipped, imported, or delivered in any of the following ways:

(a) An outstate seller of beer sells, ships, imports, or delivers to its

licensed premises, to the licensed premises of a licensed wholesaler of beer, or to the licensed premises of a licensed warehouseman.

(b) A licensed wholesaler of beer buys, imports, or accepts delivery of beer from an outstate seller of beer at the licensed premises of an outstate seller of beer or at the licensed premises of the licensed wholesaler of beer.

(c) A brewer imports or delivers beer produced at a manufacturing plant which is located outside this state and which is owned by the brewer or the parent or subsidiary corporation of the brewer.

History: 1979 AC; 1989 AACS.

R 436.1621 Excise tax on beer; reports.

Rule 21. (1) Each brewer and each outstate seller of beer whose beer tax liability for the preceding calendar year has averaged less than \$50,000.00 per month shall submit to the commission, on forms acceptable to the commission and postmarked not later than the fifteenth day of each month, a beer tax report of all beer sold, delivered, or imported into this state during the previous calendar month and shall also submit, with the beer tax report, the payment of the required beer excise tax due pursuant to section 40 of Act No. 8 of the Public Acts of the Extra Session of 1933, as amended, being S436.40 of the Michigan Compiled Laws.

(2) Each brewer and each outstate seller of beer whose beer tax liability for the preceding calendar year has averaged \$50,000.00 or more per month shall submit to the commission, on forms acceptable to the commission, 2 beer tax reports each month. One beer tax report shall be postmarked not later than the last day of each month and may be either an estimate or an actual report of all beer sold, delivered, or imported into this state during the first 15 days of that month. Payment of the required beer excise tax due pursuant to section 40 of Act No. 8 of the Public Acts of the Extra Session of 1933, as amended, being S436.40 of the Michigan Compiled Laws, shall be included with the report. A second beer tax report shall be postmarked not later than the fifteenth day of each month and shall report all beer sold, delivered, or imported into this state during the preceding calendar month. Payment of the beer excise tax required by section 40 of Act No. 8 of the Public Acts of the Extra Session of 1933, as amended, less the amount of beer excise tax previously paid for the month, shall be included with the report.

(3) The beer excise tax reports submitted pursuant to subrules (1) and (2) of this rule by a brewer or an outstate seller of beer located outside this state shall include all of the following information:

(a) The total sales, deliveries, and importations of beer made into this state during the period covered by the report.

(b) The total amount of the beer excise tax due.

(c) The date upon which each shipment of beer was made.

(d) The name and address of the licensed wholesaler of beer who received each shipment of beer.

(e) The invoice number of each shipment of beer.

(f) The quantity and container size of each shipment of beer.

(4) The beer excise tax reports submitted pursuant to subrules (1) and (2) of this rule by an outstate seller of beer located in this state shall include the total purchases, importations, and deliveries of beer received by the outstate seller of beer during the period covered by the report and the total amount of the beer excise tax due. The documents listed in either subdivision (a) or subdivision (b) of this subrule shall be submitted with the beer tax report:

(a) A copy of each invoice, debit memo, or credit memo for each importation or delivery of beer received from a manufacturer of beer during the period covered by the report.

(b) A copy of each document issued to the outstate seller of beer by the United States customs service for each withdrawal of beer from bond which occurred during the period covered by the report.

History: 1979 AC; 1989 AACS.

R 436.1623 Rescinded.

History: 1979 AC; 1985 AACS.

R 436.1625 Price schedules and temporary price reductions.

Rule 25. (1) A manufacturer or wholesaler shall file with the commission in Lansing a schedule of net cash prices to the retail licensee for all brands of case and keg beer for its market area.

(2) A manufacturer or wholesaler shall file with the commission in Lansing beer package price reductions for its market area. The price reduction shall be filed before its effective date and shall continue for at least 180 days after the effective date.

(3) The beer package price for any market area may be increased during the 180-day period for the following reasons:

(a) To reflect any tax increase in the market area.

(b) To reflect a general industry price increase in the market area.

(4) The beer package price for any market area may be decreased during the 180-day period to meet competition if:

(a) The price reduction is not greater on a cents per case basis than the price reduction filed by the competition.

(b) The price reduction continues for the balance of the 180 days filed by the competition.

(5) A manufacturer or wholesaler shall not sell beer at a quantity discount.

History: 1979 AC.

R 436.1627 Rescinded.

History: 1979 AC.

R 436.1629 Container deposit and refund.

Rule 29. (1) A manufacturer, an outstate seller of beer, or a wholesaler of beer shall collect a container deposit of a minimum of \$30.00 for all refillable containers of beer with a capacity of over 5 gallons. The deposit collected by a wholesaler from a retail licensee for a refillable container of over 5 gallons shall be equal to the deposit collected by the manufacturer or outstate seller of beer from the wholesaler of beer.

(2) A cash refund which equals the container deposit collected pursuant to subrule (1) of this rule for all refillable containers of beer with a capacity of over 5 gallons shall be made to a licensee who has made the deposit and returned the containers for refund.

History: 1979 AC; 2007 AACS; 2010 AACS.

R 436.1631 Reports of brewers, outstate sellers of beer, and wholesalers.

Rule 31. (1) Each sale or delivery of beer made by a brewer or outstate seller of beer to a licensed wholesaler of beer shall be accurately recorded on a sales invoice, a debit memo, or a credit memo. A brewer or an outstate seller of beer shall furnish each licensed wholesaler of beer with 2 copies of each invoice at the time of each sale or delivery of beer.

(2) When a billing error is discovered, a brewer or an outstate seller of beer shall immediately furnish the licensed wholesaler of beer who was incorrectly billed with 2 copies of either a debit memo or a credit memo to correct the billing error.

(3) Each sales invoice shall have printed thereon the name, address, and location of the brewer or outstate seller of beer issuing the invoice and shall also contain all of the following information:

(a) The name and address of the licensed wholesaler of beer to whom the sale was made.

(b) The date of sale and an identifying invoice number.

(c) The quantity, brand name or brand code, container type, container size, unit price, and total cost of the beer sold.

(d) The address to which the beer was delivered, if different than the address of the licensed wholesaler to whom the beer was sold.

(4) Each debit memo and each credit memo shall have printed thereon the name and address of the brewer or outstate seller of beer issuing the debit memo or credit memo and shall also contain all of the following information:

- (a) The name and address of the licensed wholesaler of beer.
  - (b) The date on which the original sale occurred and the identifying number of the invoice being corrected.
  - (c) The corrected quantity, brand, container type, container size, unit price, the net amount debited or credited, and the number of the invoice to which the debit or credit will be applied, if known.
  - (d) The reason for the debit or credit.
- (5) Each licensed wholesaler of beer shall retain, on the licensed premises, 1 copy of each invoice, debit memo, and credit memo received from a brewer or an outstate seller of beer and shall forward to the Lansing office of the commission, postmarked not later than the fifteenth day of each month, 1 copy of each invoice, debit memo, or credit memo received during the previous month.

History: 1979 AC; 1989 AACS.

R 436.1632 Invoices and bills of lading.

Rule 32. When transporting beer, a vehicle operator for a brewer, an outstate seller of beer, a licensed wholesaler of beer, or a common carrier shall have invoices or bills of lading in his or her possession for inspection by commission inspectors or auditors and law enforcement officers. This rule shall not apply to a vehicle operator for a licensed wholesaler of beer while he or she is delivering to retail licensees.

History: 1989 AACS.

R 436.1633 Damage refunds.

Rule 33. A refund or other adjustment on beer containers shall not be made to a retail licensee by a manufacturer or wholesaler unless:

- (a) A keg of beer shows evidence of leakage.
- (b) A keg of beer is flat or not salable at the time of tapping.
- (c) Other reasonable grounds approved by a written order of the commission.

History: 1979 AC.

R 436.1635 Sale or delivery; restrictions; exception.

Rule 35. A brewer or wholesaler shall not offer for sale or deliver beer to a retail licensee between 12 midnight on Saturday and 12 midnight on Sunday, except to a holder of a special license issued by the commission.

History: 1979 AC; 1989 AACS.

R 436.1641 Brewers' and wholesalers' reports and records.

Rule 41. (1) A monthly report of operations of a brewer shall be made on forms approved by the commission and filed in the Lansing office of the commission. The records shall be maintained in order for 4 years, after which deletions may be made, but a 4-year record shall always be maintained.

(2) A wholesaler shall maintain records of its transactions, including the distribution of beer. The records shall be maintained for 4 years, after which deletions may be made, but a 4-year record shall always be maintained.

(3) A brewer or wholesaler shall maintain complete records of expenses and compensation of salesmen and representatives for 4 years.

History: 1979 AC; 1989 AACS.

R 436.1643 Rescinded.

History: 1979 AC; 1989 AACS.

R 436.1645 Inspection and enforcement.

Rule 45. (1) Upon order of the commission a commission representative or employee of the Michigan department of agriculture may inspect premises of an out-of-state manufacturer of beer which is sold or to be sold in this state.

(2) The books, records and premises of all licensees shall be available to the commission representative at all reasonable times. The licensee shall give any assistance and provide the facilities required for the inspection and analysis.

(3) The commission may demand a sample of any beer, shipped into this state and offered for sale or sold, for analytical and inspection purposes.

(4) The commission reserves the right to confiscate beer or other alcoholic beverages unless the beverage complies with these rules and the act. The beer confiscated shall be subject to disposition by order of the commission.

History: 1979 AC.

R 436.1651 Prohibited acts.

Rule 51. (1) A licensee shall not fail, neglect, or refuse to make a report required by these rules. A licensee shall not refuse to permit commission representatives to examine any of the following:

(a) The licensee's books.

(b) Federal tax stamps.

(c) Records.

(d) Invoices.

(e) Other papers pertaining to the licensee's books, federal tax stamps, records, or invoices.

(f) Any stock of beer in the licensee's possession or custody. A licensee shall not make an incomplete, false, or fraudulent report or do anything to avoid a full disclosure of the amount of beer subject to tax.

(2) A licensee shall not falsely label a container in which beer is placed for sale, use or give a false or fictitious name, use or give a false or fictitious address in an application or form required by these rules, or otherwise commit a fraud in an application, record, or report.

(3) A licensee shall not engage in tied-in sales of beer, wine, beer and wine, or any alcoholic liquor with any non-alcoholic product sold by the licensee.

History: 1979 AC; 1998-2000 AACS.

R 436.1659 Rescissions.

Rule 59. (1) Rules entitled "Rules and Regulations Applying to the Manufacture and Sale of Beer and/or Malt Beverages as Applied to Licensed Manufacturers and Distributors," being R 436.150 to R 436.250 of the Michigan Administrative Code, and appearing on pages 5320 to 5333 of the 1954 volume of the Code, page 129 of the 1955 Annual Supplement to the Code, and page 1525 of the 1960 Annual Supplement to the Code, are rescinded.

(2) Rules 36, 37, and 39 of the rules entitled "Rules and Regulations Governing the Relationship between Licensed Manufacturers, Wholesalers of Alcoholic Liquor, Their Sales Representatives and Retail Licensees," being R 436.556, R 436.557, and R 436.559 of the Michigan Administrative Code, and appearing on pages 5387 and 5388 of the 1954 volume of the Code, are rescinded.

(3) R 436.1627 of the Michigan Administrative Code, appearing on page 95 of Quarterly Supplement No. 91 to the Code, is rescinded.

History: 1979 AC.