

Michigan Mixed Spirit Drink Manufacturer Licensing Requirements & General Information

A **"mixed spirit drink"** means a drink produced and packaged or sold by a mixed spirit drink manufacturer or an outstate seller of mixed spirit drink which contains 10% or less alcohol by volume consisting of distilled spirits mixed with nonalcoholic beverages or flavoring or coloring materials and which may also contain 1 or more of the following:

- (a) Water.
- (b) Fruit juices.
- (c) Fruit adjuncts.
- (d) Sugar.
- (e) Carbon dioxide.
- (f) Preservatives.
 - MCL 436.1109(4)

****** For purposes of Rules promulgated by the Commission, an OSSMS is treated as an Outstate Seller of Wine but is subject to the rules applicable to spirits for purposes for the purposes of rules promulgated by the Commission for manufacturing and labeling.**

- MCL 436.1109(5)

A **Mixed Spirit Drink Manufacturer** license:

- License issued Michigan Liquor Control Commission ("Commission") to a person to manufacturer and sell to wholesalers mixed spirit drink.
- Must be located in Michigan.
- Must be a holder of an Importer, Producer and/or Wholesaler Basic Permit issued by the Federal Bureau of Alcohol, Tobacco & Firearms ("BATF").
- May sell and deliver **only** to Michigan wholesalers.
- No direct shipments allowed from Mixed Spirit Drink Manufacturer to Michigan retailers or Michigan consumers.
- Must enter into exclusive territory agreements with their wholesalers.
- Responsible for registering all brands with the Commission.
- Responsible for payment of Michigan mixed spirit drink excise tax.
- \$300 annual license fee (licensing year is from May 1st to April 30th each year)
- \$1,000.00 continuous Surety Bond required.

How To Apply For A Mixed Spirit Drink Manufacturer:

Applicants for a Mixed Spirit Drink Manufacturer license must submit the following documents:

- LICENSE APPLICATION - "Application for New License, or Application of Buyers for Transfer of Ownership or Interest in License" (Form LC-687). Additional documents are required for corporate, LLC & partnership applicants, as described on pages 2 & 3.
- INSPECTION FEE - A \$70.00 nonrefundable inspection fee is required to authorize the field investigation. (Check payable to "State of Michigan".)

- BOND APPLICATION - Surety Bond (Form MW-816) executed by an insurance company, authorized to do business in Michigan, in the amount of \$1,000.00 for the initial license. Subsequent year's surety bond will be the greater of the previous year's average monthly wine excise tax or \$1,000.00. **Bond application will be mailed to applicant upon Commission approval of application.**
- FEDERAL BASIC PERMIT – “Distilling, Rectifying, Blending and/or Bottling” Basic Permit, issued by the Bureau of Alcohol, Tobacco & Firearms (“BATF”). The Federal Basic Permit does not have to be submitted with the initial application. Issuance of this Permit by BATF will need to be verified prior to the Commission issuing a license.

In addition to the preceding documents required by all applicants, **CORPORATIONS** shall submit the following information per Rule 436.1109:

- Copy of current, filed Articles of Incorporation.
- Current "Certificate of Good Standing" from the state where incorporated, if incorporated outside of this state.
- “Report of Corporate Officers, Directors & Board of Directors” (Form LC-52).
- “Individual Stockholder/Corporate Stockholder Questionnaire” (Form LC-621), completed by each stockholder holding 10% or more stock interest.
- “Limited Partners, Stockholders & Members Statement” (Form LC-38), completed by each stockholder holding less than 10% stock interest.
- *Note:* All stockholders holding 10% or more corporate stock in applicant corporation will be required to be fingerprinted by local law enforcement agency. Enforcement Investigator will release necessary forms and instruct you to contact local law enforcement agency.

In addition to the LC-687 and other documents required by all applicants, **LIMITED LIABILITY COMPANIES (“LLC”)** shall submit the following information pursuant to Rule 436.1110:

- Copy of Articles of Organization and copies of any amendments to the Articles of Organization.
- Copy of Certificate of Authority to do business in Michigan, if the LLC is a non-Michigan LLC.
- Copy of Operating Agreement entered into by members.
- Copy of most recent annual statement filed with the Michigan Department of Consumer & Industry Services, Corporations and Securities Bureau. Newly organized LLC's will not have filed any such document yet.
- “Report of Limited Liability Company Members, Managers and Assignees” (Form LC-52A).
- “Individual Stockholder or Corporate Stockholder Questionnaire” Form (LC-621), completed by each member holding 10% or more of the total interest in LLC. Also, Form LC-621 should be completed for an assignee of a membership interest or a manager with a percentage distribution of 10% or more in the LLC.

- “Limited Partners, Stockholders or Members Statement” (Form LC-38), completed by member holding less than 10% of the total interest in the LLC. Also, Form LC-38 should be completed for an assignee of a membership interest or a manager with a percentage distribution of less than 10% in the LLC.
- *Note:* All members holding 10% or more interest in LLC and assignees of membership interest or managers with 10% or more percentage distribution will be required to be fingerprinted by the local law enforcement agency. The Commission Enforcement Investigator will release the necessary forms and instruct you how to contact the appropriate agency.

In addition to the preceding documents required by all applicants, **PARTNERSHIPS** shall submit the following information per R436.1111:

- Partnership Agreement (required for limited partnerships).
- “Application for New Licenses or Application of Buyers for Transfer of Ownership or Interest in License” (Form LC-687) completed by each general partner.
- “Limited Partners, Stockholders or Members Statement” (Form LC-38), completed by each limited partner. In the case where the limited partner is a corporation or a limited liability company, an “Individual Stockholder or Corporate Stockholder Questionnaire” Form (LC-621), should be completed by each of the limited partners.
- *Note:* All general partners will be required to be fingerprinted by local law enforcement agency. Enforcement Investigator will release necessary forms and instruct you to contact local law enforcement agency.

Send all applications to: Michigan Liquor Control Commission
 Manufacturers & Wholesalers Section
 P.O. Box 30005
 Lansing, MI 48909
 (517) 322-1415
www.michigan.gov/cis (Click on “Liquor Control”).

Licensing Process:

An investigation for a new license or transfer of an existing license is initiated by the applicant submitting an “Application for New License, or Application of Buyers For Transfer of Ownership or Interest in License” (Form LC-687), and the appropriate corporate, LLC or partnership documents, along with a \$70.00 inspection fee for each license applying for. Upon receipt of this information, the Commission’s Licensing Division will authorize an investigation and forward the file to the Commission’s Enforcement Division. An investigator from the Commission’s Enforcement Division will contact the applicant; advise them of the documentation necessary to be provided for review; and schedule an appointment with the applicant(s) to conduct the investigation. The investigation will cover a variety of areas including but not limited to: ownership structure; background of individuals; projected cost of the project/transaction; source of finances, including source of any money lender’s finances; present ownership verification; and physical inspection of the facility, if the physical premises is built and available for inspection. Upon completion of the investigation, the investigator will submit a report to the Commission.

The Commission investigator will also release forms and fingerprint cards to the local law enforcement agency and a resolution form to the local governing body. The local law enforcement agency's investigation is independent of the Commission's investigation. It is the responsibility of the applicant to follow-up with the local law enforcement agency and the local governing body to ensure that their recommendations are forwarded to the Commission.

The Commission will issue a formal order approving, denying, or holding the application for additional information. The applicant will be advised of the Commission's decision and provided with a copy of the Commission Order. If approved, the applicant will be provided with a check sheet listing any additional requirements or documentation necessary to be submitted to the Commission prior to issuance of the license and a contract for signatures. If the application is denied, the applicant will have the opportunity to appeal the denial

License Fee:

Mixed Spirit Drink Manufacturer's annual license fee is \$100. License must be renewed annually on May 1. License fee may not be prorated for partial year licensure. License fee is payable upon MLCC approval of your application.

- MCL 436.1525(1)(u)

Manufacturing & Labeling:

Mixed spirit drinks shall be manufactured, identified and labeled in accordance with federal spirit regulations published in Code of Federal Regulations Title 27, part 19 and Title 27, part 5. Contact BATF for detailed manufacturing and labeling requirements.

- MCL 436.1109(5)(8), Rule 436.1825, Rule 436.1827, Rule 436.1829

Label Registration:

All mixed spirit drink products sold in Michigan must have all labels approved by the Commission before the mixed spirit drink is sold in Michigan. The Commission may disapprove any label submitted for registration that is deemed to promote violence, racism, sexism, intemperance, or intoxication or to be detrimental to the health, safety, or welfare of the general public. To obtain Michigan approval, Mixed Spirit Drink Manufacturer must submit one copy of the Certificate of Label Approval ("COLA") approved by BATF and one set of loose labels, if readily available. One copy of the COLA will be returned with the Michigan registration number stamped on it. There is no fee for Michigan label registration.

- MCL 436.1109(5)(8), Rule 436.1825, Rule 436.1829

Container Deposits:

Beer, mixed wine drink (wine coolers) & mixed spirit drink (spirit coolers) sold in containers of one (1) gallon or less must comply with the Beverage Container Act (The Initiated Law of 1976) by requiring a deposit of not less than 10 cents per container when sold to consumers.

Containers must be clearly labeled with the name of this state and the deposit amount. "MI" or "MICH" are acceptable abbreviations for Michigan. The wholesaler who sells the returnable containers to their retail customers initiates the container deposit.

- MCL 445.571 – MCL 445.576

Invoices:

A Mixed Spirit Drink Manufacturer must provide each wholesaler with two (2) copies of each invoice at the time of each sale and delivery of mixed spirit drink.

- Rule 436.1720

Michigan Mixed Spirit Drink Manufacturer Excise Tax Report:

The Michigan excise tax on mixed spirit drink is \$ 0.48 (48 cents per liter). The OSSMS is responsible for paying the Michigan excise tax on all mixed spirit drink shipped and sold in Michigan. The “Michigan Mixed Spirit Drink Tax Report” (LC-891) is due with payment of the appropriate tax amount in the Lansing office of the Commission, postmarked on or before the 15th of each month, for mixed spirit drink shipped into Michigan during the preceding calendar month.

A copy of each corresponding invoice for mixed spirit drink shipments made during the preceding month must also be submitted along with the tax report. An OSSMS must submit the monthly tax report whether any shipments were made during the preceding month or not. Indicate “no shipments” on the report.

- MCL 436.1301, Rule 436.1725

Sale of Mixed Spirit Drinks by Wholesalers:

Mixed spirit drinks are sold through the three-tier distribution system. Licensed Mixed Spirit Drink Manufacturers and Outstate Sellers of Mixed Spirit Drinks are authorized to sell mixed spirit drinks to licensed Michigan wholesalers, who in turn may resell to licensed Michigan retailers. No sales may be made directly from a Mixed Spirit Drink Manufacturer or an OSSMS to a retailer.

Wholesalers may only sell mixed spirit drinks to retail licensees who are authorized to sell spirit products. Retail licensees who are only authorized to sell beer and wine may not sell mixed spirit drinks.

Samples To Consumers:

A Mixed Spirit Drink Manufacturer may offer free samples to consumers for on-premises tasting at the manufacturing premises. A Mixed Spirit Drink Manufacturer may not sell mixed spirit drinks to consumers for either on-premises consumption or for off-premises consumption (take-out).

- MCL 436.2025

Interest In Another License:

Michigan statute strictly prohibits a Mixed Spirit Drink Manufacturer or any other supplier from holding any interest, directly or indirectly, in any other license. Examples of prohibited interests include: stock ownership in another license, leasing real estate to/from another licensee, interlocking officers or directors between licensees, financial interest in any manner of another licensee.

- MCL 436.1603

Salesperson License:

A person employed or representing an alcoholic beverage supplier or wholesaler who sells, delivers, promotes or otherwise assist in the sale, delivery or promotion of alcoholic liquor in the State of Michigan must obtain a Salesperson license from the Commission. Form LC/MW-843 must be executed and submitted to the Commission with a \$35.00 fee. Form LC/MW-843 is available from the Commission Website at: www.michigan.gov/cis (Click on “Liquor Control”).

- MCL 436.1853

Price Posting:

A Mixed Spirit Drink Manufacturer is not required to post their prices to wholesalers with the Commission. Michigan wholesalers are required to post their prices to retailers with the Commission. Mixed spirit drink wholesalers must post their prices quarterly and must post prices for new products or price changes with the Commission. The wholesaler must maintain any temporary price reduction for no less than 14 consecutive calendar days.

- Rule 436.1726

Samples:

Mixed Spirit Drink Manufacturers, other suppliers and wholesalers are allowed to sample their products with on-premises or off-premises retail licensees and the retailer's employees. Sample tastings may not be offered to consumers. All containers used to sample products with retailers must be marked with the word "Sample" with lettering at least ½-inches high. While suppliers and wholesalers may offer tasting samples from multiple beverages, only one (1) sample container of 750 ml size or smaller may be left with a retail licensee for sampling by the retailer and their staff. Again, the container must be marked "Sample". A sample container must be removed from the premises within 24 hours and again may not be sampled by consumers.

- Rule 436.1001, Rule 436.1421, Rule 436.1511, Rule 436.1513, Rule 436.1863

Aid and Assistance:

Section 609 of the Code, being MCL 436.1609, and Rule 436.1035 prohibit an alcoholic beverage supplier or wholesaler from aiding or assisting any other licensee by giving them anything of value. Further, a licensee is prohibited from accepting aid and assistance from another industry member. Basically, alcoholic beverage suppliers are prohibited from giving anything of value to wholesalers or retailers. Likewise, wholesalers are prohibited from giving anything of value to retailers. This principle is intended to provide a level playing field for all industry members. Suppliers are prohibited from conducting incentive contests offering awards or prizes to wholesalers or their employees. Suppliers and wholesalers are prohibited from conducting incentive promotions offering awards or prizes to retailers or their employees. Suppliers may not give anything of value to their wholesalers or their employees. Suppliers and wholesalers are prohibited from giving anything of value to retail licensees, including but not limited to: alcoholic beverages, merchandise, furniture, fixtures, equipment, uniforms, cash or loans, labor, etc. While wholesalers and suppliers may provide point-of-sale materials such as posters, banners, table tents, flyers, etc., to retailers promoting their brands and prices, they are prohibited from providing anything that has any secondary use, value or purpose, other than actual advertising value to retailers without prior Commission approval. This same principle prohibits suppliers and wholesalers from providing free advertising, incentive programs, free or discounted product, draft system installation and maintenance, etc. Violations in the aid and assistance statute will result in all participants (retailer, wholesaler and supplier) being cited before the Commission.

- MCL 436.1609, Rule 436.1035

Rebates, Special Purchase Allowances, & Quantity Discounts:

A Mixed Spirit Drink Manufacturer is prohibited from rebating any money to wholesalers. Mixed Spirit Drink Manufacturers may offer special purchase allowances to wholesalers as long as the allowance is offered to all wholesalers and is based on the wholesaler purchases at the time of the allowance and not based on past sales. A Mixed Spirit Drink Manufacturer may offer quantity discounts to their wholesalers but may not offer free merchandise to their wholesalers.

- MCL 436.1609

Michigan Three-Tier Distribution System:

Michigan is a highly regulated three-tier distribution state. The Commission licenses and regulates alcoholic beverage suppliers, wholesalers and retailers. All alcoholic beverages sold to Michigan consumers must go through each of the licensed distribution tiers. Each of the distribution tiers operates independently of the others. An OSSMS license is required to ship wine into Michigan and *is authorized to ship/sell wine to licensed Michigan wholesalers only*. The Michigan wholesaler is then authorized to ship/sell to the licensed Michigan retailer. The licensed Michigan retailer is the only entity authorized to sell and deliver alcoholic beverages to Michigan consumers. **Under no circumstances may an OSSMS or any other out-of-state company ship alcoholic beverages directly to Michigan consumers.**

How To Contact BATF:

BATF may be contacted as follows: www.atf.treas.gov

Federal Basic Permits:

BATF

Technical Services

550 Main St., Rm 6525

Cincinnati, OH 45202

(513) 684-3335

Federal Label Approvals:

BATF

Product Compliance Branch

650 Massachusetts Ave., N.W.

Washington, DC 20226

(202) 927-8140

Michigan Regional Office:

BATF

1155 Brewery Park Blvd.

Suite 300-A

Detroit, MI 48207-2602

(313) 393-0085

How To Contact The Michigan Liquor Control Commission:

Questions relating to Mixed Spirit Drink Manufacturers and other non-retail licenses may be directed to:

Michigan Liquor Control Commission

Manufacturers & Wholesalers Section

P.O. Box 30005

Lansing, MI 48909

(517) 322-1415

(517) 322-5046 (fax)

twhite@michigan.gov

www.michigan.gov/cis (Click on "Liquor Control".)