

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEWARK INTERNATIONAL PLAZA
U.S. ROUTES 1-9 (SOUTHBOUND) NEWARK, N.J. 07114

BULLETIN 2424

FEBRUARY 26, 1982

ITEM

1. NOTICE CONCERNING AVAILABILITY OF DIVISION REGULATIONS
2. REGULATORY CHANGES IN DIVISION RULES SINCE 1978
3. CITATIONS TO REGULATIONS - NEW, AMENDED OR DELETED
4. EXPIRATION DATES OF REGULATIONS
5. FULL TEXT OF REGULATORY AMENDMENTS AS CURRENTLY IN EFFECT

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEWARK INTERNATIONAL PLAZA
U.S. ROUTES 1-9 (SOUTHBOUND), NEWARK, N.J. 07114

BULLETIN 2424

FEBRUARY 26, 1982

1. NOTICE CONCERNING AVAILABILITY OF DIVISION REGULATIONS

The Regulations of the Division of Alcoholic Beverage Control are, like those of every other State agency, part of the New Jersey Administrative Code ("N.J.A.C"). Title 13 of the Code contains the Regulations of the Department of Law and Public Safety; the Department within which this Division functions. The regulations of this Division are assigned to Chapter 2 of Title 13 (N.J.A.C.), and, as of this date, contain forty (40) Subchapters. Thus, the Division's Regulations may be located at N.J.A.C. 13:2-1.1 through 13:2-40.7.

When the Division seeks to adopt a new Regulation or amend an existing Regulation, it must follow procedures which flow from the Administrative Procedure Act (N.J.S.A. 52:14B-et seq.). As a consequence of that Act, all notices of proposed and adopted Regulations are published in the New Jersey Register ("N.J.R."), a publication of the Office of Administrative Law, which is within the Department of State.

The New Jersey Administrative Code is also a publication of the Office of Administrative Law. Therefore, Division of Alcoholic Beverage Control Regulations are "officially" published not by this Division, but by:

Administrative Publications
Office of Administrative Law
C.N. 301
Trenton, N.J. 08625
(609) 292-6060

In 1978, the Division of Alcoholic Beverage Control Rules were compiled in a booklet commonly referred to by licensees as the "blue book of rules." This Bulletin contains the current text of all Regulations changed (amended or adopted) since the "blue book" was prepared.

The Division has a limited number of the 1979 "blue book of rules" available at \$10.00. Additional copies of this Bulletin are

available at \$5.00 each. The "official" version of Division Regulations, and periodic up-date supplements, may be secured from the Office of Administrative Law, at the above address.

2. REGULATORY CHANGES IN DIVISION RULES SINCE 1978

<u>PROPOSED</u>	<u>ADOPTED</u>	<u>EFFECTIVE</u>
A.) December, 1978..... 10 <u>NJR</u> 557(a)	July 7, 1979..... 11 <u>NJR</u> 146(a)	July 15, 1979
B.) March, 1979..... 11 <u>NJR</u> 143(a)	April 4, 1979..... 11 <u>NJR</u> 257(c)	May 1, 1979*
C.) June, 1979..... 11 <u>NJR</u> 285(b)	February 11, 1980..... 12 <u>NJR</u> 156(a)	February 11, 1980*
D.) August, 1979..... 11 <u>NJR</u> 384(c)	February 11, 1980..... 12 <u>NJR</u> 156(b)	February 11, 1980*
E.) June, 1980..... 12 <u>NJR</u> 343(b)	July 3, 1980..... 12 <u>NJR</u> 494(b) 12 <u>NJR</u> 608(c)	July 3, 1980
F.) October, 1980..... 12 <u>NJR</u> 605(b)	December 4, 1980..... 13 <u>NJR</u> 41(c)	December 4, 1980
G.) January, 1981..... 13 <u>NJR</u> 37(b)	March 4, 1981..... 13 <u>NJR</u> 238(b)	N.J.A.C. 13:2-24.4 and 39.3, November 1, 1981; N.J.A.C. 13:2-38.1, May 1, 1981; N.J.A.C. 13:2-41.1 to 41.5, March 4, 1981.
H.) September, 1981..... 13 <u>NJR</u> 604(b)	November 2, 1981..... 13 <u>NJR</u> 777(e) 13 <u>NJR</u> 846(e)	November 2, 1981

* NOTE: Regulatory Changes "B", "C" and "D" (above) did not become effective until March 11, 1981 due to legal challenges. The New Jersey Supreme Court rendered its decision on February 11, 1981 in Heir v. Degnan, 82 NJ 109 (1980). However, on February 13, 1980, Presiding Justice Mark A. Sullivan entered a Temporary Stay of the Heir judgment, which was later extended by the full Court through March 10, 1980, pending an application by the industry to the United States Supreme Court. Applications to that Court were denied by Mr. Justice Potter Stewart on March 10, 1980, Mr. Justice John Paul Stevens On March 11, 1980 and by the entire Court on March 24, 1980. See, Heir v. Degnan, No. A-735, ___ US ___, 63 LE 2d 774 (1980). Since the United States Supreme Court declined to stay the State Court's determination and the New Jersey Supreme Court's stay of its own opinion expired on March 10, 1980, deregulation became effective thereafter.

3. CITATIONS TO REGULATIONS - NEW, AMENDED OR DELETED

The following Regulations were the subject of regulatory action since the last compilation of Division Regulations in 1978, (i.e., "the blue book of rules"). The alphabetic references relate to the proposal implemented as set forth in Item 2, (above).

<u>RULE</u>	<u>ACTION AND REFERENCE</u>
<u>N.J.A.C. 13:2-2.9</u>	AMEND, B
<u>N.J.A.C. 13:2-4.3</u>	AMEND, E
<u>N.J.A.C. 13:2-4.9</u>	AMEND, E
<u>N.J.A.C. 13:2-5.1</u>	AMEND, B
<u>N.J.A.C. 13:2-5.2</u>	AMEND, B
<u>N.J.A.C. 13:2-7.7</u>	AMEND, B
<u>N.J.A.C. 13:2-7.10</u>	AMEND, B & H
<u>N.J.A.C. 13:2-8.6</u>	AMEND, B
<u>N.J.A.C. 13:2-18.1</u>	AMEND, B
<u>N.J.A.C. 13:2-20.11</u>	AMEND, E
<u>N.J.A.C. 13:2-20.14</u>	AMEND, E
<u>N.J.A.C. 13:2-23.1</u>	AMEND, E
<u>N.J.A.C. 13:2-23.8</u>	AMEND, E
<u>N.J.A.C. 13:2-23.15</u>	AMEND, B
<u>N.J.A.C. 13:2-23.16</u>	DELETE, B; NEW, E
<u>N.J.A.C. 13:2-23.21</u>	AMEND, E
<u>N.J.A.C. 13:2-23.31</u>	AMEND, A & F
<u>N.J.A.C. 13:2-24.1</u>	AMEND, B, E & H
<u>N.J.A.C. 13:2-24.2</u>	AMEND, B
<u>N.J.A.C. 13:2-24.3</u>	AMEND, B
<u>N.J.A.C. 13:2-24.4</u>	AMEND, B; DELETE G; NEW H
<u>N.J.A.C. 13:2-24.5</u>	AMEND, B, C & E
<u>N.J.A.C. 13:2-24.6</u>	AMEND, B
<u>N.J.A.C. 13:2-24.7</u>	AMEND, B & E
<u>N.J.A.C. 13:2-24.8</u>	AMEND, B & E
<u>N.J.A.C. 13:2-24.9</u>	NEW, B; AMEND C, E & F
<u>N.J.A.C. 13:2-24.10</u>	NEW, B; DELETE E
<u>N.J.A.C. 13:2-24.11</u>	NEW, B; CHANGE TO 24.10, E
<u>N.J.A.C. 13:2-25.1</u>	AMEND, B & C
<u>N.J.A.C. 13:2-25.2</u>	NEW, B; AMEND, C
<u>N.J.A.C. 13:2-25.3</u>	NEW, C
<u>N.J.A.C. 13:2-26.1</u>	AMEND, B, C & E
<u>N.J.A.C. 13:2-26.2</u>	DELETE, B
<u>N.J.A.C. 13:2-26.3</u>	DELETE, B
<u>N.J.A.C. 13:2-26.4</u>	DELETE, B
<u>N.J.A.C. 13:2-27.1</u>	AMEND, B
<u>N.J.A.C. 13:2-29.1</u>	AMEND, B
<u>N.J.A.C. 13:2-29.2</u>	AMEND, B

3. CITATIONS TO REGULATIONS - NEW, AMENDED OR DELETED
CONTINUED

<u>RULE</u>	<u>ACTION AND REFERENCE</u>
<u>N.J.A.C. 13:2-29.3</u>	AMEND, B
<u>N.J.A.C. 13:2-29.4</u>	NEW, B
<u>N.J.A.C. 13:2-33.1</u>	AMEND, B
<u>N.J.A.C. 13:2-33.2</u>	AMEND, B
<u>N.J.A.C. 13:2-33.3</u>	DELETE, B
<u>N.J.A.C. 13:2-33.4</u>	CHANGE TO 33.3, B; DELETE, E
<u>N.J.A.C. 13:2-33.5</u>	DELETE, B
<u>N.J.A.C. 13:2-33.6</u>	DELETE, B
<u>N.J.A.C. 13:2-33.7</u>	DELETE, B
<u>N.J.A.C. 13:2-36.1</u>	DELETE, B
<u>N.J.A.C. 13:2-36.2</u>	CHANGE TO 36.1, B; DELETE, C; NEW E
<u>N.J.A.C. 13:2-36.3</u>	DELETE, B
<u>N.J.A.C. 13:2-36.4</u>	DELETE, B
<u>N.J.A.C. 13:2-36.5</u>	DELETE, B
<u>N.J.A.C. 13:2-36.6</u>	DELETE, B
<u>N.J.A.C. 13:2-36.7</u>	DELETE, B
<u>N.J.A.C. 13:2-36.8</u>	DELETE, B
<u>N.J.A.C. 13:2-36.9</u>	CHANGE TO 36.2, B; DELETE, E
<u>N.J.A.C. 13:2-36.10</u>	DELETE, B
<u>N.J.A.C. 13:2-36.11</u>	DELETE, B
<u>N.J.A.C. 13:2-36.12</u>	DELETE, B
<u>N.J.A.C. 13:2-36.13</u>	DELETE, B
<u>N.J.A.C. 13:2-36.14</u>	DELETE, B
<u>N.J.A.C. 13:2-36.15</u>	DELETE, B
<u>N.J.A.C. 13:2-37.1</u>	AMEND, B
<u>N.J.A.C. 13:2-37.2</u>	AMEND, B
<u>N.J.A.C. 13:2-37.3</u>	AMEND, B
<u>N.J.A.C. 13:2-37.4</u>	DELETE, B
<u>N.J.A.C. 13:2-38.1</u>	AMEND, G
<u>N.J.A.C. 13:2-39.1</u>	AMEND, B
<u>N.J.A.C. 13:2-39.2</u>	DELETE, B
<u>N.J.A.C. 13:2-39.3</u>	DELETE & NEW B; DELETE G
<u>N.J.A.C. 13:2-39.4</u>	DELETE & NEW, B
<u>N.J.A.C. 13:2-39.5</u>	DELETE & NEW, B
<u>N.J.A.C. 13:2-39.6</u>	AMEND & CHANGE TO 39.2, B
<u>N.J.A.C. 13:2-40.1</u>	AMEND, E
<u>N.J.A.C. 13:2-41.1</u>	NEW, B; DELETE, G
<u>N.J.A.C. 13:2-41.2</u>	NEW, B; DELETE, G
<u>N.J.A.C. 13:2-41.3</u>	NEW, B; DELETE, G
<u>N.J.A.C. 13:2-41.4</u>	NEW, B; DELETE, G
<u>N.J.A.C. 13:2-41.5</u>	NEW, B; AMEND, D; DELETE, G

4. EXPIRATION DATES OF REGULATIONS

Pursuant to Executive Order of the Governor (No. 66, April 14, 1978), new or amended State agency rules must expire (sunset) not more than five (5) years after amendment or adoption. Subchapters 2, 5, 7, 8, 18, 23, 24, 25, 26, 27, 29, 33, 36, 37 and 39 expire April 12, 1984. Subchapters 4, 20, and 40 expire July 3, 1985. Subchapter 38 expires March 4, 1986.

5. FULL TEXT OF REGULATORY AMENDMENTS AS CURRENTLY IN EFFECT

* * * * *

The following is the text of all Regulations which have been changed since 1978, as they now appear:

Subchapter 2. Filing of and Advertising Notice of Application for
Municipal License

* * * * *

13:2-2.9 Hearing not required; reasons.

(a) No hearing need be held if no written objection shall be lodged and the issuing authority determines to approve the application but this in no way relieves the issuing authority from the duty of making a thorough investigation on its own initiative.

(b) No application shall be approved unless the issuing authority affirmatively finds and reduces to resolution that:

(1) the submitted application form is complete in all respects; and

(2) the applicant is qualified to be licensed according to all standards established by Title 33 of the New Jersey statutes, regulations promulgated thereunder as well as pertinent local ordinances and conditions consistent with Title 33; and

(3) the applicant has disclosed and the authority reviewed the source of all funds used in the purchase of the license and the licensed business and all additional financing obtained in connection with the licensed business.

(c) However, the issuing authority shall not disapprove the application without first affording the applicant an opportunity to be heard, and providing the applicant with at least five days notice thereof. The hearing need not be of the evidentiary or trial type and the burden of establishing that the application should be approved shall rest with the applicant. In every action adverse to any applicant or objector, the issuing authority shall state the reasons therefor.

* * * * *

Subchapter 4. Issuance of and Transfer of Municipal Retail Licenses
Other Than Club Licenses by the Director

* * * * *

13:2-4.3. Fees; new or renewal licenses.

Where application is made for a new license or for a renewal of a license, there shall also be submitted supplemental application forms (copies may be obtained from the Director), fully executed in duplicate and accompanied by:

1. A fee of \$55.00 in cash, money order or certified check drawn to the order of the Division of Alcoholic Beverage Control; and
2. A certification from the municipal clerk or other responsible municipal official stating that the municipal license or renewal fee has been paid and the amount of such fee.

* *

13:2-4.9 Refund of fees.

If the application for new or renewal license is denied for any reason whatsoever or withdrawn statutory refund of 90 percent of the fee deposited with the municipality shall be made by said municipality to the applicant. The remaining 10 percent shall be deemed an investigation fee and shall be retained by the Municipality. The \$55.00 fee accompanying the supplemental application shall be retained by the Director.

* * * * *

Subchapter 5. Issuance of Special Permits by Director

* * * * *

13:2-5.1 Social affair permit.

- (a) Application for social affair permit may be made to the

Director by organizations operating solely for civic, religious, educational, charitable, fraternal, social, or recreational purposes, and not for private gain. In order to establish its eligibility, an applicant shall submit in support of its application sufficient documents such as:

1. Certificate of incorporation;
2. Charter;
3. Constitution;
4. Bylaws;
5. Minutes of meetings;
6. Membership roster;
7. Financial records;
8. Documentation of Federal Income Tax exemption or application therefor; and
9. Such other information as the Director may deem appropriate.

(b) A fee, in the sum of \$50.00 per day, in cash, certified check, or money order made payable to the Division of Alcoholic Beverage Control, must accompany each application for social affair permit filed by religious, civic or educational organizations; and \$75.00 for such other organizations, and must be received at least seven days in advance of date for which permit is requested.

(c) Applications for a social affair permit shall be endorsed by the chief of police or his designee and the clerk of the municipality wherein the affair is to be held.

(d) No more than one social affair permit shall be issued to any one applicant per month, nor shall any such permit be granted for premises at which 25 prior social affair permits have been issued within the same calendar year.

(e) A social affair permittee shall be entitled to purchase alcoholic beverages to be dispensed at social affairs from a New Jersey licensed wholesaler, distributor or retailer only, and to resell said alcoholic beverages, for on-premises consumption only. Within 10 days after the social affair, the permittee shall file with the Director a signed and sworn inventory report on forms promulgated by the Director showing all purchases of alcoholic beverages and the source and disposition thereof. Failure to so file the said inventory report shall be cause for denial of any future applications for a social affair permit.

(f) A social affair permittee must abide by all the provisions

of the New Jersey Alcoholic Beverage Law, Division rules and regulations, and municipal ordinances. Failure to do so may result in said permittee being denied future applications for social affair permits.

(g) A special permit shall be required for the sale or service of alcoholic beverages to those attending an affair at which there is any charge in connection with the affair, whether the charge be a direct one for drinks, imposed through the sale of tickets or charging of admission, requiring donations or special assessments, or where the charge is made ostensibly for food, entertainment or anything else.

(h) The rules herein contained shall be considered general rules governing the issuance of a social affair permit, and may be relaxed or dispensed with by the Director in any case where a strict adherence to them will result in hardship.

* *

13:2-5.2. Special concessionaire permit.

(a) Application for special concessionaire permit may be made to the Director, by any individual, partnership, or corporation who has entered into a contract with the State of New Jersey, or any political subdivision thereof, whereby said organization is authorized to sell alcoholic beverages for immediate consumption on property owned by or under the control of, the State of New Jersey or any political subdivision thereof.

(b) The term of a special concessionaire permit shall be from July 1 through June 30 unless otherwise specified. The fee for said permit shall be fixed by the Director, and must accompany application with either cash, certified check or money order payable to the Division of Alcoholic Beverage Control.

(c) Application must be supported by the following documents before permit will be issued by the Director:

1. Letter of authorization from, and copy of agreement with the State, county, or municipal official or body charged with responsibility over public lands for which sale of alcoholic beverages is sought;

2. Letter of applicant detailing manner and method of proposed operation under permit;

3. Plan or sketch of premises to be used in accordance with permit;

4. If applicant is incorporated - copy of certificate of incorporation; if an association - copy of charter;

5. Affidavit of publication by newspaper in which notice of application has appeared, as hereinafter provided.

(d) Within ten days subsequent to the filing of application with the Director, applicant shall cause to be published a notice of application once in a newspaper printed in the English language, published and circulated in the municipality in which the premises sought to be authorized are located. If, however, there shall be no such newspaper, then such notice shall be published in a newspaper printed in the English language, published and circulated in the county in which said premises are located.

(e) Notice of application shall be published in the following form:

NOTICE

ALCOHOLIC BEVERAGE PERMIT

TAKE NOTICE THAT has applied to the DIRECTOR of the
..... (Name of Applicant)
New Jersey DIVISION OF ALCOHOLIC BEVERAGE CONTROL for a SPECIAL CONCESSION-
AIRE PERMIT for premises situated at
..... (No.) (Street) (Municipality)

See below *, **, ***, ****

Objections, if any, should be addressed to the Director, Division of Alcoholic Beverage Control.
..... (Name of Applicant)
..... (Address of Applicant)

* If applicant is a corporation, insert at this point the names and residences of all officers and all directors who have no other named office, and the names and residences of all stockholders holding more than ten per cent of any of the stock of said corporation.

** If applicant is a partnership, insert at this point the name of the partnership and the names and residences of all partners.

*** If applicant is a club, insert at this point the names and residences of the officers and the offices they fill respectively, and the names and residences of the directors, trustees or other governing body.

**** If the application is for a building not yet constructed, insert at this point "Plans of building to be constructed may be examined at the office of the Municipal Clerk."

(f) Upon receipt of a duly signed written objection to the issuance of special concessionaire permit, the Director will afford a hearing to all parties immediately notifying the applicant and the objector of the date, hour and place thereof.

1. No hearing need be held if no such objection shall be lodged, but the application shall not be denied without first affording the applicant an opportunity to be heard.

(g) The holder of a special concessionaire permit shall be entitled to purchase alcoholic beverages only from the holders of New Jersey whole-sale or distributor's license, for resale at the authorized premises. Said holder is expressly prohibited from purchasing alcoholic beverages from retail liquor licensees or from selling or offering for sale alcoholic beverages for off-premises consumption

(h) The Director may, in his discretion, impose special conditions on any permit.

(i) The holder of a special concessionaire permit must abide by all provisions of the New Jersey Alcoholic Beverage Law, Division rules and Regulations and municipal ordinances. Failure to do so may result in disciplinary proceedings against the permittee.

(j) The rules herein contained shall be considered as general rules governing the issuance of a special concessionaire permit and may be relaxed or dispensed with by the Director in any case where a strict adherence to them will result in hardship.

* * * * *

Subchapter 7. Transfers of State and Municipal Licenses

* * * * *

13:2-7.7 Publication of notice of application .

(a) The notice of application shall be published once a week, for two weeks successively at least seven days apart, in a newspaper printed in the English language published and circulated in the municipality in which the licensed premises are located. If, however, there shall be no such newspaper, then such notice shall be published in a newspaper printed in the English language, published and circulated in the county in which the licensed premises are located.

(b) A copy of such Notice shall be filed with the Division at the time of first publication and shall be available for inspection as a public record.

* * *

13:2-7.10 Hearing not required; reasons.

(a) No hearing need be held if no written objection shall be lodged, and the issuing authority determines to approve the application, but this in no way relieves the issuing authority from the duty of making a thorough investigation on its own initiative.

(b) No application shall be approved unless the issuing authority affirmatively finds and reduces to resolution that:

(1) the submitted application form is complete in all respects, and

(2) the applicant is qualified to be licensed according to all standards established by Title 33 of the New Jersey statutes regulations promulgated thereunder as well as pertinent local ordinances and conditions consistent with Title 33; and

(3) the applicant has disclosed and the authority reviewed the source of all funds used in the purchase of the license and the licensed business and all additional financing obtained in connection with the licensed business; and

(4) In the case of person-to-person transfers, that it has received a written statement, under oath, signed by an authorized representative of both the transferor and transferee, affirming that the transferee is aware of all obligations outstanding to New Jersey alcoholic beverage manufacturers, wholesalers, and distributors, and that either the transferee has assumed any such obligations or the obligations have been or will be satisfied by the transferor out of the proceeds of the sale of the licensed business.

(c) The issuing authority shall not disapprove the application without first affording the applicant an opportunity to be heard, and providing the applicant with at least five days notice thereof. The hearing need not be of the evidentiary or trial type and the burden of establishing that the application should be approved shall rest with the applicant. In every action adverse to any applicant or objector, the issuing authority shall state the reasons therefor.

(d) In the event no action is taken on an application for transfer of a license within 60 days of the date of filing of the application, the applicant may file an appeal with the Director as if the application had been denied.

* * * * *

Subchapter 8. Club Licenses

* * * * *

13:2-8.6 Qualifications of officers and members.

(a) No club license shall be issued nor renewal granted to any corporation, association or organization in which an officer or member of the governing body has been convicted of a disqualifying offense pursuant to Title 33 unless the statutory disqualification resulting from such conviction has been removed by order of the Director. Application for removal of the disqualification may be made by verified petition to the Director when the unlawful situation is corrected.

(b) No application shall be approved unless the issuing authority affirmatively finds and reduces to resolution that:

(1) the submitted application form is complete in all respects, including the requirements of N.J.A.C. 13:2-8.7, and

(2) the officers and directors of applicant club are qualified to be licensed according to all standards established by Title 33 of the New Jersey statutes, regulations promulgated thereunder as well as pertinent local ordinances or conditions consistent with Title 33; and

(3) the club maintains all records required pursuant to

N.J.A.C. 13:2-8.8 and 8.12.

* * * * *

Subchapter 18. Petition Proceedings; Discrimination against Wholesalers

* * * * *

13:2-18.1 Grounds for relief.

(a) There shall be no discrimination in the sale of any nationally advertised brand of alcoholic beverage other than malt alcoholic beverage, by importers, blenders, distillers, rectifiers and wineries, to duly licensed wholesalers of alcoholic beverages who are authorized by such importers, blenders, distillers, rectifiers and wineries to sell such nationally advertised brand in New Jersey. All actions by duly licensed New Jersey wholesalers seeking relief from such discrimination shall be in the form of a petition to the Director setting forth the facts of alleged discrimination, the relief sought and the grounds therefor.

(b) For purposes of subsection (a) of this section, refusal to sell based upon any of the following shall be deemed not to be discrimination:

(1) The appointment of a trustee, receiver or other similar custodian for all or any substantial part of the wholesaler's property based upon the provisions of N.J.S. 14A:14-2(2) or any other state or federal provision similar to N.J.S. 14A:14-2(2);

(2) The filing of the petition by the wholesaler, or an answer, not denying jurisdiction, in bankruptcy, under Chapter XI of the Federal Bankruptcy Act, or any similar law, state or federal, whether now or hereafter existing, or if any such petition is filed against the wholesaler and not vacated or stayed within 15 days of such filing;

(3) The making, by the wholesaler, of an assignment for the benefit of creditors;

(4) An attachment of the wholesaler's property, or any substantial part thereof, or the filing of any like process against it which is not discharged within 30 days of such filing, unless satisfaction of the underlying obligation is the subject of continuing negotiations, installment payments, or appeal;

(5) The rendition of a final judgment by any competent

court or tribunal against the wholesaler which remains unsatisfied for 30 days after the entry thereof and which is substantial in relation to the assets of such wholesaler; unless satisfaction of the underlying obligation is the subject of continuing negotiations, installment payments or appeal;

(6) The actual suspension or loss, by the wholesaler of any federal or state license required for the operation of its business whether lost through revocation, failure to renew or suspension, for a period of 60 continuous days or more;

(7) The insolvency of the wholesaler;

(8) The disparagement, by the wholesaler, of any product of the refusing seller made by a representative specifically authorized by a wholesaler's key management personnel; disparagement shall mean the specific suggestion that the product of the refusing seller not be purchased, or demonstration of a course of conduct that would lead a reasonable person to believe that the product of the refusing seller should not be purchased, and when called to the attention of key management personnel of the wholesaler, no reasonable corrective action is taken;

(9) The unfair preferment in sales effort, by the wholesaler, of a competitor's brand over that of the refusing seller;

(10) The material breach, by such wholesaler, of any material term or condition of sale or credit agreed upon or established by course of dealing between the wholesaler and the refusing seller, in writing; provided that where either by virtue of customary practice in the industry or past dealings between parties, such breach would not be deemed a reasonable basis for fear of material economic loss from the transaction or transactions involved.

(c) For purposes of subparagraph (b)(7), a wholesaler shall be deemed insolvent when:

(1) The aggregate of its property, exclusive of any property which it may have conveyed, transferred, concealed, removed or permitted to be concealed or removed, with intent to defraud, hinder, or delay its creditors, shall not at a fair valuation be sufficient in amount to pay its debts; or

(2) The wholesaler is unable, by its available assets or the reasonable use of credit to pay its debts as they become due; provided however, that where such inability does not put the refusing seller in reasonable fear of material economic loss from the transaction or trans-

actions involved, refusal to sell shall not be authorized.

* * * * *

Subchapter 20. Transportation by Licensees; Transit Insignia

* * * * *

13:2-20.11 Affixing transit insignia to vehicle.

(a) Except as otherwise provided in this rule, transit insignia, immediately upon receipt, must be directly and securely affixed to an unmovable window either at the rear or on the left side of the vehicle for which such insignia has been issued, in the lower left corner of such window, in a manner not to interfere with the driver's view. On vehicles without such unmovable rear or side window, such insignia shall be affixed to the exterior of the body on the left side thereof. In either event, such insignia shall be clearly visible at all times.

(b) In lieu of affixing the insignia in the manner prescribed in subsection (a) of this section, it may be carried in the vehicle while engaged in the transportation of alcoholic beverages, provided an inscription is painted on the exterior of the body of the vehicle on the left side thereof, clearly visible at all times, which inscription shall, in letters not less than one inch in height and of proper and proportionate width, indicate the number of the current insignia and the date of its expiration in form as follows (inserting the appropriate number and year);

STATE OF NEW JERSEY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

TRANSIT INSIGNIA NO.
EXPIRES AUGUST 31, 19..

* * *

13:2-20.14 Term of transit insignia; renewal.

All transit insignia and special transportation permits expire on August 31 following their issuance unless previously terminated by order of the Director or by surrender, revocation or expiration of the license. Renewals must be applied for in the same manner as new insignia or permits.

* * * * *

Subchapter 23. Conduct of Licensees and Use of Licensed Premises

* * * * *

13:2-23.1 Serving minors and intoxicated persons.

(a) No licensee shall sell, serve or deliver or allow, permit or

suffer the sale, service or delivery of any alcoholic beverage, directly or indirectly, to any person under the legal age to purchase or consume alcoholic beverages, or allow, permit or suffer the consumption of any alcoholic beverage by any such person in or upon the licensed premises.

(b) No licensee shall sell, serve or deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, directly or indirectly, to any person actually or apparently intoxicated or permit or suffer the consumption of any alcoholic beverage by any such person in or upon the licensed premises.

* *

13:2-23.8 Eastern Standard Time change.

(a) On the last Sunday of April of each year, at 2:00 a.m., the clocks in each licensed premises will be advanced one hour in observance of Eastern Daylight Saving Time. In any municipality having a closing hour later than 2:00 a.m., the official time will then become 3:00 a.m. and the hours of sale will be calculated accordingly.

(b) On the last Sunday of October of each year, at 2:00 a.m., the clocks in each licensed premises will be turned one hour back in observance of Eastern Standard Time. In municipalities having a closing hour later than 2:00 a.m., the clocks will be immediately returned to 1:00 a.m. and hours of sale will be calculated accordingly.

(c) In either case, (a) or (b), licensed premises having closing hours of 2:00 a.m., or earlier, will be unaffected.

* *

13:2-23.15 Possession of container mislabeled as to fill.

No licensee shall knowingly display, sell or deliver any alcoholic beverage in an original container having a content of fill less than that stated on the container or label thereof, subject to such tolerance as permitted by Federal law and regulation; and no licensee shall possess such a container except for the sole purpose of return for credit or replacement consistent with N.J.A.C. 13:2-23.11 and 39.4.

* *

13:2-23.16 Prohibited promotions.

(a) No licensee or registrant privileged to sell or solicit the sale of alcoholic beverages within this State shall, directly or in-

directly, allow, permit or suffer any practice or promotion that:

(1) Offers to the public-at-large unlimited availability of any alcoholic beverage for a set price; or

(2) Offers to a patron or consumer a free drink, gift, prize or anything of value, conditioned upon the purchase of an alcoholic beverage or product, except branded or unique glassware or souvenirs in connection with a single purchase; or

(3) Requires or allows a consumer to pre-purchase more than one drink or product at a time via tickets, tokens, admission fees, two for one, or the like, as a condition for entry into a licensed premises or as a requirement for service or entertainment thereon.

* *

13:2-23.21 Storage of alcoholic beverages.

No licensee shall store any alcoholic beverage except at his licensed premises, or at a public warehouse licensed under the alcoholic beverage law, or at other premises pursuant to special permit first obtained from the Director of the Division of Alcoholic Beverage Control, provided, however, that nothing herein contained shall prohibit the storage of alcoholic beverages by a licensee upon the formerly licensed premises for a period not exceeding five days subsequent to the effective date of the transfer of the license to other premises or for a period not to exceed 72 hours following delivery at the licensed premises of a fellow member of a cooperative purchasing agreement pursuant to subchapter 26.

* *

13:2-23.31 Law enforcement officers.

(a) No license shall be held by any regular police officer, any peace officer or any other person whose powers or duties include the enforcement of the alcoholic beverage law or regulations, or by any profit corporation or association in which any such officer or person is interested, directly or indirectly.

(b) No licensee shall employ or have connected with him in any business capacity whatsoever any such officer or person, except that:

(1) Nothing herein shall prohibit a licensee from employing in a non-managerial capacity a special police officer who shall not sell, serve or deliver any alcoholic beverages; and

(2) A licensee, upon prior written application to and written approval by the Director, may employ in a non-managerial capacity a regular police officer, peace officer or other person whose powers and duties include the enforcement of the Alcoholic Beverage Law (other than an officer employed by the Division of State Police) provided that such officer shall not be employed in a jurisdiction in which the officer is officially employed and such officer shall not sell, serve, possess or deliver alcoholic beverages;

(i) Written application pursuant to (b)2 above shall include prior written approval of such employment by the chief law enforcement officer of the jurisdiction which employs said officer or person and proof that written notice of the application has been provided to the chief law enforcement officer of the jurisdiction where the licensee is located. In the case of the chief law enforcement officer seeking such employment, the prior written approval must be from the chief executive officer of the governing body of the jurisdiction which employs said chief officer; and

(3) The Director may authorize, upon prior application, the employment of regular police officers, peace officers or other persons whose powers and duties include the enforcement of the alcoholic beverage laws and regulations, by licensees who operate racetracks, stadiums, auditoriums, theatres and other such establishments whose primary business does not consist of the sale or service of alcoholic beverages, where the use of trained police officers may be required to provide crowd control, traffic control or security for large sums of money located at such establishments. Persons employed in such capacity may not distribute, possess or sell alcoholic beverages and may only accept such employment with the consent of their governmental employer.

* * * * *

Subchapter 24. Trade Member Discrimination, Marketing and Advertising

* * * * *

13:2-24.1 Discrimination in terms of sale.

(a) Except as may otherwise be authorized by this Subchapter, no manufacturer, supplier, importer, brand registrant, wholesaler, or distributor privileged to engage in the commerce of any alcoholic beverage into or within this State shall, directly or indirectly, be a party to, or assist in, any transaction or sale, or contract to sell:

(1) which discriminates against purchaser competitors, in that:

(i) there is a different price or are different credit

terms for different purchasers of alcoholic beverages of the same brand or trade name of like age, quality and quantity (including but not limited to proof and size), or

(ii) any discount, rebate, allowance or advertising service granted to a purchaser is over and above any discount, rebate, allowance, or advertising service available at the time of such transaction to competitors with respect to a sale of alcoholic beverages of the same brand or trade name of like age, quality and quantity.

(2) alcoholic beverages in any part of the State at prices lower than those charged by that person or entity elsewhere in the State for the purpose of destroying competition, or eliminating a competitor in the State.

(3) alcoholic beverages at unreasonably low prices for the purpose of destroying competition or eliminating a competitor.

(b) The provisions of the foregoing shall not prevent:

(1) differentials which make only due allowance for actual differences in the cost of manufacture, sale or delivery resulting from differing methods or quantities in which alcoholic beverage products are sold or delivered to, or paid for by, purchasers including discounts for prompt payment.

* *

13:2-24.2 Discrimination in services, facilities or equipment.

(a) Except as may otherwise be authorized by this Subchapter, no manufacturer, supplier, importer, brand registrant, wholesaler or distributor privileged to engage in the commerce of any alcoholic beverage into or within this State shall, directly or indirectly, in any connection whatsoever with the sale, purchase, distribution or marketing of alcoholic beverages in this State, sell, pay, grant, provide, receive or or accept anything of value:

(1) as a commission, brokerage fee or other compensation, or any allowance or discount in lieu thereof, except for the reasonable value of services actually rendered, and as to the sale, purchase or distribution of alcoholic beverages, and only to a permittee, licensee or registrant of this State; or

(2) as, or for services, facilities or equipment, unless the same is available on proportionally equal terms to all other customers or accounts competing in the distribution of the connected alcoholic beverage product(s), except that no service, facility or equipment may

be offered to a retail licensee which, directly or indirectly, requires the future purchase or an agreement to make a future purchase of any alcoholic beverages.

* * *

13:2-24.3 Restraint of trade.

No licensee or registrant privileged to sell or distribute alcoholic beverages within this State shall contract, combine in the form of trust or otherwise, or conspire in restraint of trade or commerce in alcoholic beverages.

* * *

13:2-24.4 Regulation of Wholesaler Credit.

(a) Credit terms established by an individual wholesaler shall be offered equally to the entire retail trade unless different terms to individual retail accounts are justified by the financial or credit history or risk of the particular accounts.

(1) The maximum period for which credit may be extended in sales made to retailers is 30 days from the date of delivery in the case of all sales of any type of alcoholic beverages.

(b) In the event that a wholesaler has not received payment in accordance with the terms of sale as set forth upon an individual delivery invoice pursuant to N.J.A.C. 13:2-39.1, such wholesaler shall physically serve a "Notice of Obligation" upon any such defaulting retailer or its employee within three (3) business days after the obligation is due.

(1) A "Notice of Obligation" shall inform the retailer in writing of amount due, the date delinquency occurred, the consequences of non-payment and that in the event that the claim is disputed, immediate written notice shall be given to the Division of Alcoholic Beverage Control by the retailer which will initiate a review pursuant to subparagraph (f) below.

(c) A wholesaler which has complied with the provisions of subparagraph (b) above shall, on the third business day thereafter, cause a written or electronic "Notice of Delinquency" to be transmitted to all wholesalers of alcoholic beverages who sell to retailers in this State and to the retailer which is the subject of the Notice. The "Notice of Delinquency" shall contain the State license number of the delinquent licensee, the amount due, and the date past due.

(1) A "Notice of Delinquency" shall not be transmitted by any wholesaler which has received notice that the retailer disputes the existence of an obligation.

(2) Any wholesaler which has received a "Notice of Delinquency" with respect to a retail account shall not sell alcoholic beverages to that account on credit terms until it has received a "Notice of Satisfaction" thereof.

(d) A wholesaler which has caused a "Notice of Delinquency" to be transmitted with respect to a retail account shall promptly upon satisfaction of the terms of sale relating to the original transaction (and in no event later than three (3) business days) cause all persons to whom a "Notice of Delinquency" was transmitted to receive a "Notice of Satisfaction." The "Notice of Satisfaction" shall include State license, number of the retailer, the date of satisfaction, and the amount of debt and date originally due.

(1) "Satisfaction" for purposes of this regulation shall mean payment according to the terms of sale established individually by each wholesaler in its Current Price List pursuant to N.J.A.C. 13:2-24.6(a)(3)(i).

(e) Any wholesaler which disseminates credit obligation, delinquency or satisfaction information directly or through a credit information agency, shall be responsible for the accuracy of the information transmitted to any person and shall:

(i) Cause to be maintained all information transmittals and other credit records for a period of two years; and

(ii) Cause to be submitted to the Division monthly reports of all delinquent retail accounts by license number, license name, the amount due, and the date due; and

(iii) Cause to be submitted to the Division annually, evidence in the form of a report outlining what it or its agent has done and will do to insure compliance with ABC credit regulations.

(f) Upon receipt of a written claim by a retailer that it disputes the existence of a debt as set forth in a "Notice of Obligation", the Director or his designee will, upon a showing that either the merchandise was not delivered or that payment has been made, direct that the matter be set down for informal conference with notice to the parties. In the event that the dispute has not been resolved by the date of the conference, the Director or his designee shall take proofs as to whether or not the merchandise which is the subject of the "Notice of Obligation" was delivered, and/or whether or not payment was made, and if so, upon

what date.

Should the Director or his designee determine that the "Notice of Obligation" was accurate, a Special Ruling shall be entered directing that a "Notice of Delinquency" be issued with respect to the licensee for such period of time as that which would have transpired between the original "Notice of Obligation" and "satisfaction." Should it be determined that the original "Notice of Obligation" was inaccurate, a Special Ruling shall be entered prohibiting the issuance of a "Notice of Delinquency." The party for whom the determination was adverse shall promptly remit to the Division such costs as may be determined, which shall in no event be less than twenty-five dollars.

(g) The provisions of this regulation may be relaxed in the discretion of the Director, upon written petition by a retail licensee with notice to all creditor-wholesalers, in such instances where a formal debt liquidation plan has been entered into by such a licensee. In proceedings pursuant to paragraph (f) above, the Director will decline to entertain claims predicated upon set-offs or other defenses more appropriately resolved by the parties in a court of competent jurisdiction.

* *

13:2-24.5 Supplier pricing and marketing information

(a) Every manufacturer, supplier, winery, brewer, importer, blender or rectifier intending to sell alcoholic beverages to wholesalers or distributors within this State shall:

(1) For a period of three years maintain on its licensed premises or other principal place of business made known to the Division in a readily retrievable fashion pursuant to subchapter 29:

(i) A "Historical Price List," which shall contain the prices at which all products by brand, type, proof, age and size were offered for sale to the trade, inclusive of all discounts, allowances or differentials; and

(ii) A "Marketing Manual", which shall contain, by category, on a chronological basis, all services, facilities, equipment, advertising and promotional items and programs offered to the trade or consumers; and

(2) By the first day of the month preceding the month for which they are to become effective, make available to all its wholesalers or distributors its prices, inclusive of all discounts, allowances or

differentials, and

(3) Prior to any sale or delivery of distilled spirit alcoholic beverages, or annually by August 1 of each year, file with the Division a written statement under oath affirming that its prices to New Jersey wholesalers and distributors have not been and will not be a price or discount higher than the lowest price or lower than the highest discount which has been or will be offered to any wholesaler or distributor or state agency (which operates retail stores) in any other State of the United States or in the District of Columbia.

* * *

13:2-24.6 Required records.

(a) Every licensee or registrant privileged and intending to sell alcoholic beverages to retailers in this State shall maintain upon its licensed premises for a period of three years the following records:

(1) A "Historical Price List" which shall contain the prices at which all products by brand, type, proof, age and size were offered for sale, inclusive of all discounts, allowances or differentials and which may be maintained in any "readily retrievable" fashion pursuant to Subchapter 29, and

(2) A "Marketing Manual", which shall be maintained in a separate book or ledger and shall contain, by category, on a chronological basis all offered or available services, facilities, equipment, advertising and promotional items and programs, and

(3) A "Current Price List", maintained in a separate book or ledger, containing:

(i) Prices, inclusive of all discounts, allowances and differentials and other terms of sale, at which all products are offered for sale to retailers during the calendar month following filing; and

(ii) The correct brand or trade name of the product, its nature and type, size and age and proof of alcoholic content when stated on the label, the standard number of unit containers per standard case and the capacity of each unit container.

(4) The Current Price List shall be filed with the Division of Alcoholic Beverage Control no later than the 15th day of each calendar month, shall become effective the first day of the following calendar month and remain effective for that month.

(5) The prices contained therein shall be filed independently by each individual filer, and no amendments or changes (except upon approval of the Director to correct bona fide clerical errors) shall be made therein prior to filing of the next monthly price list.

(6) No manufacturer, supplier or wholesaler shall offer for sale, sell or deliver to any retailer and no retailer shall accept delivery from any manufacturer, supplier or wholesaler of any alcoholic beverage upon terms other than those set forth in the seller's "Current Price List."

(7) The Current Price List shall be a public record and nothing herein shall preclude any licensee selling alcoholic beverages to retailers from providing it directly to retailers by mail, through sales personnel or through publication in trade journals.

* *

13:2-24.7 Marketing initiatives.

Subject to the foregoing provisions of this Subchapter, a licensed or registered manufacturer, supplier, importer, wholesaler or distributor may furnish or provide advertising or promotional materials to any retail licensee, except that samples may be provided to retailers, and donations of alcoholic beverages made to qualified industry trade organizations, only within the terms and conditions of a special permit first obtained from the Director, issued upon a petition establishing and defining its need and use and verifying that all taxes have been paid thereon.

* *

13:2-24.8 Sales below cost; prohibited.

(a) Notwithstanding other provisions of this subchapter, no wholesaler, distributor or other licensee, privileged to sell to retailers, and no retail licensee, shall offer to sell or sell alcoholic beverages at a price below "cost" except for authorized samples and donations pursuant to N.J.A.C. 13:2-24.7 or upon petition to and approved by the Director, pursuant to a bona fide "close out" sale.

(b) "Cost" is defined as the actual proportionate invoice price and freight charge to a distributor or wholesaler and the actual proportionate invoice price to a retailer, as the case may be, of any given container of an alcoholic beverage product, plus applicable State and Federal taxes. The actual invoice price shall be determined by the "last-in-first-out" method applying generally accepted accounting principles.

* *

13:2-24.9 Combination sales.

(a) Notwithstanding other provisions of this subchapter, no licensee shall sell or offer to sell any alcoholic beverage product upon terms that permit purchase of that product, by size and price, only when purchased in conjunction with a different product or the same product in a different size.

(b) Except for sales to retailers of malt alcoholic beverages; no wholesale licensee shall offer to sell or sell any alcoholic beverage product in combination with another product. For purposes of this subsection, a sale of products which are identical, except for size, in mixed lots (a mixed size sale), and the sale of distillers' and vintners' packaged holiday and gift merchandise pre-packaged as a unit are not combination sales.

(c) Subject to N.J.S.A. 33:1-12, nothing herein shall preclude a retail licensee from selling or offering for sale any product in combination with another product at a single unit price, provided that such unit price shall exceed the cost of the combined products and the individual unit price of each combined product is provided in advertising and shelf pricing.

* *

13:2-24.10 Advertising and consumer protection.

(a) No manufacturer, importer, registrant, wholesaler, distributor or retailer shall include in any advertising material or in any advertisement, directly or indirectly, any statement, illustration, design, device, name, symbol, sign or representation that:

- (1) is false or misleading;
- (2) is obscene;
- (3) contains the name of or depiction of any biblical character or religious character or symbol;
- (4) portrays a minor child or items or symbols which are generally associated with children or which tends to induce minors to purchase alcoholic beverages;
- (5) tends to create or give the impression that the use of an alcoholic beverage has curative or therapeutic effects or enhances athletic prowess;
- (6) offers an alcoholic beverage product for sale to consumers which is not immediately available in reasonable supply at the price,

size and age specified, unless advertised at a stated limited quantity;

(7) Offers alcoholic beverage pricing information in affiliation with other non-identically owned licensees in a communication which fails to truthfully disclose and prominently indicate the identity of the individual licensee who established the pricing information and that the specific prices and products featured may not be available at all businesses represented or indicated as being affiliated.

* * * * *

Subchapter 25. Diversion, Transshipment, and Registered Distribution

* * * * *

13:2-25.1 Plenary and wine wholesalers; delivery from warehouse inventory.

No plenary wholesale licensee or wine wholesale licensee shall deliver alcoholic beverages to a licensed retailer other than from inventory in a warehouse located in New Jersey and operated under a plenary wholesale license or a wine wholesale license. Such "inventory" shall be deemed to include only alcoholic beverages which shall have been stored in such warehouse for at least a period of 24 continuous hours.

* * *

13:2-25.2 Plenary, wine and limited wholesalers, registered distribution.

(a) No plenary wholesale, wine wholesale, or limited wholesale licensee shall sell, deliver, or include in its Current Price List any brand of alcoholic beverages not acquired from the owner of the brand or its registered supplier pursuant to Subchapter 33 or for which that wholesaler or distributor is not a registered wholesaler or distributor pursuant to Subchapter 33, except pursuant to waiver provisions of N.J.A.C. 13:2-33.1(b)3., when granted permission by the Director upon petition setting forth the brand name, the quantity to be acquired, the source of supply, and such other information as the Director may deem necessary.

(b) Nothing herein shall prohibit accommodation sales or transfers of alcoholic beverages by such a wholesaler:

(1) to an affiliated wholesaler, or

(2) to another such wholesaler registered pursuant to Subchapter 33 to sell the brand which is the subject of the sale or transfer to alleviate a bona fide temporary shortage of inventory. Except where

the wholesaler is the registering brand owner pursuant to Subchapter 33, any other such sale or transfer of alcoholic beverages between wholesalers is prohibited.

* * *

13:2-25.3 State beverage distributors.

(a) No State Beverage Distributor shall sell or deliver to another State Beverage Distributor malt alcoholic beverages other than from inventory:

- (1) From a warehouse located in New Jersey;
- (2) Stored therein for a period of at least 24 continuous hours; and
- (3) Operated pursuant to a State Beverage Distributors license.

(b) No State beverage distributor shall sell, deliver, acquire or purchase or include in its Current Price List malt alcoholic beverages not acquired or purchased from the owner of the brand or its registered distributors pursuant to Subchapter 33, except pursuant to waiver provisions of N.J.A.C. 13:2-33.1(b)3., when granted permission by the Director upon petition setting forth the brand name, the quantity to be acquired, the source of supply, and such other information as the Director may deem necessary.

* * * * *

Subchapter 26. Retail Cooperative Purchases.

* * * * *

13:2-26.1 Restrictions on cooperative purchases.

(a) A Class C retail licensee, as defined in N.J.S. 33:1-12, may join with another Class C licensee in a cooperative agreement for the purchase and transportation of alcoholic beverages, provided that such agreement and activity shall conform to the following standards:

- (1) No unlicensed person or entity may participate in any management capacity nor receive any compensation in connection with the purchase or transportation of alcoholic beverages; and
- (2) the number of Class C licensees joined in any agreement shall not exceed the largest number of plenary retail distribution

licenses, as defined in N.J.S. 33:1-12 (3.) (a.), issued to any one person or entity in this State at the time of the prior most recent annual renewal of such licenses; and

(3) no cooperative agreement may prohibit any licensee from joining any other cooperative agreement; and

(4) no cooperative agreement may prohibit any retailer from advertising or selling any product at any otherwise lawful price; and

(5) any cooperative agreement may be withdrawn from by any licensee upon thirty days written notice and no penalties may be charged for such withdrawal; and

(6) all purchases on credit through or by cooperative agreement shall be reduced to writing, signed by the wholesaler and each individual participating member of the cooperative, and be consistent with the credit provisions of Subchapters 24 and 39 of this Chapter. Such credit terms shall include adequate assurances of payment by either the posting of a bond by the cooperative member or a provision that each member of the cooperative shall be jointly and severally liable for payment for the purchases made through the cooperative. A copy of such written agreements shall be maintained by the wholesaler in its marketing manual and by the registered buying cooperative; and

(7) all individual purchases through or by cooperative agreement shall be separately invoiced consistent with Subchapter 39; and shall contain the cooperative's registration number; and

(8) all purchases through or by cooperative agreement shall be transported consistent with Subchapter 20, N.J.S. 33:1-13 and N.J.S. 33:1-28; and

(9) no licensed party to a cooperative agreement shall commingle inventory, funds or other assets inconsistent with this subchapter and N.J.A.C. 13:2-23.21; and

(10) any purchase or transfer in violation of Title 33 or the regulations promulgated thereunder, shall be a violation by all members of the cooperative purchase agreement.

(11) Nothing herein shall be deemed to require the servicing of any cooperative agreement with quantity or cash discounts if there exists no corresponding justification for the differential pursuant to N.J.A.C. 13:2-24.1(b)(1).

(b) No cooperative buying group may participate in any business transaction permitted by subsection (a) of this section unless the

cooperative is registered with the Division in a form prescribed by the Director. Such registration shall include:

- (1) The identity and State issued license numbers of the members;
- (2) A copy of the cooperative agreement; and
- (3) The issuance of a special permit by the Director, which shall be renewable annually on August 1.

* * * * *

Subchapter 27. Labeling and Standards of Fill.

* * * * *

13:2-27.1 Adoption of Federal requirements.

Federal regulations, as amended or supplemented from time to time, relating to labeling and standards of fill concerning distilled spirits, wine and malt alcoholic beverages packaged for shipment in interstate or foreign commerce, are made a part hereof and shall also apply to alcoholic beverages packaged purely for intrastate shipment within New Jersey.

* * * * *

Subchapter 29. Records.

* * * * *

13:2-29.1 Public records.

The following enumerated records required to be maintained by law or other regulation by the Director, Division of Alcoholic Beverage Control, shall constitute public records of the Division:

- (1) all license or permit applications filed with the Director, subject to non-disclosure of information protected by Federal or State Law;
- (2) all filed administrative disciplinary charges, transcripts of Division disciplinary hearings, Hearers' Reports and Conclusions and Orders of the Director;
- (3) all filed administrative appeal pleadings, transcripts of Division appeal hearings, Hearers' Reports and Conclusions and Orders of

the Director;

(4) all Ordinances or Resolutions of local issuing authorities that may be filed with the Division;

(5) all product information filings, affirmation price filings, and such other filings required to be made by licensees and permittees by law or regulation;

(6) all records, pleadings, documents and orders, exclusive of investigative reports, pertaining to duly instituted seizure proceedings, pocket license applications and tax revocation proceedings.

* *

13:2-29.2 Confidential records.

(a) For purposes of investigative confidentiality and integrity, the following records constitute "confidential records" of this Division and shall not be available for inspection or photocopy:

(1) all initial reports received concerning alleged violations;

(2) all investigative records or reports prepared by Division personnel, or prepared on behalf of this Division by other duly authorized law enforcement agencies of municipal, State or Federal governments, or their agencies or subdivisions;

(3) all questionnaires, documents, records and reports required to be filed with the Director by licensees, permittees and other persons interested, directly or indirectly, with such licensees or permittees, the primary purpose of which is for the use in any investigative matter authorized by the Director;

(4) all intergovernmental and intra-Division memoranda, reports, documents or records of and to this Division; including but not limited to Criminal History Record Information supplied by a Criminal Justice Agency;

(5) all such other documents, records, reports and memoranda the Division shall possess, where the primary purpose is the investigation and enforcement of the Alcoholic Beverage Law and its Regulations;

(6) all solicitors' statements of compensation.

* *

13:2-29.3 Inspection, reproduction and availability of records.

(a) As hereinabove defined and limited, every citizen of this State, during regular business hours, shall have the right to inspect such public records at the Division's offices, and, under the supervision of a Division representative, to copy such public records by hand or purchase copies of same upon payment of such prices as hereinafter set forth.

(b) The fee for supplying copies of Division records shall be based upon the total number of pages or parts thereof to be purchased for each individual report of separate record filed with this Division, not upon the ultimate number of pages provided.

First page to twentieth page\$1.00 per page
Twenty-first to fortieth page\$0.75 per page
All pages over forty (40).....\$0.50 per page

(c) If the Director finds that there is no risk of damage or mutilation of such records and that it would not be incompatible with the economic and efficient operation of the office and the transaction of public business, he may permit any citizen who is seeking to copy any individual record or report which exceeds 100 pages to use his own photographic process, approved by the custodian, upon the payment of a fee of twenty-five (\$25.00) per day.

(d) Special records such as computer printouts, tapes and discs or other computer records associated with the Licensing Information System (ABC/LIS) may be made available, in the discretion of the Director, upon payment of such special costs relating to the development and reproduction thereof, and upon such terms as shall insure their integrity and the privacy of information contained therein, when required by law.

* *

13:2-29.4 Licensee records-Storage systems.

(a) Upon written application to the Director accompanied by all relevant specifications and descriptions, the Director, in his discretion, may approve alternate methods or locations for storage of any record required to be maintained by licensees, provided that such a record system permits access to all required records so that they are "readily retrievable" and "accurate."

(b) Records are "readily retrievable" if when relating to a transaction from the date of request they are:

(1) not more than 3 months old and are produced for inspection

upon demand.

(2) not more than 1 year old but in excess of 3 months old, and are produced for inspection within 2 business days.

(3) in excess of 1 year old and produced for inspection within 7 business days.

(c) Records are "accurate" if they are a reduced copy of the original document or otherwise correctly reflect all information contained on the original required record.

* * * * *

Subchapter 33. Product Information Filing - Brand Registration

* * * * *

13:2-33.1 Schedule of product filing.

(a) No licensee shall sell or offer for sale or deliver, or receive or purchase at wholesale or retail, any alcoholic beverage, including private label brands owned by a retailer and exclusive brands owned by a manufacturer or wholesaler and offered for sale or sold by such manufacturer or wholesaler exclusively to one New Jersey retailer, unless there is first filed with the Director of the Division of Alcoholic Beverage Control for each calendar year a schedule listing the following:

- (1) Its current brand or trade name;
- (2) Its nature and type;
- (3) Its age and proof of alcoholic content when stated on the label;
- (4) The standard number of unit containers per standard case;
- (5) The capacity of each unit container; and
- (6) The names of all New Jersey licensees acknowledged by the filer to be an authorized distributor of the product at wholesale.

(b) The schedule shall be filed by:

- (1) The manufacturer or wholesaler who owns such brand; or
- (2) A wholesaler selling such brand who is appointed as exclusive

agent by the brand owner for the purpose of filing such schedule; or

(3) Any wholesaler with the approval of the Director in the event that the owner of such brand does not file or is unable to file a schedule or designate an agent for such purposes; or

(4) In the case of private label brands, by the manufacturer or wholesaler supplying such private label brand to the retailer or by any wholesaler having authority, in writing, from the retailer owning such private label brand, except where the alcoholic beverages are imported by the retailer under a special permit issued by the Director, in which case the retailer shall file the schedule and the labels.

* * *

13:2-33.2 Schedule filing dates.

The schedule of product filings shall be filed in such form and on such dates and upon payment of such fees as shall be prescribed by the Director.

* * * * *

Subchapter 36. Requests for Advisory Opinions

* * * * *

13:2-36.1 Advisory opinions

(a) Other than in proceedings instituted pursuant to N.J.S.A 52:14B-8 (Declaratory Rulings), a written non-hypothetical request for an interpretation, application, or other inquiry concerning the Division's regulations, policies or practices shall only be considered if it sets forth issues not previously articulated by the Division or involves a substantial question of general applicability. Such requests and corresponding advisory opinions may be reproduced in Bulletins issued by the Division which are publically available upon subscription. Requests which are hypothetical in nature will not receive Division response.

(b) The provisions of this section are to be considered of general applicability and may be relaxed in the discretion of the Director.

* * * * *

Subchapter 37. Contracts of Employment and Conduct of Solicitors

* * * * *

13:2-37.1 Solicitor's contracts.

All contracts of employment between manufacturers or wholesalers engaged in the sale in New Jersey of alcoholic beverages, other than malt alcoholic beverages, and their solicitors shall be in writing and shall set forth truly the salary and commission or other compensation of any kind agreed to be paid to each solicitor. Said contracts shall be maintained by the employer for a period of three years from the date of execution. Contracts which are the result of collective bargaining shall be available for inspection by any licensee or authorized representative thereof.

* *

13:2-37.2 Filing of statement of compensation with Director.

On or before April 1 of each year, each manufacturer and wholesaler employing any holder of a solicitor's permit during the preceding calendar year shall file with the Director a true statement listing all compensation, itemized as to salary, commission, reimbursed expenses or otherwise, paid to each such solicitor by such manufacturer or wholesaler during such calendar year.

* *

13:2-37.3 General prohibited conduct.

No holder of a solicitor's permit employed by a manufacturer or wholesaler of alcoholic beverages shall, directly or indirectly, engage in any conduct prohibited its employer by the provisions of Title 33 or any regulations promulgated thereunder. Nor shall he or she offer to sell, solicit, or sell alcoholic beverages at a price or upon terms or conditions or under promotions or contests not contained for the operative period in his or her employer's "Marketing Manual" and "Current Price List", kept pursuant to Subchapter 24.

* * * * *

Subchapter 38. Limitation of Hours For Sale and Delivery at Retail of Alcoholic Beverages in Original Containers For Off-Premises Consumption

* * * * *

13:2-38.1 Retail package sales hours.

Subject to local option as expressed in Title 33 and N.J.A.C. 13:2-38.3, no licensee shall sell or deliver, or allow, permit or suffer the sale or delivery of any alcoholic beverage at retail in its original

container for consumption off the licensed premises or allow, permit or suffer the removal of any alcoholic beverage in its original or opened container from retail licensed premises before 9:00 A.M. or after 10:00 P.M. on any day of the week; except that, whenever the sale of alcoholic beverages for consumption on the premises and off the premises or either thereof is authorized in any municipality by ordinance or rule or regulation of the Division of Alcoholic Beverage Control by the holder of a retail consumption or retail distribution license such ordinance or rule shall authorize the sale by such licensees of malt alcoholic beverage in original bottle or can containers for consumption off the premises on the same days and during the same hours as the sale of alcoholic beverages for consumption on the premises is permitted and authorized in said municipality, pursuant to N.J.S.A. 33:1-40.3.

* * * * *

Subchapter 39. Credit Terms - Required Records - Returns - Notices

* * * * *

13:2-39.1 Credit terms - disclosure on documents.

Subject to N.J.A.C. 13:2-39.2(c) no manufacturer or wholesaler shall sell or offer for sale to any licensee any alcoholic beverages, and no licensee shall purchase or offer to purchase from any manufacturer or wholesaler any alcoholic beverages except for payment before or upon delivery of such alcoholic beverages or on credit terms which shall be fully disclosed on the delivery slip, invoice, manifest, waybill or similar document. Nothing in these regulations shall require any manufacturer or wholesaler to extend credit to any licensee.

* * *

13:2-39.2 Delivery and transportation documents.

(a) No manufacturer or wholesaler shall deliver or transport, directly or indirectly, any alcoholic beverage to any licensee unless such beverage is accompanied by an accurate delivery slip, invoice, manifest, waybill or similar document stating the name and address of the licensee, the state assigned license number, the brand, size of container and quantity of each alcoholic beverage being delivered or transported, and the price and terms of sale, and bearing a printed or stamped legend reading as follows:

"The undersigned licensee hereby acknowledges that all of the alcoholic beverages itemized above have been ordered and were received on

.....
(DATE)

....."
(SIGNATURE BY OR FOR LICENSEE)

(b) Two copies of such delivery slip, invoice, manifest, waybill or similar document shall be truly dated and signed by the licensee or his agent at the time and on the date of actual delivery of any alcoholic beverage, one of which copies shall be retained for a period of three years from the date thereof by the manufacturer or wholesaler and the other by the purchasing licensee for a like period at its respective licensed premises, available for inspection by agents of the Director, unless the Director shall have granted written permission to the manufacturer, wholesaler or retailer to keep its copies at another designated place or in another readily retrievable form;

(c) Except that with regard to:

(1) sales or transfers from manufacturers or suppliers to wholesalers or distributors, when the nature of the documentation and transaction precludes the immediate availability of all documents required in paragraphs (a) and (b), compliance shall be deemed to have occurred when all such records are available within a reasonable time following the sale, transfer, delivery and receipt, and

(2) sales or deliveries of keg beer or ale only to retail licensees, when the nature of the documentation and transaction precludes the immediate availability of all documents required in paragraphs (a) and (b), compliance shall be deemed to have occurred when all such records are available upon completion of the operative period of the terms of such sales which shall have been set forth and consistent with the sellers Marketing Manual and Current Price List pursuant to Subchapter 24.

* *

13:2-39.3 Reserved

* *

13:2-39.4 Return of alcoholic beverages.

No wholesale licensee shall accept return of a product from a retail licensee for credit except on such terms as are

(1) customary to the industry; or

(2) set forth by the wholesaler in its current price list or marketing manual.

* *

13:2-39.5 Salesman or retailer pick-up notice.

If alcoholic beverages are picked up at the licensed premises of a manufacturer or wholesaler by a retail licensee or by a solicitor for ultimate delivery to a retail licensee, proper invoices shall accompany the order and the manufacturer or wholesaler must, within a reasonable time of pickup, mail a copy of the invoice to the destined retailer. Such copy of the invoice must have prominently printed or stamped thereon the following legend: "To the retailer - If you have not already received the merchandise herein, you must immediately give written notice to the Division of Alcoholic Beverage Control of such fact." Every retail licensee receiving such copy of the invoice shall immediately give written notice to the Division of Alcoholic Beverage Control if he has not already received such merchandise.

* * * * *

Subchapter 40. Issuance of Identification Cards by County Clerks

13:2-40.1 Form of application; contents.

Application for an identification card by residents of a county who shall have attained the legal age for purchase and consumption of alcoholic beverages may be filed with the county clerk in the county wherein said applicant resides and shall be in the following form:

IDENTIFICATION CARD APPLICATION

TO: County Clerk of County, New Jersey. The undersigned hereby applies for an identification card as proof of age, and submits the required fee of \$2.00.

1. Full name of applicant
 (First) (Middle) (Last)
2. Residence address
3. Height Weight
 (Ft.) (In.)
 Color of Eyes Color of Hair
4. Date of Birth Date of 18th birthday
5. Place of birth
 (Municipality) (County) (State)
6. Father's name
 (First) (Middle) (Last)
7. Mother's Maiden Name
 (First) (Middle) (Last)
8. The applicant presents one of the following certificates to establish his or her age (check appropriate line):
 () Birth Certificate
 () Naturalization Certificate
 () Voter Registration Certificate
9. The applicant submits two (2) recent black and white photographs, approximately 1 1/2 inches by 1 1/2 inches in size, of himself or herself, full face, without hat.
10. Has the applicant ever previously applied for an identification card?
 If so, state the details thereof

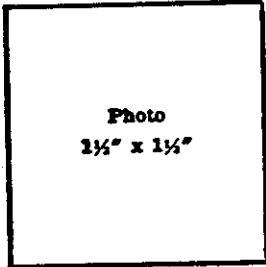
IDENTIFICATION CARD APPLICATION FORM - CONTINUED

WARNING: Any person not entitled thereto who shall have unlawfully procured or have issued to him an identification card shall be guilty of a misdemeanor and shall be sentenced to pay a fine of not more than \$300.00, or imprisonment for not more than 60 days. N.J.S.A. 23:1-81.7.

The applicant hereby certifies that all of the foregoing information and statements are true in all respects.

- 11. Signature of applicant
- 12. Signature witnessed by: (County Clerk or Duly Authorized Deputy) (Date)

DO NOT WRITE BELOW THIS LINE



Identification Card Number

Date of Issuance

Issued by

DATE: FEBRUARY 26, 1982

[Handwritten Signature]
 DENNIS P. O'KEEFE
 ACTING DIRECTOR

mlm

END - BULLETIN 2424