

**CHAPTER 2**

**DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

**Authority**

N.J.S.A. 33:1-1 et seq.

**Source and Effective Date**

R.2006 d.67, effective January 19, 2006.  
See: 37 N.J.R. 3221(a), 38 N.J.R. 1193(a).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 2, Division of Alcoholic Beverage Control, expires on July 18, 2013. See: 43 N.J.R. 1203(a).

**Chapter Historical Note**

Chapter 2, Division of Alcoholic Beverage Control, was adopted and became effective prior to September 1, 1969.

Pursuant to Executive Order No. 66(1978), Chapter 2, Division of Alcoholic Beverage Control, was readopted as R.1990 d.412, effective July 24, 1990, and Subchapter 22, Transportation of Alcoholic Beverages by Railroad Carriers, Subchapter 34, Alcohol Permits, and Subchapter 37, Contracts of Employment and Conduct of Solicitors, were repealed by R.1990 d.412, effective August 20, 1990. See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Subchapter 22, Licensee Training and Certification, was adopted as new rules by R.1992 d.445, effective November 2, 1992. See: 24 N.J.R. 1958(b), 24 N.J.R. 4055(b).

Chapter 2, Division of Alcoholic Beverage Control, was readopted as R.1995 d.450, effective July 24, 1995, and Subchapter 9, Warehouse Receipts Licenses, Subchapter 11, Farm Winery Licenses and Retail Privileges, Subchapter 28, Decanting of Wine, Subchapter 32, Sales of Forfeited Property, and the Appendix were repealed and Subchapter 34, Restricted Brewery, Subchapter 37, Consumer Alcoholic Beverage Tastings and Tasting Dinners, and Subchapter 41, Issuance or Transfer of Plenary Retail Consumption Licenses to Non-Profit Musical or Theatrical Corporations; Qualifications of Restaurant Operators, were adopted as new rules by R.1995 d.450, effective August 21, 1995. See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Pursuant to Executive Order No. 66(1978), Chapter 2, Division of Alcoholic Beverage Control, was readopted as R.2000 d.342, effective July 24, 2000, and Subchapter 13, Execution of Questionnaire by State Licensees, and their Principals and Employees, was repealed by R.2000 d.342, effective August 21, 2000. See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).

Subchapter 42, Petitions for Relief to the Director, Pursuant to N.J.S.A. 33:1-12.18 and Subchapter 43, Petitions for Relief to the Director, Pursuant to N.J.S.A. 33:1-12.39, was adopted as new rules by R.2003 d.436, effective November 3, 2003. See: 35 N.J.R. 2810(a), 35 N.J.R. 5122(a).

Subchapter 9, Rules of General Application, and Subchapter 44, Definitions, was adopted as new rules by R.2005 d.212, effective July 5, 2005. See: 36 N.J.R. 4211(a), 37 N.J.R. 2544(a).

Chapter 2, Division of Alcoholic Beverage Control, was readopted as R.2006 d.67, effective January 19, 2006. Subchapter 10, Plenary and Farm Winery Licenses; Wine Blending Licenses; Retail Privileges; Parcel Delivery Service, was renamed Plenary and Farm Winery Licenses; Wine Blending Licenses; Retail Privileges; and Subchapter 40, Issuance of Identification Cards by County Clerks, was repealed by R.2006 d.67, effective February 21, 2006. See: Source and Effective Date. See, also, section annotations.

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 2, Division of Alcoholic Beverage Control, was scheduled to expire on July 18, 2011. See: 43 N.J.R. 557(a).

**Law Review and Journal Commentaries**

Practitioner's Guide to ABC Disciplinary Review. Kevin Marc Schatz, 137 N.J.L.J. No. 16, 10 (1994).

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

6. Any other information or documents requested by the Director.

(d) Within 10 days subsequent to the filing of the application with the Director, the applicant shall cause to be published a notice of application 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 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 \_\_\_\_\_  
(Name of Applicant)  
has applied to the DIRECTOR of the New Jersey DIVISION OF ALCOHOLIC BEVERAGE CONTROL for a SPECIAL PERMIT FOR A GOLF FACILITY for premises situated at

\_\_\_\_\_  
(No.) (Street) (Municipality)

The person(s) who will hold an interest in this permit is/are:

See \*

See \*\* to insert other information applicable

Objections, if any, should be addressed to the Director, Division of Alcoholic Beverage Control, PO Box 087, Trenton, New Jersey 08625.

\_\_\_\_\_  
(Name of Applicant)

\_\_\_\_\_  
(Address of Applicant)

\*If the applicant is an individual, insert the name and residence address of that individual.

If the applicant is a corporation, insert the names and residence address of all officers and all directors, and the names and residences of all stockholders holding one percent or more of any of the stock of the applicant corporation or any corporation that is a stockholder in the applicant corporation.

If the applicant is a partnership, insert the name of the

partnership and the names and residence address of all partners and any limited partners holding an interest of one percent or more.

If the applicant is a limited liability company, insert the name of the limited liability company, and the names and addresses of all officers and members.

\*\*If the application is for a building not yet constructed, insert in the Notice the following: "Plans of building to be constructed may be examined at the office of the Director of the Division of Alcoholic Beverage Control, 140 East Front Street, Fifth Floor, Trenton, New Jersey 08625."

(f) Upon timely receipt of a duly signed written objection to the issuance of a special permit for a golf facility, the Director will afford a hearing to all parties and notify the applicant and the objector of the date, hour and place thereof. The Director may, in his sole discretion, issue a temporary special permit pending the hearing. No hearing need be held if no objection is lodged, but the application shall not be denied without first affording the applicant an opportunity to be heard.

(g) The holder of a special permit for a golf facility shall be entitled to purchase alcoholic beverages only from the holders of New Jersey wholesale licenses. Said permittee is expressly prohibited from purchasing alcoholic beverages from retail licensees and from selling or offering for sale alcoholic beverages for off-premises consumption.

(h) All membership applications received by the holder of a special permit for a golf facility shall be on file, dated and available for inspection by law enforcement officers. The holder of a special permit for a golf facility may serve alcoholic beverages to members of the golf facility, guests of members and guests of the golf facility, and those attending a social gathering, if such social gathering is directly related to playing golf on the golf course the same day. This permit specifically does not authorize the sale or service of alcoholic beverages at non-golf related social gatherings, such as holiday parties, weddings, birthday parties, or family religious events. Each member shall be limited to a maximum of three guests per day who may be served alcoholic beverages by the permitted golf facility. A list of each scheduled golf-related social gathering to be held at the permittee's facility shall be filed with the Division of Alcoholic Beverage Control and the municipality where the facility is located at least 72 hours before the event. The list shall contain the date and time of the social gathering, and the name of the member or members hosting such gathering and to be in attendance with the guests at the gathering or a statement that the golf facility is the host of the social gathering.

(i) No alcoholic beverages shall be consumed on the permittee's premises other than that sold by the permittee. All payments for alcoholic beverages consumed by a member or the guests of a member shall be made by that member or



Amended by R.1990 d.412, effective August 20, 1990.  
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Revised section "to authorize the sale of alcoholic beverages by a receiver, trustee, executor" or other parties, in accordance with law or court order. Added (b) through (d).

Amended by R.1995 d.450, effective August 21, 1995.  
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

In (b), substituted "prescribed" for "promulgated" and increased permit fees.

Recodified from N.J.A.C. 13:2-5.3 by R.2003 d.17, effective January 6, 2003.

See: 34 N.J.R. 3196(a), 35 N.J.R. 253(a).

Former N.J.A.C. 13:2-5.4, Temporary miscellaneous contingency permits; fees, recodified to N.J.A.C. 13:2-5.5.

Special amendment, R.2003 d.311, effective July 3, 2003 (to expire January 3, 2004).

See: 35 N.J.R. 3707(a).

In (b), substituted "\$10.00" for "\$5.00" and "\$2,000" for "\$1,000"; added (e).

Adopted concurrent amendment, R.2003 d.470, effective November 5, 2003.

See: 35 N.J.R. 3707(a), 35 N.J.R. 5427(a).

Provisions of R.2003 d.311 adopted without change.

Amended by R.2006 d.67, effective February 21, 2006.

See: 37 N.J.R. 3221(a), 38 N.J.R. 1193(a).

In (e), added a \$5.00 per day fee for Ad Interim permit, changed fee for Close Out permit from \$25.00 to \$1.00 per case with a minimum price of \$20.00, increased fee for Donation permit from \$50.00 to \$150.00, added "per day" to Extension of Premises permit fee, changed fee for Food and Pharmaceutical permit from \$25.00 to \$20.00 to \$40.00, substituted "Gratuitous Samples" for "Gratuitous Services", categorized Merchandising Show permit into "In-state licensee" with a \$75.00 fee and "Out of state licensees" with a \$100.00 fee, decreased Merchandising Show—Out-of-State Importers permit fee from \$200.00 to \$100.00, decreased Temporary Authorization to Operate permit fee from \$200.00 to \$150.00, changed Temporary Storage permit fee from \$75.00 to \$25.00 plus \$2.00 per day, and deleted Temporary Warehousing permit and fee.

### 13:2-5.5 Temporary miscellaneous contingency permits; fees

(a) The Director, for special cause shown, may issue such temporary permits for such contingencies where a license is not expressly provided for by law, and such a permit would be appropriate and consonant with the spirit of the Alcoholic Beverage Control Act.

(b) Application for such permits shall be on forms prescribed by the Director and shall be accompanied by payment of fees as set forth by the Director. The fees for such permits shall not be less than \$10.00 nor more than \$2,000.

(c) The Director may impose special conditions or requirements on any such permit.

New Rule, R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Amended by R.1995 d.450, effective August 21, 1995.

See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

In (b), substituted "prescribed" for "promulgated" and increased permit fees.

Recodified from N.J.A.C. by R.2003 d.17, effective January 6, 2003.

See: 34 N.J.R. 3196(a), 35 N.J.R. 253(a).

Special amendment, R.2003 d.311, effective July 3, 2003 (to expire January 3, 2004).

See: 35 N.J.R. 3707(a).

In (b), substituted "\$10.00" for "\$5.00" and "\$2,000" for "\$1,000".

Adopted concurrent amendment, R.2003 d.470, effective November 5, 2003.

See: 35 N.J.R. 3707(a), 35 N.J.R. 5427(a).

Provisions of R.2003 d.311 adopted without change.

## SUBCHAPTER 6. EXTENSION OF LICENSE

### 13:2-6.1 Petition for extension of license

(a) In case of death, bankruptcy, receivership or incompetency of a licensee, or if for any other reason whatsoever the operation of the business covered by the license shall devolve by operation of law upon a person other than the licensee, the licensed business may not be operated unless the license is extended by the issuing authority which issued the license.

(b) An application for extension of a license for a limited time not exceeding its term must be made in the form of a petition executed by the executor, administrator, trustee, receiver or other person upon whom operation of the business covered by the license shall have devolved by operation of law.

(c) Said petition shall be addressed to and acted upon by the authority which issued the license sought to be extended. An amendment of the license application to reflect the extension of the license shall be filed at the same time. No fee is required to be paid for an extension of the license and the petitioner is not required to publish a notice of application.

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Section was "Special permit to operate licensed business". Incorporated 13:2-6.2, "Petition for extension of license", as (b) and (c).

### 13:2-6.2 Special permit to operate licensed business

Where an application for extension of license cannot be made immediately because the fiduciary has not yet qualified, the Director, Division of Alcoholic Beverage Control, may issue a special permit to allow the licensed business to continue operations temporarily until the license is formally extended. The issuance of any special permit shall not indicate any opinion as to the merits of the formal petition to extend the license.

New Rule, R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Incorporated prior text, "Petition for extension of license", into 13:2-6.1.

### 13:2-6.3 Proof of appointment; assignments

(a) Petitioners for extension of a license must present satisfactory proof to the issuing authority of their appointment to act in their representative capacity.

(b) A license may not be extended to an assignee for the benefit of creditors, unless said assignee presents to the issuing authority a court order authorizing him to continue

assignor's business during a period set forth in said order, as provided for in N.J.S.A. 2A:19-16.

### 13:2-6.4 Endorsement of licenses

If the petition for extension is granted, the license shall be endorsed as follows:

"This license is hereby extended, subject to all of its terms and conditions to \_\_\_\_\_, (Executor, or as the case may be) until \_\_\_\_\_, 20 \_\_\_\_".

Amended by R.1990 d.412, effective August 20, 1990.  
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Deleted references to "local issuing authority" and "proper municipal official"; deleted (b), regarding endorsement in license book.  
Amended by R.2000 d.342, effective August 21, 2000.  
See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).

## SUBCHAPTER 7. TRANSFERS OF STATE AND MUNICIPAL LICENSES

### 13:2-7.1 Transferability of license

Any license issued under the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq., may be transferred either from person-to-person or place-to-place, or both, in accordance with the provision of said law and these regulations.

Amended by R.1990 d.412, effective August 20, 1990.  
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).  
Referenced N.J.S.A. 33:1-1 et seq.

#### Case Notes

Where a plenary retail consumption license holder did not abandon or vacate the licensed premises, but in fact the landlord testified that he intentionally kept the lease intact in hopes that the lease holder would resolve his tax problems or that a third party would buy the license, acquire the lease, and resume operations, the ALJ's decision denying transfer of the license was reversed. *United Funding, LLC v. Municipal Bd. of Alcohol Beverage Control, City of Paterson*, OAL Dkt. No. ABC 10954-04, 2005 N.J. AGEN LEXIS 1484, Final Decision (June 21, 2006).

Nude dancing was not allowed within separate room adjacent to or within licensed premises. *Division of Alcohol Beverage Control v. J & M Restaurant*, 95 N.J.A.R.2d (ABC) 11.

Revocation of license was not required; undisclosed interest of disqualified person; indefinite suspension pending transfer to a bona fide purchaser. *Division of Alcoholic Beverage Control v. 99 Washington Street, Inc., t/a Good & Plenti*, 92 N.J.A.R.2d (ABC) 76.

Topless bar; application for place-to-place transfer. *M.O.O. Inc. v. Board of Commissioners of Union City*, 92 N.J.A.R.2d (ABC) 47.

Place-to-place transfer of plenary retail distribution license. *Gene's Liquors v. Municipal Board of Alcoholic Beverage Control of the City of Paterson*, 92 N.J.A.R.2d (ABC) 39.

Division of Alcoholic Beverage Control without statutory authority to prevent person-to-person transfer of liquor license which may be only asset of corporation which may owe unliquidated debt to transfer objector; liquor license is not property subject to lien, levy or execution; creditor cannot prevent sale of license or obtain satisfaction from

proceeds. *Mannies Cigarette Service, Inc. v. Aidan Corp.*, 4 N.J.A.R. 197 (1980).

### 13:2-7.2 Application for place-to-place license transfer

(a) Application for transfer of license to other premises, signed and sworn to by the licensee, must be filed with the Director or other issuing authority, as the case may be, at or before the first insertion of the advertisement of the notice of application on forms prescribed by the Director.

(b) If the application is for transfer of the license to a building not yet constructed, plans of the proposed building shall accompany the application. The plans shall show the appearance and design of the proposed building, the type or types of exterior building material and the over-all and room dimensions.

(c) Expansion of the licensed premises shall require a place-to-place transfer (expansion of premises) application.

(d) Voluntary reduction or voluntary delicensure of a portion of the premises shall require a place-to-place transfer (reduction of premises) application. A voluntary abandonment of all of the licensed premises shall be a change of facts that must be reported to the issuing authority pursuant to N.J.A.C. 13:2-2.7 and 2.14, but does not require a place-to-place transfer. A licensee that has voluntarily abandoned its licensed premises must apply for and be approved for a place-to-place transfer before commencing operation again.

Amended by R.1990 d.412, effective August 20, 1990.  
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Stylistic revisions.

Amended by R.1995 d.450, effective August 21, 1995.  
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Added provisions for expansion and reduction of licensed premises at (c) and (d).

Amended by R.2000 d.342, effective August 21, 2000.  
See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).

Rewrote (d).

#### Case Notes

Good cause required before extending license's reactivation deadline. In the *Matter of Ghedine Unlimited, Inc.*, 97 N.J.A.R.2d (ABC) 79.

Municipal denial of place to place license transfer constitutes abuse of discretion if it relies on factors not substantiated by record. *Martell's Sea Breeze, Inc. v. Mayor and Council of the Borough of Point Pleasant Beach*, 97 N.J.A.R.2d (ABC) 39.

Neighboring license holder's objections to transfer of liquor license to location across street from his establishment were dismissed where transfer was properly effected and no community sentiment against transfer was shown. *McCurdy v. Municipal Board of Alcoholic Beverage Control of Atlantic City*, 96 N.J.A.R.2d (ABC) 156.

Evidence that did not exist until after request for place-to-place transfer of liquor license was granted could not be considered in determining reasonableness of that transfer. *Borough of Pitman v. Township of Mantua and J.G. Cook's Bar and Grill*, 96 N.J.A.R.2d (ABC) 118.

Approval of place-to-place transfer of liquor license was affirmed, despite new location's proximity to school and to existing licensee. *Butch Kowel's Tavern, Inc. v. Rahway Board of Alcoholic Beverage Control*, 96 N.J.A.R.2d (ABC) 109.

Amended by R.1995 d.450, effective August 21, 1995.  
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).  
Stylistic changes.

### 13:2-23.30 Prohibition against hindering an investigation

(a) Every license and every person with an ownership interest therein and every director, officer, agent and employee of every licensee shall facilitate any investigation or inspection of the licensed premises conducted by, or on behalf of the Division, or other issuing authority. The failure of any of the foregoing persons or entities, either directly or indirectly, to answer any question, to produce any document in the time, place and manner requested or to facilitate in any way whatsoever the inspection of the licensed business or premises shall constitute a violation of this section.

(b) A refusal by any licensee, or any of the persons identified in (a) above, to comply with an investigatory subpoena or request combined with a prompt legal challenge thereto shall constitute a defense if the refusal and legal challenge are based upon a legally cognizable privilege or claim for which the licensee has an objectively reasonable basis to believe applies to its circumstances, as determined by the Director or a court of law with competent jurisdiction. A legal challenge to an investigatory subpoena shall be prompt if a motion to quash the subpoena is filed with either the Director or a court of law before the return date of the subpoena.

(c) Every person identified in (a) above shall accept service of any investigatory request, including requests for documents or testimony or subpoena issued by the Director. If service of an investigatory request cannot be made due to the refusal of the licensee or any such person identified in (a) above to accept service of same, the licensee may be considered in violation of N.J.S.A. 33:1-35 and N.J.A.C. 13:2-23.30.

(d) No licensee, permittee or any shareholder, partner or other person having an interest in a license or permit shall refuse to submit to fingerprinting when so required by the Director or the local issuing authority.

(e) No licensee, permittee or any shareholder, partner or other person having an interest in a license or permit shall refuse to submit full disclosure in a financial investigation, including but not limited to all savings, checking, or other bank or financial accounts held by or for such person or entity individually, jointly, or in trust (for himself, herself or another person or entity), when so required by the Director or the local issuing authority.

Amended by R.1990 d.412, effective August 20, 1990.  
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Revised heading; stylistic revisions.

Amended by R.1995 d.450, effective August 21, 1995.  
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Stylistic changes.

Amended by R.2000 d.342, effective August 21, 2000.  
See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).

Rewrote the section.

Amended by R.2005 d.212, effective July 5, 2005.  
See: 36 N.J.R. 4211(a), 37 N.J.R. 2544(a).

Added (c) through (e).

### Case Notes

Disciplinary proceedings against liquor company resulted in a suspension of plenary retail distribution license for failure to disclose a hidden interest in the license (N.J.S.A. 33:1.25); failure to keep true books of account (N.J.A.C. 13:2-23.32) and hindering an investigation into the matter in violation of N.J.S.A. 33:1-35 and N.J.A.C. 13:2-23.30. In Re: M.A.T. Co., 9 N.J.A.R. 262 (1983).

### 13:2-23.31 Law enforcement officers; ownership prohibition; employment restrictions

(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 law enforcement officer; and

2. A licensee, upon prior written application to and written approval by the Director, may employ 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 further provided:

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.

ii. 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;

iii. A police officer so employed shall not, while engaged in the selling, serving, possessing or delivering of any alcoholic beverages;

(1) Have in his or her possession any firearm; or

(2) Wear or display any uniform, badge or insignia which would identify him or her as a police officer; and

iv. No police officer so employed shall be permitted to work in excess of 24 hours a week in any such establishment.

(c) 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.

(d) Nothing contained in this section shall prohibit any regular police officer, peace officer or any other person whose powers and duties include the enforcement of the alcoholic beverage control laws or regulations from assuming any leadership or titular position in any fraternal, veterans', religious or similar type of nonprofit organization that is a club licensee; provided, however that:

1. The actual licensee of the organization is not a police officer or a person whose duties include enforcement of the alcoholic beverage control laws and regulations; and

2. No police officer or person whose duties include enforcement of the alcoholic beverage control laws and regulations shall be involved in the alcoholic beverage operations of the club licensee.

Amended by R.1974 d.341, effective December 16, 1974.

See: 6 N.J.R. 439(a), 7 N.J.R. 13(a).

Amended by R.1979 d.67, effective February 15, 1979.

See: 10 N.J.R. 557(a), 11 N.J.R. 146(a).

Amended by R.1980 d.526, effective December 4, 1980.

See: 12 N.J.R. 605(b), 13 N.J.R. 41(c).

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

In (b)1, deleted text regarding sale or handling of alcoholic beverages by special officer; in (b)2, deleted text concerning employment "in a non-managerial capacity" and sale or handling of alcoholic beverages by officer; redesignated part of (b)2i as ii, and added iii and iv. Redesignated (b)3 as (c), and added (d).

Amended by R.1995 d.450, effective August 21, 1995.

See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Stylistic changes.

Amended by R.2006 d.67, effective February 21, 2006.

See: 37 N.J.R. 3221(a), 38 N.J.R. 1193(a).

In (b)1, substituted "law enforcement" for "police."

#### Case Notes

Attorney's misconduct while serving as judge materially bore on his fitness to practice law and might merit further professional discipline against him, in his capacity as attorney, apart from removal as judge. Matter of Yaccarino, 117 N.J. 175, 564 A.2d 1184 (1989).

Failure of judge to disclose interest in liquor licenses in license applications and transfers found one of several grounds for removal from office; not necessary, in this case, to resolve issue of whether regulation bars license ownership by judge. Matter of Yaccarino, 101 N.J. 342, 502 A.2d 3 (1985).

Initial Decision (2008 N.J. AGEN LEXIS 111) adopted, which found that a suspended police officer was improperly employed at a licensed establishment in his home area while a police officer; however, the officer was both suspended and unpaid at the time of this outside employment and it was not a removable offense. In re Lasco, OAL Dkt. No. CSV 6808-07, 2008 N.J. AGEN LEXIS 515, Merit System Board Decision (March 12, 2008).

#### 13:2-23.32 Records to be maintained on the licensed premises; other required records

(a) Unless a licensee has obtained a permit for the off-premises storage of certain records, pursuant to N.J.A.C. 13:2-29.4, each licensee holding a Class C license must keep and maintain the following documents and records on its licensed premises:

1. The current license certificate;
2. A copy of the current license application with any amendments filed, if applicable, together with a copy of the last long-form retail licensee application filed by the licensee;
3. A fully completed up-to-date list of all persons currently working on the licensed premises (commonly known as Form E-141A);
4. The current Federal special tax stamp, or proof of proper filing for such annual stamp;
5. Copies of all delivery slips, invoices or similar documents for such transactions made within the past year;
6. Records of transactions with or placements by a registered display service;
7. New Jersey Sales Tax Certificate of Authority; and
8. Records set forth in (b) and (c) below.

(b) All licensees shall maintain, for a period of five years, a record of all money or any other thing of value received in the ordinary course of business or received outside the ordinary course of business, including, but not limited to, alcoholic beverage sales, food sales, rebates, including payments from any Retail Incentive Program "RIPs," and miscellaneous income.

(c) All licensees shall maintain, for a period of five years, records which show the payment of all expenses. The records shall indicate the name of the person or entity receiving such payment, the amount of the payment and the reason that the payment was made. Payment records shall include payments made for:

1. The purchase of alcoholic beverages;
2. The purchase of food items;
3. The purchase of supplies and use of utilities;
4. The purchase or lease of equipment;
5. The payment of employees' compensation, including all required withholding;
6. The payment of all local, state and Federal taxes and license fees;
7. The payments of rents, mortgages, loans and/or a reduction of an owner's equity; and
8. All other disbursements.

(d) All licensees shall produce the above-enumerated records for inspection immediately upon request by the Director, the issuing authority or the agents or representatives thereof and any other law enforcement officer, peace officer or any other person whose powers or duties include the enforcement of the Alcoholic Beverage Control Act and officers as defined by N.J.S.A. 33:1-1(p), unless a different time period is prescribed in N.J.A.C. 13:2-29.4, at a location designated by the requester. The failure to comply with this subsection shall be considered a violation of N.J.S.A. 33:1-35 and N.J.A.C. 13:2-23.30.

(e) All licensees shall have and keep, for an unlimited period of time, permanent records of account which shall truly and accurately contain a record of all moneys invested in the licensed business, including loans, the source of all such investments and the disposition of such investments for an unlimited period of time. Such documents may be stored on or off the licensed premises and shall be produced within seven days of a request from by the Director, the issuing authority or the agents or representatives thereof and any other law enforcement officer, peace officer or any other person whose powers or duties include the enforcement of the Alcoholic Beverage Control Act and officers as defined by N.J.S.A. 33:1-1(p) at a location designated by the requester.

(f) All records required to be maintained by a licensee shall be in the English language.

Amended by R.1990 d.412, effective August 20, 1990.  
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Clarified five-year record requirement of all moneys received and expended.

Amended by R.1995 d.450, effective August 21, 1995.  
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Provided recordkeeping periods.

Amended by R.2005 d.212, effective July 5, 2005.  
See: 36 N.J.R. 4211(a), 37 N.J.R. 2544(a).

Rewrote the section.

**Case Notes**

Proof was clear that petitioner licensee did not timely provide the true book of account and other documents to respondent city governing body where that which was offered as a true book of account was factually determined not to have been among the documentation submitted one month after the request, and petitioner failed to provide additional receipts and bills after consenting to do so. Also, it was factually determined that a spiral notebook presented as the 2004 true book of account did not exist at the time of the city’s investigation, but was factually determined to be of recent vintage and concoction and was presented to mislead the respondent. *Fayette Fair Trade, Inc. v. City of Perth Amboy*, OAL DKT. NO. ABC 360-05, 2006 N.J. AGEN LEXIS 391, Initial Decision (June 16, 2006).

Disciplinary proceedings against liquor company resulted in a suspension of plenary retail distribution license for failure to disclose a hidden interest in the license (N.J.S.A. 33:1.25); failure to keep true books of account (N.J.A.C. 13:2-23.32) and hindering an investigation into the matter in violation of N.J.S.A. 33:1-35 and N.J.A.C. 13:2-23.30. In Re: M.A.T. Co., 9 N.J.A.R. 262 (1983).

**13:2-23.33 Dishonored checks; unpaid fees**

If a check submitted by a licensee, permittee or applicant is returned unpaid to the Division or other issuing authority or if

all or any portion of any fee required is unpaid, the licensee, permittee or applicant shall be subject to disciplinary action or denial of current and future applications.

New Rule, R.2005 d.212, effective July 5, 2005.  
See: 36 N.J.R. 4211(a), 37 N.J.R. 2544(a).

SUBCHAPTER 24. TRADE MEMBER  
DISCRIMINATION, MARKETING AND  
ADVERTISING

**13:2-24.1 Discrimination in terms of sale**

(a) The purpose of this subchapter is to promote competition while preserving an orderly marketplace, including, but not limited to, the prevention of destructive price wars, and to promote practices that foster moderation and responsibility in the use and consumption of alcoholic beverages.

(b) For purposes of this subchapter:

1. A discount is an inducement or allowance to purchase a product which is reflected on the wholesaler’s invoice at the time the sale of the subject alcoholic beverages to a retailer is completed. A discount is reflected in the cost of the product on which it is given, as it relates to the retailer’s sale price for purposes of N.J.A.C. 13:2-24.8. Discounts may include quantity discounts;

2. A rebate is an inducement or allowance to purchase a product which is not reflected on the wholesaler’s invoice at the time the sale of the subject alcoholic beverages to a retailer is completed, but which is payable no less than 30 days and no more than 90 days after the payment for the product on which it is given. A rebate is not reflected in the cost of the product on which it is given, as it relates to the retailer’s sale price for purposes of N.J.A.C. 13:2-24.8; and

3. A retail incentive program (RIP) is a form of rebate in which a wholesaler provides a financial incentive to a retailer to purchase a specific quantity of alcoholic beverages in one purchase transaction and places no other obligation on the retailer. A purchase transaction is a single order and a single delivery of a specific quantity of a specific alcoholic beverage or combination of beverages, as reflected on a single wholesaler’s invoice. More specific requirements for this type of rebate are set forth in (e) below.

(c) 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 purchasers, 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. It is a discount, rebate, allowance or advertising service granted to a purchaser 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. However, a wholesaler may exclude retail cooperatives from a RIP program without the prior approval of the Director so long as the RIP program complies with (e) below. A wholesaler wishing to exclude retail cooperatives from a RIP program that does not comply with (e) below shall first petition the Director and seek approval of its program. This petition may include one or more such proposed programs and shall be submitted to the Director at least 75 days in advance of the date on which the program(s) is proposed to appear on the Current Price List. Such program(s) shall not appear on the Current Price List without the Director's prior approval. The petition shall include the following information upon which the Director shall make his or her decision:

(1) A detailed description of the proposed program(s);

(2) A detailed description of how individual retail licensees will be able to participate in the program(s);

(3) A detailed explanation of why the program(s) will not destabilize the marketplace, including, but not limited to, the creation of destructive price wars, or unduly increase the consumption of alcoholic beverages; and

(4) Any other information the Director deems necessary from a specific petitioner.

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 purposes of destroying competition, or eliminating a competitor.

(d) 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.

(e) Except as approved by the Director under (c)1ii above, a retail incentive program (RIP) rebate shall conform to the following requirements:

1. All wholesalers participating in such programs shall provide the rebate in the form of a monetary payment, payable only by business checks issued by the participating wholesalers;

2. No RIP rebate shall be offered on a quantity in excess of 50 cases for distilled spirits and wine, or 250 cases for beer. For every RIP rebate, there shall be a corresponding small quantity RIP rebate on the same product(s), for a quantity that is five cases or less. The minimum quantity of any RIP rebate shall be one bottle for distilled spirits or wine, or one case for beer;

i. RIP rebates may be based on a combination of various sizes and products. However, no single RIP rebate shall exceed \$1,000;

ii. Nothing in this section shall be deemed to limit the number of single RIP rebates which can be earned for qualifying purchases;

iii. If a wholesaler wishes to offer a RIP rebate using any formula or dollar amount other than that specified in this subsection, it shall obtain the written approval of the Director prior to offering such RIP rebate and prior to publication thereof in the wholesaler's Marketing Manual and Current Price List applicable to the period during which the RIP rebate will be offered;

3. All wholesalers and all retailers participating in such programs shall keep a separate, complete and accurate accounting of all such rebates disbursed or received and all documents that reflect same; and

4. All wholesalers participating in such programs shall publish the details in its Marketing Manual and its Current Price List.

(f) The Director may, on his own initiative or at the request of any affected industry member, investigate and, if appropriate, disapprove and prohibit the continued or renewed use of any RIP, including, but not limited to, a RIP that complies with the formula and dollar amounts specified in (e) above, if the effect of that RIP is inconsistent with the purposes of this subchapter. Whether to disapprove and prohibit a RIP will be considered pursuant to N.J.S.A. 33:1-39 and/or N.J.A.C. 13:2-19.

(g) If the Division investigates and/or prosecutes any discount, rebate, allowance or advertising service offered by any manufacturer, supplier, importer, brand registrant, wholesaler, or distributor, the party offering it must make a prima facie showing that the program is consistent with the applicable statutes and rules.

Amended by R.1980 d.304, effective July 3, 1980.

See: 12 N.J.R. 343(b), 12 N.J.R. 494(b).

Amended by R.1981 d.432, effective November 2, 1981.

See: 13 N.J.R. 604(b), 13 N.J.R. 777(e).

(b)2 deleted.

Amended by R.2004 d.55, effective February 2, 2004.

See: 35 N.J.R. 1045(a), 36 N.J.R. 657(a).

Rewrote the section.

**Case Notes**

Anti-discrimination statute not violated when supplier refuses to do business with newly-formed limited liability company. *R & R Marketing et al. v. Brown-Foreman Corporation*, 97 N.J.A.R.2d (ABC) 74.

**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 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.

(b) No solicitor shall receive compensation, whether by commission or otherwise, unless the solicitor performed the duties referenced in N.J.A.C. 13:2-16.3(e) throughout the period and for each account for which the compensation is paid.

(c) No solicitor whose immediate family member, as defined in N.J.A.C. 13:2-16.3(d), has a direct or indirect financial interest or participates in the operation of a retail license, shall receive any commission or compensation, directly or indirectly, based on sales to any retail license in which an immediate family member of another solicitor

employed by the same wholesaler has any direct or indirect financial interest or participates in the operation thereof.

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

In (a)2, corrected error.

Amended by R.2010 d.160, effective August 2, 2010 (operative October 1, 2010).

See: 41 N.J.R. 2436(a), 42 N.J.R. 1733(a).

Added (b) and (c).

**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 beverage.

(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, personally or by first class mail, serve a "Notice of Obligation" upon any such defaulting retailer or its employee within three business days after the obligation is due. Service shall be deemed complete on the second business day following the date of mailing or when personal service is made.

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 (f) below.

(c) A wholesaler which has complied with the provisions of (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 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 the State license number of the retailer, the date of satisfaction, and the 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)3i.

(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:

1. Cause to be maintained all information transmittals and other credit records for a period of two years; and

2. Cause to be submitted to the Division such reports as requested by the Director.

(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 and subject to appropriate interim orders to preserve the rights of the retailer. In the event that the dispute has not been resolved by the date of the hearing, 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 \$25.00. In such proceedings, the Director shall not entertain claims predicated upon set-offs or other defenses more appropriately resolved by the parties in a court of competent jurisdiction.

(g) The provisions of this section 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:

1. The licensee and creditor-wholesalers have executed among themselves a written repayment plan;

2. Where the license has been the subject of a formal debt liquidation plan, pursuant to Federal or State insolvency proceedings where notice was given to all creditor-wholesalers; or

3. Where the license has been transferred by the issuing authority, to a person(s) not connected to the debtor, pursuant to a sale approved under:

i. Federal or State insolvency proceedings;

ii. State receivership action;

iii. New Jersey Division of Taxation seizure of the license; or

iv. Internal Revenue Service seizure of the license.

(h) Whenever the license of any retail licensee that is subject to an outstanding "Notice of Delinquency" is transferred or extended to another person or is subject to a change in corporate stockholders, the name and address of the transferee or the person to whom the license has been extended or the same corporate entity that has its State assigned license number modified because of a stockholder change shall be placed on the "Notice of Delinquency" in the place and stead of the transferor or license subject to extension or stockholder change.

Repealed by R.1981 d.71, effective November 1, 1981.

See: 13 N.J.R. 37(b), 13 N.J.R. 238(b).

New Rule, R.1981 d.432, effective November 2, 1981.

See: 13 N.J.R. 604(b), 13 N.J.R. 777(e).

Amended by R.1981 d.432, effective October 20, 1981.

See: 13 N.J.R. 604(b), 13 N.J.R. 846(e).

Amended by R.1983 d.545, effective November 21, 1983.

See: 15 N.J.R. 1557(a), 15 N.J.R. 1945(b).

In (b), added "personally or by first class mail" and also added last sentence. In (f), added "and subject to appropriate interim orders to preserve the rights of the retailer". Also added (h).

Amended by R.2000 d.342, effective August 21, 2000.

See: 32 N.J.R. 1717(a) 32 N.J.R. 3162(a).

Rewrote (e) through (g).

## Case Notes

Rule cited in support of testimony counter to allegations of customer and territorial allocation conspiracy by distribution in violation of antitrust laws; summary judgement for distribution on liability and damages. *Package Shop, Inc., v. Anheuser-Busch, Inc.*, 675 F.Supp. 894 (D.N.J.1987).

**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 N.J.A.C. 13:2-29:

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.

Amended by R.1980 d.72, effective February 11, 1980.

See: 11 N.J.R. 285(b), 12 N.J.R. 156(a).

Amended by R.1980 d.304, effective July 3, 1980.

See: 12 N.J.R. 343(h), 12 N.J.R. 494(b).

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Deleted (a)3, regarding filing of prices certification.

**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 N.J.A.C. 13:2-29; 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 per unit costs, 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. A "unit" is defined as a can, bottle or individualized container;

ii. The correct brand or trade name of the product, its nature and type, the brand registration number according to N.J.A.C. 13:2-33.1, 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; and

iii. Displays whose fair market retail value is over \$100.00 and any retailer incentive programs.

4. The Current Price List shall be filed in a format prescribed by the Director with the Division of Alcoholic Beverage Control no later than the 15th day of each calendar month and shall become effective the first day of the following calendar month and remain effective for that month.

5. The prices contained therein and any retail incentive program offered 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. Requests for additional amendments may be considered pursuant to N.J.A.C. 13:2-19.

6. No manufacturer, supplier or wholesaler shall offer for sale, sell or deliver to any retailer and no retailer shall accept delivery of anything listed on a Current Price List 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 any means. Any re-publication of the filed Current Price List must be published in its entirety unless conspicuously noted otherwise.

Amended by R.1979 d.138, effective April 12, 1979.

See: 11 N.J.R. 143(a), 11 N.J.R. 257(c).

Amended by R.1996 d.271, effective June 17, 1996.

See: 27 N.J.R. 2051(a), 28 N.J.R. 3177(a).

Amended by R.2000 d.342, effective August 21, 2000.

See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).

In (a)5, added "and any retail incentive program offered" following "therein".

**13:2-24.7 Marketing initiatives**

Subject to the foregoing provisions of this subchapter, a licensed manufacturer, supplier, importer, wholesaler or distributor may furnish or provide advertising or promotional materials to any retail licensee. Such licensees may provide product samples to retailers and make donations of alcoholic beverages to qualified industry trade organizations and bona fide charitable 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.

Amended by R.1980 d.304, effective July 3, 1980.  
 See: 12 N.J.R. 343(b), 12 N.J.R. 494(b).  
 Amended by R.1995 d.450, effective August 21, 1995.  
 See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

### 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.

Amended by R.1980 d.304, effective July 3, 1980.  
 See: 12 N.J.R. 343(b), 12 N.J.R. 494(b).

### 13:2-24.9 Combination and tied sales

(a) 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) Subject to the provisions of N.J.S.A. 33:1-12, the holder of a Class C license, notwithstanding a local ordinance to the contrary, may sell alcoholic beverages in combination with packaged holiday merchandise prepackaged as a unit with other suitable objects as gift items to be sold only as a unit.

(c) The holder of a Class A or B license authorized to sell to retailers, may sell any combination of distilled spirits, malt alcoholic beverages and wine, provided that the combined products offered for sale are all within one of the three noted categories.

(d) The holder of a Class C license, or the holder of any Class A or B license which has the privilege to sell at retail, may sell at retail, may sell, at retail, any combination of alcoholic beverages with or without any other suitable objects provided that such sale is in accordance with the license's privileges and that the combination sale shall not be offered at a price below cost as defined by N.J.A.C. 13:2-24.8.

Amended by R.1980 d.72, effective February 11, 1980.  
 See: 11 N.J.R. 285(b), 12 N.J.R. 156(a).  
 Amended by R.1980 d.304, effective July 3, 1980.  
 See: 12 N.J.R. 343(b), 12 N.J.R. 494(b).  
 Amended by R.1980 d.526, effective December 4, 1980.  
 See: 11 N.J.R. 605(b), 13 N.J.R. 41(c).  
 Amended by R.1996 d.271, effective June 17, 1996.  
 See: 27 N.J.R. 2051(a), 28 N.J.R. 3177(a).

### 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 or lewd;
3. Contains the name of or depiction of any biblical character or religious character or symbol;
4. Portrays a minor or 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. Is in violation of any other provisions of the Alcoholic Beverage Control Act; or
8. Offers alcoholic beverage pricing information in affiliation with other non-identically owned licensees in a communication which fails to truthfully disclose and prominently indicate:
  - i. The identity of the individual licensee who established the pricing information; and
  - ii. That the specific prices and products featured may not be available at all businesses represented or indicated as being affiliated.

Amended by R.1980 d.304, effective July 3, 1980.  
 See: 12 N.J.R. 343(b), 12 N.J.R. 494(b).  
 Amended by R.1995 d.450, effective August 21, 1995.  
 See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).  
 Amended by R.2005 d.212, effective July 5, 2005.  
 See: 36 N.J.R. 4211(a), 37 N.J.R. 2544(a).  
 In (a), added a new 7 and recodified former 7 as 8.

### 13:2-24.11 Manufacturers' rebates and coupons

(a) Subject to the provisions of this section, a manufacturer, distiller, blender and rectifier, brewer, vintner, or any importer may offer mail-in rebates or refunds of a portion of the purchase price of alcoholic beverages directly to consumers.

1. No such rebate may be for more than the full amount of the retail purchase price of the alcoholic beverage. In addition, the reimbursement of first-class postage to the consumer for the cost of mailing in the rebate offer for redemption is permitted.

2. Any such rebate offer shall require a form, with all the terms and conditions of the rebate offer clearly stated thereon, to be completed and mailed by a consumer who must be of legal age to purchase alcoholic beverages. A proof-of-purchase may also be required to be submitted with the form. Such forms shall be distributed to consumers via advertisements in newspapers, magazines, circulars of general distribution, or internet site; by general address mailings; by point-of-sale tear-off pads on retail licensed premises; or by neck-hangers or other attachments on bottles or packaging or other similar means of distribution; provided that such pads, neck-hangers, or other attachments or other similar means of distribution shall be non-discriminatorily distributed to licensees within a targeted advertising area.

3. Any rebate offered in accordance with this section shall be mailed to the consumer completing the form at the address shown thereon in the form of cash or check only.

4. At least 10 days prior to the commencement of any rebate promotion offered in accordance with this section, the manufacturer, distiller, blender and rectifier, brewer, vintner, or importer making such rebate offer shall file in duplicate with the Director of the Division of Alcoholic Beverage Control a statement setting forth all terms and conditions of the rebate offer, including, but not limited to, the amount of rebate, any proof-of-purchase requirement, the effective dates of the offer, the marketing area in which the offer will be promoted, how the offer will be advertised to the public and the name and address of any clearinghouse retained to process rebates. A facsimile or copy of the rebate offer form shall also be filed in duplicate. The Division shall promptly be notified of any change in the terms of a rebate offer prior to such changes taking place.

(b) No manufacturer, distiller, blender and rectifier, brewer, vintner, importer, wholesaler or distributor shall provide or distribute by any means whatsoever any coupon or certificate redeemable for a discount on or "cents-off" the purchase price of any alcoholic beverage by a consumer at any retail licensed premises, nor shall any retail licensee redeem any such coupon or certificate.

(c) No manufacturer, distiller, blender and rectifier, brewer, vintner, importer, wholesaler or distributor shall provide or distribute any instant win coupon, ticket, cap, game card or the like.

(d) A retail licensee may advertise a net final price or a reduction in the price of an alcoholic beverage product or package offered for sale by reason of a manufacturer's rebate or refund, provided that the manufacturer's rebate or refund is conspicuously displayed in the advertising.

New Rule, R.1983 d.361, effective September 6, 1983.  
See: 15 N.J.R. 1003, 15 N.J.R. 1478(a).  
Amended by R.1983 d.644, effective January 17, 1984.  
See: 15 N.J.R. 1830(a), 16 N.J.R. 146(a).  
(a)5 and (a)6 added, (c) added.

Amended by R.1995 d.450, effective August 21, 1995.

See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Added other means of providing rebate forms.

Administrative Correction.

See: 28 N.J.R. 1552(a).

Amended by R.2000 d.342, effective August 21, 2000.

See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).

In (a)2, deleted "or" following "magazines," and added ", or internet site" following "distribution".

Amended by R.2006 d.67, effective February 21, 2006.

See: 37 N.J.R. 3221(a), 38 N.J.R. 1193(a).

Added (c); recodified former (c) as (d).

### 13:2-24.12 Display services

(a) No licensee, permittee, or registrant privileged to engage in the commerce of alcoholic beverages in this State shall, directly or indirectly, furnish to, provide payment for, receive or accept anything of value from, or otherwise utilize in any manner whatsoever, any display service unless such service has registered with the Division in a form prescribed by the Director. Such registration shall include:

1. The name and address of the display service and all officers, directors, partners, stockholders and/or employees thereof unless a publicly traded corporation, in which case only officers, directors and stockholders having at least one percent interest need be furnished;

2. An affidavit or certification that no person listed in (a) above would be disqualified from having an interest in an alcoholic beverage license in this State;

3. Copies of all existing display service agreements with licensees, permittees, registrants, suppliers, importers, manufacturers or cooperatives doing business in the State of New Jersey; and

4. The issuance of a registration acknowledgement, which shall be renewable on May 1 of each year.

(b) Every licensee, permittee or registrant privileged to engage in the commerce of alcoholic beverages in this State shall maintain on its licensed premises all written agreements and detailed records of all transactions with any display service for a period of three years.

Amended by R.1984 d.140, effective April 16, 1984.

See: 15 N.J.R. 1921(a), 16 N.J.R. 916(b), 16 N.J.R. 1278(b).

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Stylistic revision.

Amended by R.1995 d.450, effective August 21, 1995.

See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Deleted (b) and renumbered (c) as (b).

## 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.

Amended by R.1979 d.138, effective May 1, 1979.  
See: 11 N.J.R. 143(a), 11 N.J.R. 257(c).  
Amended by R.1980 d.72, effective February 11, 1980.  
See: 11 N.J.R. 285(b), 12 N.J.R. 156(a).

### 13:2-25.2 Registered distribution

No plenary wholesale, wine wholesale or limited wholesale licensee shall sell or deliver any brand of alcoholic beverage intended for resale in this State unless the alcoholic beverage is acquired from the brand owner, or his authorized agent, or a wholesale licensee designated as a New Jersey registered distributor by the brand owner or his authorized agent pursuant to N.J.A.C. 13:2-33.

New Rule, R.1979 d.138, effective May 1, 1979.  
See: 11 N.J.R. 143(a), 11 N.J.R. 257(c).  
Amended by R.1980 d.72, effective February 11, 1980.  
See: 11 N.J.R. 285(b), 12 N.J.R. 156(a).  
Amended by R.1990 d.412, effective August 20, 1990.  
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Revised former (a) and deleted (b), regarding accommodation sales or transfers.

#### Case Notes

N.J.A.C. 13:2-25.2(a) valid as serving purpose of identifying licensees subject to taxation through filing of documentation, as providing marketplace and industry stability, as solving problem of industry member identification and as promoting and enhancing interbrand competition; rule does not adversely affect consumers or violate anti-trust laws (Director's Decision). In Re: Todd Seifert, 4 N.J.A.R. 294 (1983).

### 13:2-25.3 State beverage distributor

(a) No State beverage distributor shall sell or deliver to any retailer or consumer malt alcoholic beverages other than from inventory in a warehouse or salesroom located in New Jersey and operated under a State beverage distributor's license. Such "inventory" shall be deemed to include only malt alcoholic beverages which shall have been stored in such warehouse for at least a period of 24 continuous hours.

(b) No State beverage distributor shall sell or deliver any brand of alcoholic beverage intended for resale in this State unless the alcoholic beverage is acquired from the brand owner or his authorized agent, or a New Jersey distributor designated by the brand owner or his authorized agent.

New Rule, R.1980 d.72, effective February 11, 1980.  
See: 11 N.J.R. 285(b), 12 N.J.R. 156(a).  
Amended by R.1990 d.412, effective August 20, 1990.  
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Revised (a) to specify "any retailer or consumer" and malt beverage inventory, and (b) to include "any brand of alcoholic beverage".

#### Case Notes

N.J.A.C. 13:2-25.3(b) valid as serving purpose of identifying licensees subject to taxation through filing of documentation, as providing marketplace and industry stability, as solving problem of industry member identification and as promoting and enhancing interbrand competition; rules does not adversely affect consumers or violate anti-trust laws (Director's Decision). In Re: Todd Seifert, 4 N.J.A.R. 294 (1983).

## 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.A. 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. The cooperative may hire employee(s) to act in an administrative or management capacity for the cooperative's purchase, storage and transportation of alcoholic beverages, provided:

i. The employee meets with the qualification requirements of N.J.S.A. 33:1-25 and N.J.A.C. 13:2-14.5;

ii. The employee applies for and receives a permit from the Director of the Division of Alcoholic Beverage Control upon a format prescribed by the Director; and

iii. The employee has no ownership of, employment with or financial interest in a Class A, B or C license;

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.A. 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;

3. No cooperative agreement may prohibit any licensee from joining any other cooperative agreement;

4. No cooperative agreement may prohibit any retailer from advertising or selling any product at any otherwise lawful price;

5. Any licensee may withdraw from any cooperative agreement upon 30 days written notice and no penalties may be charged for such withdrawal;

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 N.J.A.C. 13:2-24. Such credit terms shall include adequate assurances of payment by each individual participating member 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;

7. All individual purchases through or by cooperative agreement shall be separately invoiced consistent with N.J.A.C. 13:2-20.4, and shall contain the cooperative's registration number;

8. All purchases through or by cooperative agreement shall be transported consistent with N.J.A.C. 13:2-20, N.J.S.A. 33:1-13 and N.J.S.A. 33:1-28;

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

10. Any purchase or transfer in violation of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq. 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;

12. Each registered cooperative buying group may maintain a public warehouse provided that the cooperative complies with N.J.S.A. 33:1-14, the cooperative public warehouse maintains assigned space for each individual participating member, and the inventory is transferred to that space within 72 hours after delivery pursuant to N.J.A.C. 13:2-23.21. All purchases through or by the cooperative agreement must be transported to and from the warehouse consistent with N.J.S.A. 33:1-13, N.J.S.A. 33:1-28 and N.J.A.C. 13:2-20; and

13. Each registered cooperative buying group may maintain a bank account and invoice, assess and charge its members for the cost and expense, including capital and operational expenditures, of establishing, maintaining and providing services.

(b) No cooperative buying group may participate in any business transaction permitted by (a) above, 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;
3. A fee of \$15.00 per member; and
4. The issuance of a special permit by the Director, which shall be renewable annually on August 1.

Amended by R.1980 d.72, effective February 11, 1980.

See: 11 N.J.R. 285(b), 12 N.J.R. 156(a).

Amended by R.1980 d.304, effective July 3, 1980.

See: 12 N.J.R. 343(b), 12 N.J.R. 494(b).

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

In (a), stylistic revisions; corrected references.

Amended by R.1995 d.450, effective August 21, 1995.

See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Amended requirements for cooperative employees at (a)1 and added (a)12 and (a)13.

Amended by R.2006 d.67, effective February 21, 2006.

See: 37 N.J.R. 3221(a), 38 N.J.R. 1193(a).

Added (b)3; recodified former (b)3 as (b)4.

## SUBCHAPTER 27. LABELING AND STANDARDS OF FILL; DEPOSIT MARKED CONTAINERS

### 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.

Amended by R.1971 d.148, effective August 27, 1971.

See: 3 N.J.R. 111(b), 3 N.J.R. 181(b).

Amended by R.1976 d.252, effective October 1, 1976.

See: 8 N.J.R. 336(c), 8 N.J.R. 439(c).

Amended by R.1979 d.138, effective May 1, 1979.

See: 11 N.J.R. 143(a), 11 N.J.R. 257(c).

### 13:2-27.2 Deposit marked containers

(a) No manufacturer, supplier, importer, brand registrant, wholesale or retail licensee or permittee shall sell, distribute or market for resale to a consumer in New Jersey or purchase for resale to a consumer in New Jersey any malt alcoholic beverage product, except for malt coolers, packaged in a bottle or can marked for deposit of another state.

(b) The provisions of (a) above shall not apply where an application is received from the brand registrant or its authorized agent of a malt alcoholic beverage which is accompanied by a certification from an appropriate officer that the total of all shipments from the brewery of malt alcoholic beverages for the past full or part calendar year in New Jersey did not exceed 3,000 barrels of 31 fluid gallons capacity or their container equivalent. False or misleading certifications shall be punishable by suspension or revocation of all brand registrations filed by the brewery or its authorized agent.

(c) For the purposes of (a) above, "malt coolers" shall be defined as a flavored malt beverage made from a base of malt beverage and flavored with fruit juices, aromatics, essences, or other flavoring in quantities and proportions such that the resulting product possesses a character and flavor distinctive from the base malt beverages and distinguishable from other

New Rule, R.1979 d.138, effective May 1, 1979.

See: 11 N.J.R. 143(a), 11 N.J.R. 257(c).

malt beverages and is generally considered a “malt cooler” product.

(d) When the Director, after providing notice and an opportunity to be heard, determines that, for an otherwise exempt product, the purposes for lifting the prohibition of selling alcoholic beverage containers marked for deposit of another state are no longer being served, the Director shall prohibit the sale, distribution or marketing for resale or purchase for resale to a consumer in New Jersey, of that product when packaged in a container marked for deposit of another state. The Director’s determination shall be based upon a finding of evidence of transshipping, economic hardship caused to licensed wholesalers, degradation of tax revenues, violation of the primary source law, or for other good cause.

New Rule, R.1984 d.50, effective March 5, 1984.  
 See: 16 N.J.R. 31(a), 16 N.J.R. 428(b).  
 Amended by R.1996 d.142, effective March 18, 1996.  
 See: 28 N.J.R. 61(a), 28 N.J.R. 1552(b).  
 Application limited to malt alcoholic beverages.

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**SUBCHAPTER 28. (RESERVED)**

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**SUBCHAPTER 29. RECORDS**

**13:2-29.1 Public records**

(a) The following enumerated records required to be maintained by law or other regulation by the Director shall constitute public records of the Division:

1. All license or permit applications filed with the Director, subject to nondisclosure of information protected by Federal or State law;
2. All filed administrative disciplinary charges, transcripts of Division disciplinary hearings, Office of Administrative Law initial decisions and reports and recommendations, and Conclusions and Orders of the Director;
3. All filed administrative appeal pleadings, transcripts of Division appeal hearings, Office of Administrative Law initial decisions and reports and recommendations, 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 and other filings required to be made by licensees and permittees by law or regulation; and
6. All records, pleadings, documents and orders, exclusive of investigative reports, pertaining to duly

instituted seizure proceedings, pocket license applications and tax revocation proceedings.

Amended by R.1990 d.412, effective August 20, 1990.  
 See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).  
 In (a)2 and 3, added text regarding OAL determinations.  
 Amended by R.1995 d.450, effective August 21, 1995.  
 See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).  
 Stylistic changes.

**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; and
7. Tax reports and documents filed by licensees regarding the payment of monetary penalties.

Amended by R.1990 d.412, effective August 20, 1990.  
 See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).  
 Added (a)7.

**13:2-29.3 Inspection, reproduction and availability of records; copy fees**

(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 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 or separate record filed with this Division, not upon the ultimate number of pages provided.

1. First page to 10th page \_\_\_\_\_ \$0.75 per page;
2. Eleventh to 20th page \_\_\_\_\_ \$0.50 per page;
3. All pages over 21 \_\_\_\_\_ \$0.25 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, any citizen who is seeking to copy any individual record or report which exceeds 100 pages may be permitted to use his own photographic process, approved by the custodian, upon the payment of a fee of \$25.00 per day.

(d) Special records such as computer printouts, tapes and discs or other computer records of the Division 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.

Amended by R.1990 d.412, effective August 20, 1990.  
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Stylistic revisions.

Amended by R.1995 d.450, effective August 21, 1995.  
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Stylistic changes.

Amended by R.2006 d.67, effective February 21, 2006.  
See: 37 N.J.R. 3221(a), 38 N.J.R. 1193(a).

In (b)1, substituted "10th page" for "Twentieth page" and decreased fee from \$1.00 per page to \$0.75 per page; rewrote (b)2 to include the eleventh to 20th page and decreased fee from \$0.75 to \$0.50 per page; rewrote (b)3 to include all pages over 21 and decreased the fee from \$0.50 to \$0.25 per page.

### 13:2-29.4 Licensee records; storage systems and availability of records

(a) Upon written application to the Director, the Director may, in the sound exercise of his or her discretion, issue a permit for the off-premises storage of the records listed in N.J.A.C. 13:2-23.32(a)5, (b) and (c) that are in excess of three months old, provided that such storage 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 three months old and are produced for inspection immediately upon demand; or
2. In excess of three months old and produced for inspection within seven business days.

(c) Records are "accurate" if they correctly reflect all information required to be contained on the original record.

(d) Computer systems and programs may be used to store records required to be maintained by law or other regulation if such records are retrievable within the time limits as enumerated in this section.

(e) A licensee may apply to the Director for a Permit for off-premises storage of business records on a form prescribed by the Director. The permit term shall coincide with the license term. A separate permit shall be obtained for each license held by the licensee. The cost of this permit shall be \$100.00 per license for each license term.

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Revised heading; in (b)1, added "immediately" to "upon demand".

Amended by R.1995 d.450, effective August 21, 1995.

See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Added (d).

Amended by R.2005 d.212, effective July 5, 2005.

See: 36 N.J.R. 4211(a), 37 N.J.R. 2544(a).

Rewrote the section.

### 13:2-29.5 Inspection by other governmental agencies

Nothing in this subchapter shall prohibit the Division, in its sole discretion, from providing to any governmental agency for inspection any document in the Division's possession.

New Rule, R.2005 d.212, effective July 5, 2005.

See: 36 N.J.R. 4211(a), 37 N.J.R. 2544(a).

## SUBCHAPTER 30. REGISTRATION OF STILLS

### 13:2-30.1 Stills to be registered

Every still, distilling apparatus and parts thereof, located within this State, whether set up, dismantled or in the process of construction, shall be registered with the Director of the Division of Alcoholic Beverage Control.

### 13:2-30.2 Registration form; contents

Such registration shall be upon forms prescribed by the Director designated as registry certificates, which may be obtained from the Director upon request, and which shall set forth the description and location of the still, distilling apparatus and parts thereof, and the names and address of the owner and the person having possession, control or custody thereof.

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Specified "forms promulgated by the Director".

Amended by R.1995 d.450, effective August 21, 1995.

See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Substituted "prescribed" for "promulgated".

**13:2-30.3 Possession of registry certificate on premises**

Certificates must be completed and returned to the Director in duplicate, and one of said certificates, bearing due endorsement by the Director of the receipt thereof, shall be returned to the registrant and must at all times be kept on the premises where the still, distilling apparatus and parts thereof are located.

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Substituted "completed and returned" for "executed and transmitted".

**13:2-30.4 Removal of registered still**

No registered still, distilling apparatus and parts thereof shall be transported, except pursuant to written permission first obtained from the Director, and any registered still, distilling apparatus and parts thereof removed from the premises described in the registry certificate without such permission shall be deemed forthwith unregistered.

**13:2-30.5 Sale of registered still; notice**

When any registered still, distilling apparatus and parts thereof are sold or become the subject of a contract of sale, the registrant shall forthwith notify the Director of the name

and address of the purchaser and the place where said still, distilling apparatus and parts thereof are to be delivered.

**13:2-30.6 Stills of licensed distillery, rectifier or blender**

None of the foregoing rules shall apply to any still, distilling apparatus and parts thereof, possessed by or in the custody or control of any licensed distillery or rectifier and blender, when located at the licensed premises and used in connection with the operation of the licensed business, and such stills, distilling apparatus and parts thereof are hereby declared registered during the continuance of the license.

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**SUBCHAPTER 31. SEIZURE HEARINGS****13:2-31.1 Hearings generally**

Contested case hearings to determine whether seized property constitutes unlawful property and shall be forfeited, shall be conducted according to N.J.A.C. 1:1 and either retained by the Director, Division of Alcoholic Beverage Control under the provisions of N.J.S.A. 52:14F-8 or filed with the Office of Administrative Law pursuant to N.J.A.C. 1:1-5.1.

iii. Non-operation of the entire licensed business, but that, prior to May 28, 1948, such licensee had sold alcoholic beverages in original containers for off-premises consumption from a portion of the premises other than the public barroom or had actually undertaken alteration or construction of the licensed premises to be licensed, intending and making provision thereon for the sale of alcoholic beverages in original containers for off-premises consumption from a portion of the premises other than the public barroom.

Amended by R.1990 d.412, effective August 20, 1990.  
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).  
Revised heading.

**13:2-35.3 Notation of privilege on license certificate; daily certification**

The Division of Alcoholic Beverage Control shall note the following on the face of the renewal license certificate of each holder of a license which includes the "Broad package privilege" as set forth in N.J.A.C. 13:2-35.2:

"This license bears the "Broad package privilege" pursuant to P.L. 1948, ch. 98 (N.J.S.A. 33:1-12.23 and N.J.A.C. 13:2-35.2)".

Amended by R.1990 d.412, effective August 20, 1990.  
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).  
In former (a), changed "issuing authority" to "Division of Alcoholic Beverage Control"; deleted (b), regarding daily certifications.

**13:2-35.4 Off-premises consumption sales; requirements and prohibitions**

(a) No licensee without the "Broad package privilege" shall, with respect to the public barroom in which he may sell or display for sale alcoholic beverages in original containers for off-premises consumption:

1. Display package goods in the principal public barroom other than in an area located behind the bar or on shelving along the perimeter walls of the barroom, which shelving must not exceed two feet in depth, must be attached to the perimeter walls and run parallel to same, may be located below and around the exterior windows but not in any way obstructing the windows, and may include refrigerated cases, which are located flush and fastened to the wall;
2. Maintain a cashier service counter which exceeds more than three percent of the net sales area (with an area 30 inches behind a straight counter being included as part of the counter), nor shall any licensee maintain such counter, the outside edge of which is located more than five feet from a perimeter wall;
3. Maintain folding doors, gates, curtains, or other type of separation to be utilized for the purpose of closing off the package goods display area from the remainder of the barroom, except that such area may be roped off to the

public during the hours when the sale of alcoholic beverages for off-premises consumption is prohibited;

4. Permit the public bar to be obstructed by low walls, screens, filigree, plants, flower boxes, racks, gondolas, movable shelves, fences, stacks of alcoholic beverages (including malt alcoholic beverages), or other mercantile items or merchandise.

Amended by R.1990 d.412, effective August 20, 1990.  
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).  
Recodified from 13:2-35.5. In (a), added "Broad package privilege" qualification. Prior text at 13:2-35.4, "Lack of notation of privilege on license certificate", repealed.  
Amended by R.2000 d.342, effective August 21, 2000.  
See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).  
In (a)1, deleted "and" following "same,,"; added "and may include refrigerated cases, which are located flush and fastened to the wall" at end of paragraph.

**Case Notes**

Transfer of retail consumption license with package sales to site adjacent to licensed premises with restaurant was granted. *Pungoti v. Sayreville*, 95 N.J.A.R.2d (ABC) 72.

Alcoholic beverages being displayed on shelving attached to the side of a large walk-in beer cooler constituted a violation of N.J.A.C. 13:2-35.4(a)1 because the wall to which the shelving was attached was not a perimeter wall, as defined by N.J.A.C. 13:2-35.1. *Division of Alcohol Beverage Control v. PCK Enterprises, Inc.*, OAL DKT. NOS. ABC 656-03 and 2986-03 (consolidated), 2005 N.J. AGEN LEXIS 395, Initial Decision (August 4, 2005).

Display of cases of beer so as to partially obstruct the exterior front windows of a barroom constituted a violation of N.J.A.C. 13:2-35.4(a)1, even though the cases did not rise above the tops of advertising posters taped to the lower panels of glass. *Division of Alcohol Beverage Control v. PCK Enterprises, Inc.*, OAL DKT. NOS. ABC 656-03 and 2986-03 (consolidated), 2005 N.J. AGEN LEXIS 395, Initial Decision (August 4, 2005).

Small refrigerated cooler located in front of a wall, sitting atop a pedestal or stand, and simply plugged into a wall outlet constituted a violation of N.J.A.C. 13:2-35.4(a)1. *Division of Alcohol Beverage Control v. PCK Enterprises, Inc.*, OAL DKT. NOS. ABC 656-03 and 2986-03 (consolidated), 2005 N.J. AGEN LEXIS 395, Initial Decision (August 4, 2005).

Where careful review of videotape evidence taken by an ABC investigator and sketches of the respondent retail consumption licensee's premises introduced into evidence clearly disclosed that the respondent operated its establishment more like a liquor store than a bar, the respondent violated N.J.A.C. 13:2-35.4. *Division of Alcohol Beverage Control v. PCK Enterprises, Inc.*, OAL DKT. NOS. ABC 656-03 and 2986-03 (consolidated), 2005 N.J. AGEN LEXIS 395, Initial Decision (August 4, 2005).

Where the record clearly disclosed that respondent retail consumption license holder committed multiple violations of the ABC Act and the implementing regulations, including multiple violations of N.J.A.C. 13:2-35.4(a)1, and the violations were discovered on three separate occasions within a span of 12 months, and where the respondent apparently did little or nothing to remedy the problems, the ALJ determined that the respondent's conduct demonstrated complete ignorance of, or an utter disregard for, the regulations governing plenary retail consumption licensees; consequently, the Director's determination to impose a 284-day suspension could in no way be considered arbitrary, unreasonable, or oppressive. *Division of Alcohol Beverage Control v. PCK Enterprises, Inc.*, OAL DKT. NOS. ABC 656-03 and 2986-03 (consolidated). 2005 N.J. AGEN LEXIS 395, Initial Decision (August 4, 2005).

**13:2-35.5 Multiple barrooms; package goods sales restricted to the bona fide principal barroom**

(a) No holder of a plenary retail consumption license or seasonal retail consumption license, without the "Broad package privilege" as set forth in N.J.A.C. 13:2-35.1, 35.2 and 35.3, who maintains at the same time more than one barroom on the licensed premises, shall sell or display for sale any alcoholic beverage in the original container for off-premises consumption except from and in principal bona fide public barroom on the licensed premises.

(b) Every holder of a plenary retail consumption license or seasonal retail consumption license, without the "Broad package privilege" as set forth in N.J.A.C. 13:2-35.1, 35.2 and 35.3, who maintains at the same time more than one barroom on the licensed premises, shall designate the principal public barroom on its sketch of the licensed premises. For current licensees, this requirement shall become effective upon the filing of the first renewal application after July 5, 2005. This designation shall be binding on the licensee, but not on the Division or other issuing authority.

Amended by R.1990 d.412, effective August 20, 1990.  
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Recodified from 13:2-35.6. Revised heading. Recodified prior text at 13:2-35.5. "Off-premises consumption sales; requirements", to 13:2-35.4.

Amended by R.2005 d.212, effective July 5, 2005.  
See: 36 N.J.R. 4211(a), 37 N.J.R. 2544(a).

Codified existing text as (a); added (b).

**13:2-35.6 (Reserved)**

Recodified to 13:2-35.5 by R.1990 d.412, effective August 20, 1990.  
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).  
Section was "Multiple barrooms".

**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 request for an interpretation, application, or other inquiry concerning the Division of Alcoholic Beverage Control'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.

(b) All requests shall be sent to the Director, Division of Alcoholic Beverage Control, PO Box 087, Trenton, New Jersey 08625-0087, and any request and corresponding advisory opinion may be reproduced in Bulletins issued by the Division which are publicly available upon subscription. Requests which are hypothetical in nature may not receive Division response. All requests shall contain a certification that the requesting party is not aware that the subject matter of the

inquiry is presently an issue pending in any Federal or State court or any administrative adjudicatory forum. If the requesting party is aware that the subject matter of the inquiry is an issue pending in any court or forum, the nature of the proceedings and identification of the court or forum shall be fully described in the request for the advisory opinion.

Amended by R.1990 d.412, effective August 20, 1990.  
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

In (a), "a written request" was "a written non-hypothetical request"; added new (b), with Division address for submitting requests; re-designated existing (b) as (c).

Amended by R.1995 d.450, effective August 21, 1995.  
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Added certification of the legal status of the inquiry subject matter in (b) and deleted (c).

Amended by R.2000 d.342, effective August 21, 2000.  
See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).

In (b), substituted "may" for "will" following "nature".

**SUBCHAPTER 37. CONSUMER ALCOHOLIC BEVERAGE TASTING EVENTS AND SAMPLINGS**

**13:2-37.1 Consumer Alcohol Beverage Tasting Events and Samplings**

(a) Definitions for the purpose of this section are as follows:

1. "Tasting event" means a scheduled event hosted by a licensee or permittee, which is not open to the public and for which invitations are provided to guests at least 24 hours in advance.

2. "Sampling" means an act by a licensee or permittee where a small amount of an alcoholic beverage is offered to a consumer for the purpose of inducing or promoting a sale.

(b) Consumer alcoholic beverage tasting events or samplings may be held by a licensee or permittee allowed to sell alcoholic beverages in open containers under the following conditions:

1. The host for an event shall hold an actively operated license or a valid permit authorizing sales of alcohol for immediate on-premises consumption;

2. All alcoholic beverages consumed at a tasting event shall be obtained from the inventory of the host licensee or Annual State permittee, or, if a social affair permittee, purchased in accordance with the Division laws and regulations;

3. The tasting event is not open to the general public, but is limited to invitation given 24 hours in advance only;

4. Servings of alcoholic beverages per person are limited to:

i. No more than five ounces of a particular malt alcoholic beverage, or naturally fermented or sparkling wine at a consumer tasting event; or

ii. No more than one-and one-half ounces of a particular fortified wine or distilled spirit at consumer tasting events;

5. Suppliers, manufacturers or wholesalers of alcoholic beverages may apply for an annual special permit to participate in consumer tasting events, solely to provide educational commentary regarding the alcoholic beverages. The fee for the annual special permit for the supplier, manufacturer or wholesaler shall be \$200.00 and an additional \$200.00 permit for each solicitor or duly authorized representative. Ten days prior to participating in the event, the permittee shall file with the Division a consumer tasting request on a form prescribed by the Director;

6. Tasting events and samplings are not offered to, or allowed to be consumed by, any person under the legal age for consuming alcoholic beverages or intoxicated persons;

7. Tasting events and samplings are not offered when the sale of alcoholic beverages is otherwise prohibited; and

8. All samplings must be from the inventory of the licensee.

(c) Consumer wine tasting events and samplings may be held at plenary retail distribution licensed premises under the following conditions:

1. Tasting events and samplings are confined to the licensed premises and all wine used in the tasting events and samplings shall be from the inventory of the licensee conducting the tasting event or sampling;

2. Suppliers, manufacturers or wholesalers of alcoholic beverages holding an annual special permit as provided in (b)5 above may participate in consumer tasting events hosted by distribution licensees, provided each solicitor or duly authorized representative participating in consumer tasting events holds an additional permit as required in (b)5 above;

3. No eating of any kind nor any bars are permitted for the purpose of samplings or tasting events on a distribution licensed premises;

4. Only cheese, crackers, chips, dip and similar snack foods are permitted to be served at a tasting event and only cheese and crackers are permitted to be served during a sampling;

5. Distribution licensees holding a tasting event must notify the Division of Alcoholic Beverage Control, in writing, at least 10 days in advance of conducting a tasting event, describing the place, time and products to be featured at the event;

i. Only 12 bottles of wine may be open and offered at each tasting event; for purposes of this paragraph, an

alcoholic beverage product means each specific individual brand registered alcoholic beverage product being offered;

ii. Only one tasting event may be conducted in a 24-hour period;

iii. At a tasting event, each patron/customer is limited to four one and one-half ounce samples;

6. Samplings may only be permitted on a retail distribution licensed premises between the hours of 9:00 A.M. and 10:00 P.M.;

7. Patrons are limited to four one-and one-half ounce samplings in any 24-hour period;

8. Samplings are not offered to, or allowed to be consumed by, any person under the legal age for consuming alcoholic beverages or actually or apparently intoxicated persons;

9. Samplings are not offered when the sale of alcoholic beverages is otherwise prohibited;

10. Only six bottles of wine may be open at any one time on a plenary retail distribution licensed premise for the purpose of sampling;

i. When a bottle is opened for the purpose of a sampling, a form supplied by the Division identifying the brand, size and the date the bottle was opened must be completed by the licensee. This form must be maintained on the licensed premises and available for inspection;

ii. When a bottle is opened for the purpose of a sampling, the bottle must be marked SAMPLE and with the date the bottle was opened, which coincides with the completed form; and

iii. Once a bottle is opened for the purpose of sampling, it cannot be returned to the supplier; and

11. No samplings of distilled spirits, beers or malt alcoholic beverages may be provided by a Plenary Retail Distribution Licensee.

(d) For any violation of State statutes, Division regulations, or terms of any permit issued, the following will be imposed in connection with this subsection:

1. The liquor license will be subject to the imposition of suspensions starting five days for a first offense, 10 days for a second offense, and 15 days for a third offense; and

2. A fine not to exceed \$500.00 for each offense.

(e) No licensee or permittee shall allow or permit the advertising, in any fashion, of the availability of any alcoholic beverages for purchase or sampling on a licensed premises by a non-licensed premises which permits consumption of alcoholic beverages pursuant to N.J.S.A. 2C:33-27.

(f) The Director may, on his or her own initiative or at the request of any affected industry member, investigate and, if appropriate, disapprove and prohibit the continued or renewed conduct of any tasting event or sampling or the participation of any licensee or permittee in tasting events or sampling, if the effect of that licensee's or permittee's participation or the tasting event or sampling is inconsistent with the purposes of this subchapter. Whether to disapprove and prohibit a tasting event or sampling, or the participation by a licensee or permittee therein, will be considered pursuant to N.J.S.A. 33:1-39 and/or N.J.A.C. 13:2-19.

Amended by R.2000 d.342, effective August 21, 2000.  
See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).

Rewrote (a)5.

Special amendment, R.2003 d.311, effective July 3, 2003 (to expire January 3, 2004).

See: 35 N.J.R. 3707(a).

In (a)7, substituted "\$200.00" for "\$100.00" throughout.

Adopted concurrent amendment, R.2003 d.470, effective November 5, 2003.

See: 35 N.J.R. 3707(a), 35 N.J.R. 5427(a).

Provisions of R.2003 d.311 adopted without change.

Amended by R.2005 d.302, effective September 6, 2005.

See: 36 N.J.R. 3988(a), 37 N.J.R. 3422(a).

Added new (a), recodified former (a) as (b); rewrote the section and added (d)-(f).

premises, before 9:00 A.M. or after 10:00 P.M. on any day of the week.

(b) However, if the sale of alcoholic beverages for consumption on the premises is authorized in a municipality, the sale, service or delivery of wine and malt alcoholic beverages in original containers for consumption off the premises shall be authorized on the same days and during the same hours.

(c) Cities of the first class may establish by ordinance separate hours of sale for each type of retail license, and separate hours for each type of retail license for sales by such licenses of alcoholic beverages for on-premises and off-premises consumption.

Amended by R.1973 d.234, effective August 30, 1973.

See: 5 N.J.R. 356(a).

Amended by R.1981 d.71, effective May 1, 1981.

See: 13 N.J.R. 37(b), 13 N.J.R. 238(b).

Added "Subject to ... N.J.A.C. 13:2-38.2" and "pursuant to N.J.S.A. 33:1-40.3".

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Revised to include service and wine; other textual revisions.

Amended by R.1995 d.450, effective August 21, 1995.

See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Divided existing text into (a) and (b) and added (c).

Amended by R.2000 d.342, effective August 21, 2000.

See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).

Rewrote (c).

## 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

(a) Subject to local options as expressed in the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq. and except as further specified in (b) below, no licensee shall allow, permit or suffer the sale, service or delivery of any alcoholic beverage at retail in its original container for consumption off the licensed premises, or the removal of any alcoholic beverage in its original container from retail licensed

### 13:2-38.2 Sunday sales hours for retail distribution licensees and state beverage distributors; effect of municipal ordinances and State statute on sale for off-premises consumption

(a) If a municipality has no ordinance or local law that authorizes the sale of alcoholic beverages for consumption on the premises on Sunday, then except as provided in (b) below, a municipality may by ordinance authorize the sale of wine and malt alcoholic beverages in original containers for consumption off-premises by retail distribution licensees and State beverage distributor's licensees any time between the hours of 12:30 P.M. and 6:30 P.M. on Sunday, in addition to such weekday hours as may be authorized by ordinance.

(b) No sales in original containers for off premises consumption shall be made under the authority of this special license.

**13:2-41.5 Person-to-person and place-to-place transfers**

(a) A license issued pursuant to N.J.S.A. 33:1-19.7 may be transferred person-to-person, but only if the applicant for this license is fully qualified to receive this special license under the provisions of this statute and the transferee has complied with all applicable provisions of law required for a person-to-person transfer.

(b) A license issued pursuant to N.J.S.A. 33:1-19.7 may be transferred place-to-place, but only if the location to which it is to be transferred is fully qualified to receive this special license under the provision of this statute and the licensee has complied with all applicable provisions of law required for a place-to-place transfer.

(c) Expansion and reduction of premises must be accomplished by application for a place-to-place transfer of license.

(d) Applications for transfers of special plenary retail consumption licenses may only be filed by the qualified non-profit corporations authorized to hold such licenses.

**13:2-41.6 Reporting changes in facts and in corporate structures**

Changes in any facts contained in any existing filed application, including changes in corporate structure both in the non-profit corporation holding the license as well as any corporate restaurant operator, shall be reported in accordance with the provisions of N.J.A.C. 13:2-2.14 and 2.16.

**13:2-41.7 Renewal of special plenary retail consumption licenses**

A license issued under the provisions of N.J.S.A. 33:1-19.7 may only be renewed by the qualified non-profit corporation authorized to hold such license and shall be renewed as any other plenary retail consumption license, under appropriate provisions of law.

SUBCHAPTER 42. PETITIONS FOR RELIEF TO THE DIRECTOR, PURSUANT TO N.J.S.A. 33:1-12.18

**13:2-42.1 Required filings and required time for filings**

(a) A licensee who fails to file a renewal application with the municipal issuing authority by July 30 of the year beginning the license term for which renewal is sought may request that the Director issue a Special Ruling to permit the municipal issuing authority to consider an application for a new license by:

1. Submitting an application for a new license and the appropriate fees to the municipal issuing authority by September 28 of the year beginning the license term; and

2. Filing a Verified Petition and the statutory filing fee with the Director, with a copy of the Verified Petition sent to the municipal issuing authority, by September 28 of the year beginning the license term. This filing deadline shall not be extended under any circumstances.

**13:2-42.2 Required contents of the Verified Petition to the Director**

(a) The Verified Petition is a signed affidavit by the licensee and any other persons with personal knowledge of facts explaining why there were circumstances beyond the licensee's control that prevented the licensee from filing a renewal application by July 30 of the year beginning the license term for which renewal is sought. It shall also contain the following information:

1. Complete identification of the licensee and the license number;

2. Proof that the application for a new license and the appropriate fees were submitted to the municipal issuing authority on or before September 28 of the year beginning the license term or proof that the licensee attempted to submit such an application and fees;

3. A recitation of any efforts that were made to renew the license by July 30 of the year beginning the license term for which renewal is sought, including, but not limited to, the specific dates and details of any such efforts;

4. Whether the licensee has previously sought relief from the Director pursuant to N.J.S.A. 33:1-12.18; and

5. The signature of a notary or other person authorized to administer oaths in the State of New Jersey.

(b) Relevant documents supporting the statements made in the affidavit(s) shall be attached thereto.

**13:2-42.3 Role of the municipal issuing authority**

(a) The municipal issuing authority shall accept an application for a new license and the appropriate fees submitted by a licensee between July 30 and September 28, but it shall not act upon that application absent a Special Ruling from the Director granting relief pursuant to N.J.S.A. 33:1-12.18. If a licensee attempts to submit such an application and fees during this time period and the application and fees are refused by the municipal issuing authority, the licensee shall be deemed to have complied with N.J.A.C. 13:2-42.1(a)1.

(b) Upon receipt of a copy of a Verified Petition, the municipal issuing authority shall review the facts stated therein and provide the Division with comments, if any, that it may wish to make regarding the contents of the Verified Petition.

**13:2-42.4 Effect of the filing of a Verified Petition**

The filing of a Verified Petition for relief pursuant to N.J.S.A. 33:1-12.18 for a particular license term does not eliminate the requirement that the licensee continue to apply for renewal of the license for subsequent license terms by June 30 of each year, while the Verified Petition is pending.

**13:2-42.5 No right to a hearing**

There is no statutory right to a hearing on a request for relief pursuant to N.J.S.A. 33:1-12.18. The Director may grant or deny a Special Ruling based solely on the information provided in the Verified Petition. However, if the Director determines that there is a factual dispute, the Director may either conduct a hearing or transmit the matter to the Office of Administrative Law for a hearing. That hearing shall be governed by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

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SUBCHAPTER 43. PETITIONS FOR RELIEF TO THE DIRECTOR, PURSUANT TO N.J.S.A. 33:1-12.39

**13:2-43.1 Required filings**

(a) No Class C license shall be renewed if that license has not been actively used in connection with the operation of a licensed premises for two or more full license terms immediately preceding the license term for which renewal is sought, absent a Special Ruling from the Director allowing the municipal issuing authority to consider said renewal application.

(b) In order to request a Special Ruling seeking relief pursuant to N.J.S.A. 33:1-12.39, the licensee shall file a Verified Petition and the statutory filing fee for each year of relief requested with the Director, with a copy of the Verified Petition sent to the municipal issuing authority.

**13:2-43.2 Required contents of the Verified Petition to the Director**

(a) The Verified Petition is a signed affidavit by the licensee and any other persons with personal knowledge of the facts involving the inactive license. It shall contain the following information:

1. Complete identification of the licensee and the license number;
2. The date on which the license became inactive and why;
3. Facts which demonstrate a willingness on the part of the licensee to activate the license;
4. All efforts made by the licensee to activate the license;

5. Monetary expenditures incurred towards activation;
6. The prognosis for activation;
7. Any factors outside of the licensee's control that may have thwarted efforts to activate the license;
8. The need for any further active licenses in the community;
9. Whether the licensee has previously sought relief from the Director pursuant to N.J.S.A. 33:1-12.39; and
10. The signature of a notary or other person authorized to administer oaths in the State of New Jersey.

(b) Relevant documents supporting the statements made in the affidavit(s) shall be attached thereto.

(c) If the Verified Petition includes a contract of sale which provides for the transfer of the license, the Verified Petition shall be accompanied by an affidavit from the prospective purchaser regarding the prognosis for activation.

**13:2-43.3 Role of the municipal issuing authority**

(a) If a license meets the criteria stated in N.J.A.C. 13:2-43.1(a), the municipal issuing authority shall accept an application for a license renewal and the appropriate fees submitted by a licensee, but it shall not act upon that application absent a Special Ruling from the Director granting relief pursuant to N.J.S.A. 33:1-12.39.

(b) Upon receipt of a copy of a Verified Petition, the municipal issuing authority shall review the facts stated therein and supply the Division with comments, if any, that it may wish to make regarding the contents of the Verified Petition.

(c) If a license is required to obtain a Special Ruling from the Director pursuant to N.J.S.A. 33:1-12.39, the municipal issuing authority shall not pass a Resolution transferring such license until a Special Ruling is issued for the required license term(s).

Amended by R.2006 d.67, effective February 21, 2006.

See: 37 N.J.R. 3221(a), 38 N.J.R. 1193(a).

Added (c).

**13:2-43.4 Eminent domain and casualty exception**

If a license becomes inactive as a result of eminent domain, fire or other casualty loss and the licensee submits a Verified Petition demonstrating a good faith effort to reactivate the license, in addition to the statutory two-year period provided for by N.J.S.A. 33:1-12.39, the licensee who suffered the loss shall be granted an extension for an additional two years.

**13:2-43.5 Standard of review**

(a) The statutory standard to be applied in granting or denying a Special Ruling is good cause. In situations where there is a multi-term inactive license, there is a direct

relationship between the length of inactivity and the prognosis for activation, as it relates to the quantum of proof necessary to establish good cause. Thus, the Director will consider evidence and/or testimony presented in all prior petitions and rulings in determining whether good cause has been established. If a licensee receives a Special Ruling that provides a date certain for activation or there will be no further renewals of the license, the licensee shall only be eligible for additional relief upon a showing of extreme justification.

(b) If a licensee enters into a Consent Order that provides a date certain for activation or there will be no further renewals of the license, the licensee may file a Motion to Reopen Consent Order with the Director. The motion shall only be granted upon a showing of extreme justification. The following factors will be considered in reaching this determination:

1. Was there a serious material event that occurred which prevented the license from being activated;
2. Was the material event unforeseen at the time the Consent Order was entered into;
3. Is the license transfer to a premises for immediate activation pending or is construction of premises near completion; and
4. Would denial of the Motion to Reopen the Consent Order, under the circumstances, result in manifest injustice.

#### **13:2-43.6 Right to a hearing**

(a) There is a statutory right to a hearing on a request for relief pursuant to N.J.S.A. 33:1-12.39. That hearing shall be governed by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) If a licensee enters into a Consent Order in lieu of a hearing and agrees to a date certain for activation or there will be no further renewals of the license, there shall be no further right to a hearing.

#### **13:2-43.7 Effect of the filing of a Verified Petition**

The filing of a Verified Petition for relief pursuant to N.J.S.A. 33:1-12.39 for a particular license term(s) does not eliminate the requirement that the licensee continue to apply for renewal of the license for subsequent license terms by June 30 of each year and file additional Verified Petitions for relief pursuant to N.J.S.A. 33:1-12.39, if necessary, while the initial Verified Petition is pending.

### SUBCHAPTER 44. DEFINITIONS

#### **13:2-44.1 Definitions**

(a) Unless otherwise defined in this chapter, the definitions set forth in the Alcoholic Beverage Control Act, at N.J.S.A. 33:1-1, shall govern the meaning of terms in these rules.

(b) Definitions for purposes of this chapter are as follows:

1. "Alcoholic Beverage Control Act" means N.J.S.A. 33:1-1 et seq., and the rules promulgated thereunder, at N.J.A.C. 13:2.
2. "Employee" means a person who performs services in connection with the operation of the licensed business. The term "employee" includes people who are included on the payroll of the licensee whether on duty or not, persons who perform services on or about the licensed premises pursuant to a contract (independent contractor) and who are not included on the licensee's payroll, and even people who are not paid for their work or services, including, but not limited to, family members who may be temporarily operating the business while the owner is away from the premises.
3. "License" or "permit" are used interchangeably for disciplinary purposes. Thus, the use of either of these terms shall encompass the other.
4. "Proceeding" is any inspection or investigation conducted by the Division or any order to show cause, contested case or any other litigation in which the Division is a party related to matters involving the Alcoholic Beverage Control Act.