

Bulletin

140 East Front Street, P.O. Box 087, Trenton, New Jersey 08625-0087

BULLETIN 2483

August 14, 2001

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1. **NOTICE OF PROPOSED REGULATION - THE PROPOSAL INCLUDES NEW RULES AND AMENDMENTS TO EXISTING REGULATIONS THAT WILL CLARIFY ADMINISTRATIVE DISCIPLINARY PROCEEDINGS AGAINST LIQUOR LICENSEES WHO VIOLATE THE STATE'S ALCOHOLIC BEVERAGE CONTROL LAWS. N.J.A.C. 13:2-19.1 THROUGH 19.16. THESE RULES WILL SUPERSEDE THE SCHEDULE OF PENALTIES PUBLISHED IN ALCOHOLIC BEVERAGE CONTROL BULLETIN 2453, ITEM #2 (OCTOBER 31, 1988) WHICH HAVE BEEN USED BY THE DIVISION SINCE THIS ORIGINAL PUBLICATION.**

LAW AND PUBLIC SAFETY

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Disciplinary Proceedings

Proposed New Rules: N.J.A.C. 13:2-19.1 through 19.4, 19.11 through 19.16

Proposed Recodification with Amendment: N.J.A.C. 13:2-19.7 as 19.10

Proposed Repeal: N.J.A.C. 13:2-19.6

Authorized By: Jerry Fischer, Director

Division of Alcoholic Beverage Control

Authority: N.J.S.A. 33:1-31, et seq.

Proposal Number: PRN 2001- 344

Submit comments by October 19, 2001 to:

Jerry Fischer, Director

Division of Alcoholic Beverage Control

140 East Front Street

P.O. Box 087

Trenton, New Jersey 08625-0087

The agency proposal follows:

Summary

The Division of Alcoholic Beverage Control (Division) is proposing new rules, an amendment and recodification of an existing rule, and the recodification of five existing rules which pertain to the administrative disciplinary proceedings instituted for violation of the Alcoholic Beverage Control Act and/or the rules of the Division. These proposed new rules, recodified rules, and amendment supersede the schedule of penalties published in Alcoholic Beverage Control Bulletin 2453, Item 2 (October 31, 1988) which have been utilized by the Division since this original publication. The penalties set forth herein shall apply to violations occurring on or after the effective date of these new rules and amendment.

The Division sought and received input from the alcoholic beverage industry during the process of drafting these new penalty rules. Specifically, a report containing industry comments and recommendations was submitted by a subcommittee of the Alcoholic Beverage Control Advisory Committee in 1998. The Advisory Committee is a body made up of members of the alcoholic beverage community which gives input to the Director of the Division on issues upon his request. The report from the subcommittee was thoroughly considered and many changes from the initial draft of these penalty rules are based on this industry input. These final penalty rules are meant to balance the industry concerns with the Division's administrative mandate.

Existing rule N.J.A.C. 13:2-19.1 is recodified as 19.5 with no change in text. It provides that a disciplinary proceeding will not be barred nor will a pending proceeding be terminated because of the expiration, transfer, surrender, renewal or extension of a license or permit.

Existing rule N.J.A.C. 13:2-19.2 is recodified as 19.6 with no change in text. It provides that a disciplinary proceeding can be instituted for violations occurring during a license term, prior to a transfer or extension of a license, or during a period when the license was held by a predecessor of the current licensee.

Existing rule N.J.A.C. 13:2-19.3 is recodified as 19.7 with no change in text. It provides that a pending disciplinary proceeding shall continue to completion and that a suspension, cancellation or revocation will be effective without any further proceedings even if the license was transferred, extended or renewed during the disciplinary proceedings.

Existing rule N.J.A.C. 13:2-19.4 is recodified as 19.8 with no change in text. It provides that a licensed premises subject to a pending disciplinary hearing can be declared ineligible for licensure even though the license or permit is surrendered or another license was issued to another person for the same premises.

Existing rule N.J.A.C. 13:2-19.5 is recodified as 19.9 with no change in text. It mandates that when a license is suspended, the suspension shall continue in full force and effect notwithstanding any transfer or extension of the license during the period of suspension.

The current N.J.A.C. 13:2-19.6 is repealed and the subject matter of this rule is contained in proposed new rule N.J.A.C. 13:2-19.3.

Existing rule N.J.A.C. 13:2-19.7 is recodified as 19.10 with several grammatical changes. This section reflects that a pending disciplinary proceeding shall continue to completion and that a suspension, cancellation or revocation will be effective without any further proceedings even if the license was transferred, extended or renewed during the disciplinary proceedings. This section restates, clarifies and implements the intent of the provisions of N.J.S.A. 33:1-31. Subsection (a) is unchanged. Subsection (b) codifies Division decisions which provide that the Director shall determine, in accordance with pertinent law and articulated standards, exactly which persons or entities are affected by an order of revocation when a license is transferred prior to the time the Director has ordered the revocation.

Proposed new rule N.J.A.C. 13:2-19.1 provides that a disciplinary proceeding shall be commenced by the service of a Notice of Charges upon the licensee and allows service in person, by certified mail. If mail service is unsuccessful, the rule provides that service is to be made by publication in a newspaper of general circulation in the county where the license is located.

Proposed new rule N.J.A.C. 13:2-19.2 sets forth the contents of the Notice of Charges. The Notice of Charges shall include: (1) a list of the charges against the licensee; (2) the penalty for each separate violation as set forth in the Penalty Schedule (N.J.A.C. 13:2-19.11(i)); (3) notice that the licensee has thirty (30) days from the date of service to enter a plea of guilty, not guilty or non vult ("no contest") to the charges; and (4) advice of the licensee's right to representation. The rule also indicates that if a licensee fails to enter a timely plea, it shall be deemed to have pled non vult to the charges. This is a change from current procedure which treats failure to plead as a not guilty plea.

Proposed new rule N.J.A.C. 13:2-19.3 sets out the pleading procedure for disciplinary matters. Within 30 days of service of the Notice of Charges, the licensee shall enter a plea of guilty, not guilty or non vult to the charges. Prior to the end of this 30 day period, the Director may, for good cause shown, grant up to an additional 30 days for the licensee to enter a plea. If the licensee enters a plea of guilty or non vult, the charges shall be deemed sustained, but the licensee shall have the opportunity to petition the Director to demonstrate mitigating circumstances or request permission to make a monetary offer in compromise in lieu of all or part of the penalty. If a licensee enters a plea of not guilty, the proceedings shall be considered a contested case and shall either be filed with the Office of Administrative Law or retained for a hearing conducted by the Director. Failure of a licensee to enter any plea shall be deemed a plea of non vult. Upon certification of service, the Director may, at the Director's sole discretion, impose the penalty stated in the Notice of Charges or take any other appropriate action, without further notice. If a matter is returned to the Division from the Office of Administrative Law due to the licensee's failure to appear at a scheduled proceeding, the licensee shall be deemed to have withdrawn any plea previously entered and a plea of non vult shall be substituted. If no explanation for such non-appearance is received within 14 days of the return of the case from the Office of Administrative Law, the Director may, in the Director's sole discretion, impose upon the licensee the penalty stated in the Notice of Charges or take any other appropriate action, without further notice.

Due to the failure of licensees to plead or appear at the Office of Administrative Law, in many instances disciplinary charges have been left unresolved and the process to conclude them has been extended unnecessarily.

This new rule proposes a procedure to expedite the hearing process and allow for summary proceedings where the licensee has failed to answer the charges or appear in court. This new rule also addresses due process concerns by giving licensees more notice of the nature of the charges and the penalties attached to those charges, allowing licensees to make a more informed decision regarding how to proceed in the matter. This new rule is intended to put licensees on notice and provide a definite time period for response so that the matter may proceed in an orderly and efficient manner.

Proposed new rule N.J.A.C. 13:2-19.4 provides for an emergent hearing if an alleged action of a licensee presents a danger which is an immediate threat to the public health, safety or welfare and is contrary to the interest of the community. The Order for Emergent Hearing shall contain all of the information required for a Notice of Charges and shall notify the licensee of the time and location of the hearing. If the purpose of the emergent hearing is to address the imposition of special conditions upon the license, those conditions shall be set forth in the Order. The hearing date shall be no less than five days from the date of service of the Order. While five days notice is required by this rule before the hearing is held, the Director may impose immediate special conditions to be in effect until the hearing date in the Order for Emergent Hearing if, in the Director's sole discretion, such conditions are necessary to protect the public health, safety and welfare. This procedure allows the Division to ensure that imminent threats to the public are quickly addressed. If the licensee fails to appear in response to the Order for Emergent Hearing: (1) if the Order regards a penalty, the nonappearance shall be considered a plea of non vult to the charges and the Director may impose the charges without further notice; (2) if the Order regards special condition(s), the failure to appear shall be deemed to indicate no objection to the special condition(s) and the Director may impose them without further notice.

Proposed new rule N.J.A.C. 13:2-19.11 sets out the penalties for violations of the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, *et seq.*, and/or the rules or Orders of the Director which are promulgated thereunder. The penalty schedule lists the most common violations and is not intended to be an exhaustive list. This section also contains definitions of "violation"(each breach of duty or responsibility imposed by law upon the licensee), "concurrent violations"

(violations that occur within the same 24 hour period), and "successive violations" (violations that occur outside of the same 24 hour period). The penalty for successive violations will generally be calculated based upon the number of violations occurring within a two (2) year period from the date of the first violation. The penalty for a second, third and/or fourth violation shall only be imposed if the licensee has been notified in writing of the prior violation(s), before the additional violation is charged, except in the case of an undercover operation. In that case, a second, third and/or fourth violation may be imposed without written notice to the licensee.

Proposed new rule N.J.A.C. 13:2-19.12 describes offers in compromise of suspension. These offers may be for all or part of a suspension and can be monetary, pursuant to N.J.S.A. 33:1-31, or involve deferring some of the days of the suspension. If a licensee proposes that the Director accept a monetary offer in compromise, the licensee shall submit any documentation that the Director requests, including, but not limited to, income tax returns or other financial reports.

Proposed new rule N.J.A.C. 13:2-19.13 provides that the penalties set forth in the penalty schedule may be increased or decreased based upon a finding by the Director of aggravating or mitigating circumstances. The factors listed in the rule are provided as examples and are not all inclusive. Some of the factors the Director may consider to decrease a penalty are: previous history of compliance, good faith efforts to prevent a violation and extraordinary cooperation in the investigation demonstrating that the licensee is acting responsibly. Some of the factors the Director may consider to increase a penalty are: prior warnings, violations, compliance problems, efforts to conceal violations, youthfulness of underage customers, and whether the activity that gave rise to the violation resulted in death or substantial injury. If death or serious injury occurred as a result of the incident that gave rise to the violation, the Director may revoke the license, even if it is a first violation. The Director shall state in writing the specific reasons for determining the penalty imposed.

Proposed new rule N.J.A.C. 13:2-19.14 provides that the Director may, in the Director's sole discretion, issue a warning letter advising a licensee of violation(s) or issue a fine letter, indicating that the Director will accept a

monetary payment in lieu of prosecution. This new rule allows the Director in certain situations to conclude a disciplinary matter with a warning or to seek an appropriate monetary penalty in lieu of formal proceedings. This allows the Division greater flexibility in dealing with individual cases and creates a sufficient deterrent while allowing the licensee the ability to present factors and settle the case without a finding of guilt.

Proposed new rule N.J.A.C. 13:2-19.15 states that the Director will review the reasonableness of the penalties imposed by local issuing authorities in accordance with the penalty schedule and other factors set forth in the record before the Director.

Proposed new rule N.J.A.C. 13:2-19.16 provides that these new rules and amendment shall apply to violations occurring on or after their effective date and that the penalty schedule set forth in these rules shall supersede any other inconsistent penalty schedules.

Social Impact

The new rules proposed by the Division set forth the parameters upon which disciplinary proceedings can be brought and impact upon licensees and permittees charged with violations of pertinent laws or rules. While the form of some of these rules is new, they are substantially a codification of existing agency policies regarding disciplinary proceedings. This subchapter provides that disciplinary proceedings can involve activity which might have occurred during terms prior to renewal and can have consequences which extend beyond the final administrative adjudication as it relates to the license, the owner of the license and licensed premises. By properly sanctioning persons who were engaged in activity contrary to the alcoholic beverage law, there is a positive social benefit for the industry and public at large. The knowledge that improper conduct of licensees or permittees will result in appropriate punishment is of significant interest both to the public at large and the law abiding members of the industry. All State and municipally issued liquor licenses are subject to the rules which also provide that appropriate sanctions cannot be avoided by changes in the license entity, location of the licensed premises, or by an extension or renewal of a license. The rules enable the Division to enforce the legislative intent expressed in the Alcoholic Beverage

Control Act, N.J.S.A. 33:1-1 et seq., to strictly regulate alcoholic beverages to protect the health, safety and welfare of the people of this State. Therefore, a positive social impact is realized by the adoption of these new rules and amendment.

Economic Impact

Disciplinary proceedings, authorized by this subchapter, and instituted against a license, can result in a suspension or revocation, which has an obvious negative economic impact upon a licensee. However, this impact is authorized as a statutory sanction pursuant to law for those who abuse the privilege of engaging in alcoholic beverage activity in this State. Additionally, while the form of some of these rules is new, they are substantially a codification of existing agency policies regarding disciplinary proceedings. The removal, either temporarily or permanently, of licensees who violate pertinent laws and rules, ultimately results in a beneficial economic impact upon the alcoholic beverage industry. These disciplinary provisions impose no substantial economic impact upon the applicants for a State or municipal license or permit and have no economic impact on the public at large. These rules are necessary and proper for the supervision of the alcoholic beverage industry. There would be costs to a licensee and the Division if a hearing is held before the Director. A licensee would incur additional costs if a hearing is held and legal counsel is retained by the licensee.

There is a direct economic impact upon the Division for expenses that include scheduling and notice expenses, site expenses, instructional expenses and other related costs. The economic impact upon the Division and its enforcement arm, the ABC Enforcement Unit of the Division of State Police, will not be changed by the adoption of these new rules. Local law enforcement officials who review activities at licensed premises in their communities will continue to do so without any enhanced economic impact because of the adoption of these new rules. The adoption of these new rules and amendment represents the needed control and enforcement remedy to ensure, as best as possible, a uniform and strict compliance with the standards set forth in the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq.

Federal Standards Statement

A Federal standards analysis is not required since the proposed new rules, the amended rule, and the rules proposed for recodification are dictated and in accordance with N.J.S.A. 33:1-1, *et seq.* There are no federal requirements or standards applicable to this rulemaking.

Jobs Impact

The Division is not aware of any jobs that are likely to be generated or lost as a consequence of these new rules, the amended rule, and the rules proposed for recodification.

Agriculture Industry Impact

The proposed new rules, the amended rule, and the rules proposed for recodification will have no impact on the agricultural industry in this State.

Regulatory Flexibility Analysis

While most liquor licensees are small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 *et seq.*, the proposed new rules and amendment do not impose any new or increased recordkeeping and/or other compliance requirements beyond those already mandated by the authorizing statutes.

This subchapter sets forth the procedural and substantive rules that apply when a license is subject to a State administrative disciplinary proceeding alleging a violation of law, rule or municipal ordinance. Costs and professional services are discussed in the Economic Impact statement above. There is no distinction made for a small business applicant or licensee since the requirements imposed are considered the minimum to effectuate the requirements of due process and to lessen the requirements would frustrate the pertinent statutory provisions. These rules impose compliance requirements that are uniform for all licensees regardless of size.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 19: Disciplinary Proceedings

13:2-19.1 Commencement of disciplinary proceedings

(a) Disciplinary proceedings shall be commenced upon the service of a Notice of Charges on the licensee, permittee, brand registrant or other party (hereinafter "licensee"). For purposes of this subchapter, licenses, permits and registrations will hereinafter be described as licenses.

(b) Service shall be made in person or by certified mail, return receipt requested on any individual listed in (c) below. If the addressee refuses to claim or to accept delivery of certified mail, service shall be made by ordinary mail. If mail service is unsuccessful, then service shall be made by publication.

(c) Service shall be made upon any of the following: the individual licensee, the agent designated to accept service on the most recent license application or any officer, director, shareholder, member or partner of the licensee. If none of these individuals are available at the licensed premises, then service may be made on any employee. Mail service shall be made upon any individual listed above using the address that is shown for that individual on the most recent license application. Service by publication shall be made by publishing the Notice of Charges once in a newspaper published or of general circulation in the county in which the license is venued or which was the last known situs of the business.

(d) Service is complete upon receipt of personal service or acceptance of certified mail. If the addressee refuses to claim or accept delivery of certified mail, service is complete upon the mailing of ordinary mail. If service is made by publication, service is complete upon publication of the Notice of Charges.

13:2-19.2 Contents of Notice of Charges**The Notice of Charges shall include the following:**

- 1. A list of each of the charges against the licensee.**
- 2. A statement that each charge shall constitute an individual and separate violation and the penalty for each charge, as set forth in the Penalty Schedule in N.J.A.C.13:2-19.11(i), shall be listed separately.**
 - i. If the penalty sought is revocation, the licensee shall be notified of the personal disqualification penalty, as set forth in N.J.A.C. 13:2-19.10, and whether the Division seeks to have the premises barred from licensure for two years, pursuant to N.J.S.A. 33:1-31.**
 - ii. If the premises is not owned by the licensee and the Division seeks to bar licensure of the premises for two years, pursuant to N.J.S.A. 33:1-31, the owner of the premises shall also be notified in the manner set forth in N.J.A.C. 13:2-19.1(b).**
- 3. Notice that the licensee has thirty (30) days from the date of service of the Notice of Charges to enter a plea of guilty, not guilty or non vult to the charges.**
 - i. Notice that, if the licensee fails to enter a timely plea, it shall be deemed to have pled non vult to the charges. Thereafter, the Director may impose upon the licensee the penalty or penalties stated in the Notice of Charges, without further notice.**
 - ii. Notice that, if the licensee pleads guilty or non vult to the charges, it shall have the opportunity to present mitigating circumstances to the Director.**
 - iii. Notice that the licensee may petition the Director to accept a monetary offer in compromise in lieu of all or part of the penalty or penalties stated in the Notice of Charges, as provided in N.J.S.A. 33:1-31; and**
- 4. Advice of the licensee's right to representation.**

13:2-19.3 Pleading procedure

- (a) Within 30 days of service of the Notice of Charges on the licensee, the licensee shall enter a plea of guilty, not guilty or non vult to the charges.**

(b) If the licensee enters a plea of guilty or non vult, the charges shall be deemed sustained, but the licensee shall have the opportunity

- 1. To petition the Director to accept a monetary offer in compromise in lieu of all or part of the penalty or penalties (suspensions only) stated in the Notice of Charges, as provided in N.J.S.A. 33:1-31 and**
- 2. To demonstrate mitigating circumstances, either by written statement or, in the sole discretion of the Director, by oral statement.**

(c) If the licensee enters a plea of not guilty, the proceedings shall be considered a contested case. Contested cases shall be filed with the Office of Administrative Law, pursuant to N.J.A.C. 1:1-3.2, or retained by the Director, under the provisions of N.J.S.A. 52:14F-8. The Uniform Administrative Procedures Rules, N.J.A.C. 1:1, shall govern the conduct of all contested cases, except as otherwise provided in N.J.S.A. 33:1-1 et seq. or this chapter.

(d) Prior to the expiration of the thirty (30) day period in which to enter a plea, upon application by the licensee, the Director may, for good cause shown, grant an additional thirty (30) day period for the licensee to enter a plea.

(e) Failure of the licensee to enter a plea within the thirty (30) day period, plus extension, if any, shall be deemed a plea of non vult. Upon submission of a certification by the Division that service was made upon the licensee and that no plea was received within the thirty (30) day period, plus extension, if any, the Director may, in the Director's sole discretion, impose upon the licensee the penalty or penalties stated in the Notice of Charges, or take any other appropriate action, without further notice.

(f) In the event a matter is returned to the Division from the Office of Administrative Law due to the licensee's failure to appear at a scheduled proceeding, pursuant to N.J.A.C. 1:1-14.4, the licensee shall be deemed to have withdrawn any plea previously entered and a plea of non vult shall be entered. No earlier than 14 days of the date of the notice from the Clerk of the Office of Administrative Law returning the case to the agency for this reason, the prosecuting Deputy Attorney General may submit a certification to the Director that the attorney has received no explanation for the licensee's non-appearance and the Director may, in the Director's sole discretion, impose

upon the licensee the penalty or penalties stated in the Notice of Charges, or take any other appropriate action, without further notice.

13:2-19.4 Emergent hearing

(a) If an alleged action of a licensee presents a danger which is an immediate threat to the public health, safety or welfare and contrary to the interest of the community, the Director may, upon request of the Division, issue an Order for Emergent Hearing. The Order shall either provide a plenary hearing on the charges pursuant to (b) below, or provide a hearing concerning the imposition of conditions pending a plenary hearing pursuant to (c) below.

- 1. The hearing date shall be not less than five days from the date of service upon the licensee of the Order for Emergent Hearing. Service shall be made in the same manner set forth in N.J.A.C. 13:2-19.1(b).**
- 2. In the Order for Emergent Hearing, the Director may impose such conditions to be in effect until the hearing date, as the Director, in the Director's sole discretion, deems necessary to protect the public health, safety and welfare.**

(b) The Order for Emergent Hearing shall contain all of the information required for a Notice of Charges, as set forth in N.J.A.C. 13:19-2, and notify the licensee of the time and place of the hearing. The licensee must appear before the Director at the designated time and place to answer the charges.

- 1. An Order for Emergent Hearing regarding charges shall notify the licensee that a failure to appear shall be deemed a plea of non vult to the charges. Upon submission of a certification by the Division that service was made, the Director may impose upon the licensee the penalty or penalties stated in the Order for Emergent Hearing, without further notice.**

(c) If the sole purpose of the emergent hearing is to address the imposition of pendente lite conditions, those conditions shall be set forth in the Order for Emergent Hearing, instead of the information required by N.J.A.C. 13:19-2. The licensee must appear before the Director at the designated time

and place to address the imposition of the conditions pending the plenary hearing.

- 1. An Order for Emergent Hearing regarding pendente lite relief only shall notify the licensee that a failure to appear shall be deemed to indicate no objection to the conditions only. Upon submission of a certification by the Division that service was made, the Director may impose upon the licensee the condition or conditions stated in the Order for Emergent Hearing, without further notice.**

**Recodify existing N.J.A.C. 13:2-19.1 through 19.5 as 19.5 through 19.9
(No change in text.)**

[13:2-19.6 Jurisdiction and hearing procedure]

[(a) A Division instituted disciplinary proceeding shall be considered a contested case upon the entry of a "not guilty" plea by the licensee or upon the failure of the licensee to enter a timely plea. Contested cases shall be filed with the Office of Administrative Law pursuant to N.J.A.C. 1:1-5.1 or retained by the Director under the provisions of N.J.S.A. 52:14F-8. Upon determination that the matter is a contested case, the Uniform Administrative Procedure Rules of Practice (N.J.A.C. 1:1) shall govern the conduct of the case.]

[(b) In uncontested cases before the Division, written argument as to penalty may be submitted to the Director within 10 days after entry of the plea. No oral argument may be had before the Director unless the Director decides to hear oral argument and notifies the parties or their attorneys of the time and place fixed therefor.]

13:2-[19.7] 19.10 Revoked license: licensee inability to work; transfer prior to revocation.

- (a) (No change)**
- (b) In the event that a license is transferred to another person or entity [prior to] or a change in corporate structure has occurred, prior to the time [at which] that a license has been revoked, the Director shall review the facts of the revocation proceedings. The Director shall thereafter determine whether [or not] the holders or owners (either direct or indirect) of the license**

at the time the violations(s) occurred[;], at the time the license was [ordered] revoked[;], or any interim times, either allowed, permitted or suffered the unlawful conduct [or knew] or should have known the effects of a license revocation or should otherwise be [sanctioned for any other reason] subject to statutory disqualification or other administrative sanctions. [In the exercise of sound discretion] Thereafter, the Director may order that any or all of such holders and owners be statutorily disqualified, pursuant to the terms of N.J.S.A. 33:1-31 and N.J.A.C. 13:2-19.[7(a)] 10(a) above.

13:2-19.11 Penalty schedule, definition of violation, successive violations

(a) This section sets forth penalties for violations of the Alcoholic Beverage Control Act, N.J.S.A. 33:1:1-1 et seq., or the rules or orders of the Director promulgated thereunder.

(b) The Director may suspend or revoke a license, even for a first violation.

(c) The term "violation" means each breach of duty or responsibility imposed by the Alcoholic Beverage Control Act or the rules or orders of the Director promulgated thereunder.

(d) Violations by each and every individual shall constitute a separate incident for purposes of calculating the number of violations.

(e) The term "concurrent violations" means violations that occur within the same 24 hour period. The penalties for concurrent violations shall generally be calculated based on the same level of violation, subject to the provisions of (g) below. Notwithstanding the foregoing, the Director may, in the Director's sole discretion, consider aggravating or mitigating circumstances in determining the penalty for each violation.

(f) The term "successive violations" means violations that occur outside of the same 24 hour period. The penalties for successive violations shall generally be calculated based upon the number of violations occurring within a two-year period from the date of the first violation, subject to the provisions of (g) below. Notwithstanding the foregoing, the Director may, in the Director's sole discretion, consider aggravating or mitigating circumstances in determining the level of violation.

(g) The penalty for a second, third or fourth violation shall only be imposed if the licensee has been notified in writing of the prior violation or violations, before the additional violation is charged. Such notice may be

provided by service of a Notice of Charges or the receipt of a written notice from an investigating officer that a violation has occurred, which may be presented to the licensee or other employee at the licensed premises, or other reasonable form of notice. Notwithstanding the foregoing, if violations are discovered during an undercover operation, then no notice of any prior violation is necessary to impose the penalty for a second, third or fourth violation.

(h) The penalty schedule lists the most common violations and is not intended to be exhaustive. Therefore, a license may be suspended or revoked for a violation that is not set forth in the penalty schedule. In fixing the penalty for any such violation, the Director shall state in writing specific reasons for determining the penalty imposed.

(1) Penalty Schedule¹

Statute, Regulation or Bulletin Item	Code	Description	First Violation ²	Second Violation ²	Third Violation ²	Fourth Violation ²
N.J.S.A. 33:1-25, 26, 31a and 52	A&A	Aiding and abetting	10	20	30	
N.J.A.C. 13:2-23.5(c)	ACTIV	Illegal activity on the licensed premises	30	60	90	Revocation
N.J.A.C. 13:2-24.10(a)1-6	ADV1	Improper advertising	5	10	20	
N.J.A.C. 13:2-24.10(a)7	ADV2	Improper cooperative advertising	5	10	20	
		Failure to provide a copy of the most recent full application and/or current renewal application				
N.J.A.C. 13:2-23.13(a)2	APP1	Failure to timely notify of change	1	3	5	
N.J.S.A. 33:1-25 and N.J.A.C. 13:2-2.14(a)	APP2	Failure to timely notify of change in fact on the license application	1	3	5	
N.J.S.A. 33:1-25 and N.J.A.C. 13:2-2.14(b)	APP3	Failure to notify of corporate structure change	1	3	5	
		Failure to disclose or false, misleading or inaccurate answer to a question on an application, which would not by itself result in a disqualification for licensure				
N.J.S.A. 33:1-25	APP4	a disqualification for licensure	10	20	30	

¹The description of the penalties in this schedule is not intended to provide a complete description of the violation. The governing standard is set forth in the referenced statute or regulation.

²Number refers to days of license suspension.

N.J.S.A. 33:1-25	APPS	Failure to disclose or false, misleading or inaccurate answer to a question of material fact on an application	45	90	Revocation	
N.J.S.A. 33:1-26	APP6	Lease out of the license	45	90	Revocation	
N.J.A.C. 13:2-23.32	BOOKS1	Failure to have true book or books of account available on the licensed premises, but produced within 7 business days of demand	1	5	10	
N.J.A.C. 13:2-23.32	BOOKS2	Failure to maintain true books or books of account or failure to produce true books or books of account within 7 business days of demand	30	60	Revocation	
N.J.A.C. 13:2-23.15 or 23.23	BOT1A	Contaminated or low proof bottles (1-5 bottles)	1	5	10	
N.J.A.C. 13:2-23.15 or 23.23	BOT1B	Contaminated or low proof bottles (6 or more bottles)	5	10	20	
N.J.A.C. 13:2-23.19	BOT2	Substitution of beverages	5	10	20	
N.J.A.C. 13:2-23.9(a)	BOT3	Tampering/adulterated alcohol	5	10	20	
N.J.A.C. 13:2-35.1 and 35.5 or 35.2 and 35.4	BPP1	Broad package privilege violation (Improper sale or display)	10	30	60	
N.J.A.C. 13:2-35.1 and 35.2	BPP2	Broad package privilege violation (Insufficient equipment and/or bar)	10	30	60	
N.J.A.C. 13:2-23.12	BULK	Transfer of inventory without a bulk permit	1	5	10	
N.J.A.C. 13:2-23.13(a)1	CERT	License certificate not conspicuously displayed	1	3	5	
N.J.A.C. 13:2-1.9(d)	CHECK	Return of an unpaid check to Division or issuing authority (penalties will include original check amount and administrative costs)	5	10	20	
N.J.A.C. 13:2-8.13	CLUB1	Advertising availability of alcoholic beverages to the public	5	10	20	

N.J.A.C. 13:2-8, 8, 9 and 11	CLUB2	Sale beyond the scope of the club license, including, but not limited to, sale to non-member or social affair permittee	10	20	30	
N.J.A.C. 13:2-26.1	COOP1	Purchase of alcoholic beverages by a non-member	10	20	30	
N.J.A.C. 13:2-26.1	COOP2	Allowed a person not qualified and/or minor permittee to order for member or employee of cooperative	10	20	30	
N.J.A.C. 13:2-26.1	COOP3	Allowed a purchase by a non-member retailer under cooperative	10	20	30	
N.J.A.C. 13:2-24.8	COST	Sale of alcoholic beverages below cost	15	30	45	
N.J.A.C. 13:2-24.6(a)6	CPL1	Sale of alcoholic beverages not listed on a "Current Price List"	15	30	45	
N.J.A.C. 13:2-24.6(a)6	CPL2	Sale or acceptance of alcoholic beverages upon terms other than set forth on a "Current Price List"	15	30	45	
N.J.A.C. 13:2-24.6(a)1 and 2	CPL3	Failure to maintain an "Historical Price List" and "Marketing Manual"	15	30	45	
N.J.A.C. 13:2-24.1	DISC1	Terms of sale of alcoholic beverages offered in discriminatory manner	15	30	45	Revocation
N.J.A.C. 13:2-24.2	DISC2	Offers service to a licensee in a discriminatory manner	15	30	45	Revocation
N.J.S.A. 33:1-26 and N.J.A.C. 13:2-14.5	DISQ1	Employed a criminally disqualified person.	30	60	90	Revocation
N.J.S.A. 33:1-25, 26	DISQ2	Criminally disqualified licensee	Revocation			
N.J.A.C. 13:2-23.13(a)3	E141	Employees list not complete or available on the licensed premises	1	5	10	
N.J.A.C. 13:2-14.1 and/or 14.2	EMIN	Employing a minor without a permit	1	5	10	

N.J.A.C. 13:2-23.31(b)2i	EPOL1	Employed a law enforcement officer without approval	10	20	30	
N.J.A.C. 13:2-23.31(b)2ii	EPOL2	Employed a law enforcement officer in jurisdiction where law enforcement officer serves	15	30	45	Revocation
N.J.A.C. 13:2-23.25	ESOL	Employment of a solicitor by a retailer	15	30	45	Revocation
N.J.S.A. 33:1-12a	FETAL	Failure to display Fetal Alcoholic Syndrome warning poster	1	3	5	
N.J.S.A. 2A:40-1; N.J.A.C. 13:2-23.7, Bull. 2430, Item 3/ Bull. 2437, Item 4	GAMB1	Failure to notify of placement of approved video game within 48 hours of placement	5	10	20	
N.J.A.C. 13:2-23.7	GAMB2	Raffling of sealed containers of alcoholic beverages without a permit	5	10	20	
N.J.A.C. 13:2-23.7(a)5	GAMB3	Gambling paraphernalia on the licensed premises	5	10	20	
N.J.A.C. 13:2-23.7(a)	GAMB4A	Non-criminal gambling activity on the licensed premises	5	10	20	
N.J.A.C. 13:2-23.7(a)	GAMB4B	Criminal gambling activity on the licensed premises	30	60	90	Revocation
N.J.A.C. 13:2-23.7(a)	GAMB5	Unapproved video or slot machine or other gambling device on the licensed premises	5	10	20	
N.J.A.C. 13:2-23.7(a)4	GAMB6	Video or slot machine or other gambling device playing for money or other valuable thing	30	60	90	Revocation
N.J.A.C. 13:2-23.7	GAMB7A	Criminal gambling activity on the licensed premises involving an employee	90	Revocation		
N.J.A.C. 13:2-23.7	GAMB7B	Criminal gambling activity on the licensed premises involving a licensee	Revocation			
N.J.S.A. 33:1-35 / N.J.A.C. 13:2-23.30	HIND1	Employee hindering an investigation	30	60	90	Revocation
N.J.S.A. 33:1-35 / N.J.A.C. 13:2-23.30	HIND2	Licensee hindering an investigation	45	90	Revocation	

N.J.A.C. 13:2-38.1 or 38.2	HRS1	Sale of alcoholic beverages before or after the legal hour or in violation of a municipal ordinance	10	20	30	
N.J.S.A. 33:1-31h and N.J.A.C. 13:2-38.1 or 38.2	HRS2	Presence of non-employee(s) after the legal hour set by a municipal ordinance	10	20	30	
N.J.A.C. 13:2-20.1	INSIG	Alcoholic beverages transported without a transit insignia	1	5	10	
N.J.A.C. 13:2-20.4(b) or 23.32	INV1	Failure to have invoices available at the licensed premises, but produced within 7 business days of demand	1	5	10	
N.J.A.C. 13:2-20.4(b) or 23.32	INV2	Failure to maintain invoices or failure to produce invoices within 7 business days of demand	30	60	Revocation	
N.J.A.C. 13:2-23.6(a)1	LEWD1	Lewd activity on the licensed premises	30	60	90	Revocation
N.J.A.C. 13:2-23.6(a)1	LEWD2	Lewd activity with audience participation on the licensed premises	45	90	Revocation	
N.J.A.C. 13:2-23.14	LEWD3	Lewd material on the licensed premises	10	20	30	
N.J.S.A. 33:1-12	MERC	Conducted other mercantile business on the licensed premises	5	10	20	
N.J.A.C. 13:2-23.5(b)	NARC1	Narcotic activity on the licensed premises	45	90	Revocation	
N.J.A.C. 13:2-23.5(b)	NARC2	Narcotic paraphernalia on the licensed premises	45	90	Revocation	
N.J.A.C. 13:2-23.5(b)	NARC3	Narcotic activity on the licensed premises involving an employee	90	Revocation		
N.J.A.C. 13:2-23.5(b)	NARC4	Narcotic activity on the licensed premises involving a licensee	Revocation			

N.J.A.C. 13:2-23.6(a)3	NUIS1	Licensed business conducted in such a manner to become a nuisance (quality of life - noise, litter, urination, etc.)	10	20	30	Revocation
N.J.A.C. 13:2-23.6(a)3	NUIS2	Licensed business conducted in such a manner to become a nuisance (police intervention - public safety or rights being violated)	30	60	90	Revocation
N.J.S.A. 33:1-31(h)	ORDIN	Violation of any ordinance, resolution or regulation of an issuing authority or governing body	10	20	30	
N.J.S.A. 33:1-31	ORDER	Violation of an order of the Director or of an issuing authority	10	20	30	
N.J.A.C. 13:2-23.16	PP	Prohibited promotion	10	20	30	
N.J.A.C. 13:2-23.10	PROHD	Accepted delivery from a non-licensed carrier	5	10	20	
N.J.A.C. 13:2-23.12(a) or (b)	PROHP	Purchased alcoholic beverages from a prohibited source	10	20	30	
N.J.A.C. 13:2-23.12(b)	PROHS	Sale of alcoholic beverages to a prohibited receiver (retailer-retailer)	10	20	30	
N.J.A.C. 13:2-23.1(a)	PULA	Sale to a person under the legal age, but over the age of 18	15	30	45	Revocation
N.J.A.C. 13:2-23.1(a)	PULAM	Sale to a person under the age of 18 years.	30	60	90	Revocation
N.J.A.C. 13:2-24.11	REBATE	Prohibited consumer rebate	5	10	20	
N.J.A.C. 13:2-23.24	RET	Retailer received -parallel to SOL3	30	60	90	Revocation
N.J.S.A. 33:1-11.2c	SBD1	Sale of less than one hundred forty-four fluid ounces of malt alcoholic beverages in original containers	5	10	20	
N.J.S.A. 33:1-11.2c	SBD2	Sale of "chilled" malt alcoholic beverages	5	10	20	

N.J.S.A. 33:1-12	SCOPE	Sale or consumption beyond the scope of the license	10	20	30	
N.J.S.A. 33:1-52/N.J.A.C. 13:2-16.11(a) and/or 16.11(c)	SOL1	Solicitor offered an order of alcoholic beverages for purchase or sale, other than allowed by law and the license of employer and/or to retail licensee with family member involved	15	30	45	Revocation
N.J.A.C. 13:2-16.12	SOL2	Solicitor employed by or connected in business capacity to a retail licensee	15	30	45	Revocation
N.J.A.C. 13:2-16.11(b)	SOL3	Solicitor offered a cash rebate, free goods or other incentive not contained on Current Price List	30	60	90	Revocation
N.J.S.A. 33:1-31(e)	STAMP	Federal Tax Stamp not available	1	3	5	
N.J.A.C. 13:2-23.21	STOR1	Storage of alcoholic beverages off the licensed premises without a permit or not in a licensed warehouse	5	10	20	
N.J.A.C. 13:2-23.21	STOR2	Storage of alcoholic beverages for a time period exceeding 72 hours following receipt of a delivery for a fellow co-op member	5	10	20	
N.J.A.C. 13:2-23.27	SUSPV	Prohibited activity during license suspension	10	20	30	
N.J.A.C. 13:2-23.22(a)	TAP	Tap connected to a container of malt alcoholic beverages not truly indicating name or brand	5	10	20	
N.J.S.A. 33:1-31(d)	TAX	Knowing failure to pay taxes described in N.J.S.A. 33:1-31	15	30	60	
N.J.A.C. 13:2-23.1(b)	TOX1	Sale of alcoholic beverages to an intoxicated patron	15	30	45	Revocation
N.J.A.C. 13:2-23.20	TOX2	Licensee or employee working at licensed premises while intoxicated	15	30	45	Revocation
N.J.A.C. 13:2-20.4(a)	TRANS	Transporting alcoholic beverages without proper documents	10	20	30	

N.J.S.A. 33:1-25	UI1	Undisclosed person, not otherwise disqualified, with a beneficial interest in a liquor license or licensed business	30	60	90	Revocation
N.J.S.A. 33:1-26	UI2	Person under the age of 18 or criminally disqualified person with an undisclosed beneficial interest a liquor license or licensed business	Revocation			
N.J.S.A. 33:1-12,31	UI3	Acquiring a beneficial interest in more than two retail liquor licenses	Revocation			
N.J.S.A. 33:1-43/N.J.A.C. 13:2-16.12	UI4	Solicitor with an undisclosed business relationship to or a beneficial interest in a retail license	Revocation			
N.J.A.C. 13:2-23,31	UI5	Police officer, peace officer, or any other person whose power or duties include the enforcement of the alcoholic beverage law or regulations with an undisclosed beneficial interest in a liquor license	Revocation			
N.J.S.A. 33:1-43	UI6	A brewery, winery, distillery, rectifying and blending plant or wholesale licensee with an undisclosed interest in a retail liquor license	Revocation			
N.J.A.C. 13:2-16.11 and 23.28	WHOL	Wholesaler responsible for solicitor violating N.J.A.C. 13:2-16.11(a), (b) and/or (c)	30	60	90	Revocation

13:2-19.12 Offers in compromise of suspension

(a) The Director may, in the Director's sole discretion, accept offers in compromise for all or part of a suspension. These offers may be monetary, pursuant to N.J.S.A. 33:1-31, or may involve deferring some of the days of suspension. The Director is under no obligation to accept an offer in compromise and shall make this decision based on what the Director determines to be reasonable and proper under the circumstances of the case.

(b) In cases being prosecuted by the Division, a licensee proposing that the Director accept an offer in compromise shall submit any such proposal to the Director, in writing, setting forth the reasons why the offer should be accepted.

(c) In municipal cases involving an application to the Director for a monetary offer in compromise, the licensee shall file a Notice of Appeal, with notice to the municipality, setting forth the reasons why the offer should be accepted. Rules governing the Notice of Appeal are set forth in N.J.A.C. 13:2-17.

(d) If a licensee proposes that the Director accept a monetary offer in compromise, the licensee shall submit any documentation the Director requests, including, but not limited to, income tax returns or other financial reports.

13:2-19.13 Increase or decrease of penalties

(a) The penalties set forth in the penalty schedule, at N.J.A.C. 13:2-19.11(i), may be increased or decreased based upon a finding by the Director of aggravating or mitigating circumstances.

(b) Some of the factors that the Director may consider to decrease a penalty are: previous history of compliance, good faith efforts to prevent a violation and extraordinary cooperation in the investigation demonstrating that the licensee is acting responsibly. Some of the factors the Director may consider to increase a penalty are: prior warnings or violations about compliance problems, efforts to conceal violations, age of customers and that the incident that gave rise to the violation resulted in death or substantial injury. These factors are provided as examples only and are not to be considered all inclusive.

(c) In addition, if death or serious injury occurred as a result of the incident that gave rise to the violation, the Director may revoke the license,

even if it is a first violation. The licensee has the burden of demonstrating mitigating circumstances.

(d) In determining to increase or decrease the penalty or penalties set forth in the penalty schedule, the Director shall state in writing specific reasons for determining the penalty or penalties actually imposed.

13:2-19.14 Warning letters and fine letters

The Director may, in the Director's sole discretion, issue a warning letter advising a licensee of a violation(s) or issue a fine letter, indicating that the Director will accept a monetary payment in lieu of prosecution.

13:2-19.15 Review by Director of penalties imposed by local issuing authorities

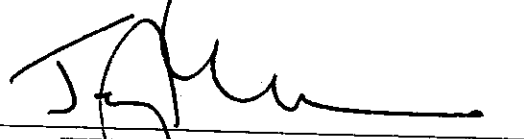
In reviewing the reasonableness of penalties imposed by local issuing authorities, reasonableness will be judged in accordance with the penalty schedule and other factors set forth in the record before the Director.

13:2-19.16 Application of this subchapter

(a) This subchapter, as amended effective (effective date of amendment and new rules), shall apply to violations occurring on or after (the effective date of amendment and new rules).

(b) To the extent that any of the penalties set forth in this subchapter are inconsistent with the penalties set forth in any earlier document(s), including, but not limited to, ABC Bulletins, the penalties set forth in this subchapter shall apply

Publication of Bulletin 2483 is hereby directed this
14th Day of August, 2001



JERRY FISCHER, DIRECTOR
DIVISION OF ALCOHOLIC BEVERAGE CONTROL