

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2202

October 28, 1975

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STATE OF NEW JERSEY
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25 Commerce Drive Cranford, N.J. 07016

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October 28, 1975

1. NOTICE TO MANUFACTURERS AND WHOLESALERS - REVISION OF PORTIONS OF STATE
REGULATIONS NO. 30, 34 and 39

TO ALL MANUFACTURERS AND WHOLESALERS:

Enclosed you will find a copy of a revision of portions of State Regulations No. 30, 34 and 39, effective September 2, 1975. Please note that some of the changes which may immediately affect the operation of your businesses are as follows:

Rule 7 of Regulation No. 30 has been revised to provide that price schedules of minimum consumer resale prices for malt alcoholic beverages shall be available for inspection until 11:00 A.M., rather than 4:00 P.M., of the first business day after the last day for filing such schedules and that any amended price schedule, to meet a higher or lower competing filed price, must be filed before 1:00 P.M., rather than 4:00 P.M., of such first business day. Price schedules may be further inspected and amended between 1:00 P.M. and 3:00 P.M. of such day to meet only a lower amended price filed between 11:00 A.M. and 1:00 P.M. of such day.

Rule 2 of Regulation No. 34 has been revised to provide that manufacturers and wholesalers filing quarterly prices at which distilled alcoholic beverages may be sold to wholesalers must now file amended prices not later than the fifth, rather than the fifteenth, day of any month subsequent to the month of the quarterly filing in order to comply with this State's so-called "affirmation" requirements. Notice of such price changes must now be served upon appropriate wholesalers on or before the fifth, rather than the fifteenth, day of the month of filing the amended prices, or mailed to them on or before the second, rather than the twelfth, day of such month. Proof of such service or mailing shall be filed with this Division on or before the fifth, rather than the fifteenth, day of such month.

Rule 8 of Regulation No. 34 has been revised to provide that amended reduced prices for the second or third month of a calendar quarter (so-called "post-offs") of alcoholic beverages sold to wholesalers must now be filed not later than the fifth, rather than the fifteenth, day of the month preceding the month in which the reduction is to become effective. Notice of such price reduction must now be served upon appropriate wholesalers on or before the fifth, rather than the fifteenth, day of such month, or mailed to them on or before the second, rather than the twelfth, day of such month. An affidavit of such service or mailing must now be filed with the Division on or before the fifth, rather than the fifteenth, day of such month.

Rule 9 of Regulation No. 34 has been revised to provide that amended reduced prices for the second or third month of a calendar quarter (so-called "post-offs") of alcoholic beverages sold to retailers must now be filed not later than the tenth, rather than the eighteenth, day of the month preceding the month in which the reduction is to become effective.

Rule 12 of Regulation No. 34 has been revised to require that whenever alcoholic beverages are picked up at the premises of a manufacturer or wholesaler by a retailer or a solicitor for ultimate delivery to a retailer, the manufacturer or wholesaler must, within 48 hours of pickup, mail a copy of the invoice in question to the retailer. Such copy must have prominently printed or stamped thereon the following legend:

"To the retailer -- If you have not already received the merchandise herein, you must immediately give written notice to the Division of Alcoholic Beverage Control of such fact".

Rule 12 of Regulation No. 34 has also been revised to change the procedure for returns of merchandise (other than malt alcoholic beverages) to manufacturers and wholesalers by retailers. Permissible returns may now be accepted for replacement or credit, rather than credit only. Merchandise may no longer be returned within twelve days of delivery without permission from the Division. No return may be accepted unless permission is granted upon petition submitted to this Division by a manufacturer or wholesaler setting forth good cause as shown on a form designated in the enclosed Rule 12 and signed by the retailer.

Rule 4 of Regulation No. 39 has been revised to provide that payments in cash by retailers on default must be in the office of the manufacturer or wholesaler within 48 hours after delivery to the retailer. Payments received in such office after said 48 hours will not be deemed payments in cash on delivery and the manufacturer or wholesaler shall be deemed to have made a prohibited sale to the retailer.

Rule 5(a) of Regulation No. 39 has been deleted. Thus, manufacturers and wholesalers no longer need give written notice to retailers that they are about to be in default of payment for a particular delivery.

Rule 5(d), now Rule 5(c), has been revised to provide for the inclusion of any late payment fees or interest in any notice of payment filed with the Division with respect to a retailer on default.

LEONARD D. RONCO
DIRECTOR

Dated: August 29, 1975

2. NOTICE TO ALL RETAIL LICENSEES - REVISION OF PORTIONS OF STATE REGULATIONS NO. 30, 34 and 39.

NOTICE TO ALL RETAIL LICENSEES:

Effective September 2, 1975, certain portions of State Regulations No. 30, 34 and 39 have been revised. Some of these changes which may affect retail licensees in important respects are as follows:

Rule 12 of Regulation No. 34 has been revised to require that whenever alcoholic beverages are picked up at the premises of a manufacturer or wholesaler by a retailer or a solicitor for ultimate delivery to a retailer, the manufacturer or wholesaler must, within 48 hours of pickup, mail a copy of the invoice in question to the retailer. Such copy must have prominently printed or stamped thereon the following legend:

"To the retailer -- If you have not already received the merchandise herein, you must immediately give written notice to the Division of Alcoholic Beverage Control of such fact".

Every retail licensee receiving such a copy of an invoice must immediately give written notice to the Division of Alcoholic Beverage Control if he shall not have already received such merchandise.

Rule 12 of Regulation No. 34 has also been revised to change the procedure for return of merchandise (other than malt alcoholic beverages) to manufacturers and wholesalers by retailers. Permissible returns may now be accepted for replacement or credit, rather than credit only. Merchandise may no longer be returned within twelve days of delivery without permission from this Division. No return may be accepted unless permission is granted upon petition submitted to this Division by a manufacturer or wholesaler setting forth good cause as shown on a form designated in Rule 12 and signed by the retailer.

Rule 5(a) of Regulation No. 39 has been deleted. Thus, manufacturers and wholesalers no longer need give written notice to retailers that they are about to be in default of payment for a particular delivery.

Rule 5(d), now Rule 5(c), has been revised to provide for the inclusion of any late payment fees or interest in any notice of payment filed with the Division with respect to a retailer on default.

LEONARD D. RONCO
DIRECTOR

Date: August 29, 1975

3. STATE REGULATIONS - REVISIONS TO PORTIONS OF REGULATIONS NO. 30, 34 and 39.

Leonard D. Ronco, Director of the Division of Alcoholic Beverage Control, pursuant to authority of N.J.S.A. 33:1-39, does hereby adopt revised rules concerning minimum consumer resale prices of alcoholic beverages, wholesale prices of alcoholic beverages and extension of credit to retail licensees, as follows (additions indicated in bold face thus, deletions in brackets [thus]):

REGULATION NO. 30
MINIMUM CONSUMER RESALE PRICES
OF ALCOHOLIC BEVERAGES

Rule 3. Minimum Consumer Resale Price Lists shall be published [quarter-annually] each calendar quarter by the Director, to become successively effective on and after the 1st day of January, April, July and October of each year, and shall list by type and brand name the minimum consumer resale prices of alcoholic beverages listed with the Director by the manufacturers and wholesalers in accordance with Rule 1 hereof; provided, however, that nothing contained herein shall require the printing and publication of schedules of minimum consumer resale prices for any brand of alcoholic beverages offered for sale or sold by its manufacturer or wholesaler exclusively to one New Jersey retailer. The Minimum Consumer Resale Price Lists shall be printed in pamphlet form and mailed to all New Jersey retailers not later than three business days before the effective date of such price lists. The printer of such pamphlet may be selected by the price filers and the costs of printing and mailing such pamphlet may be negotiated by such filers directly with the printer so selected, but should the price filers not do so, the Director shall select the printer and negotiate such costs in accordance with any applicable State bidding laws. In either event, [A] all manufacturers and wholesalers whose minimum consumer resale price listings are included in the pamphlet shall be chargeable with a proportionate cost of the preparation by the Division and the printing and mailing of the pamphlet so published and mailed, which shall be paid by such manufacturer or wholesaler to the Director or the printer, or both, as determined by the Director, within sixty days after the effective date of the prices listed in the pamphlet. Failure by any manufacturer or wholesaler to pay such proportionate cost shall be deemed cause for the Director's refusal to accept any further price listings from such manufacturer or wholesaler while such proportionate cost remains unpaid.

Rule 5. No licensee shall sell or offer to sell at retail, directly or indirectly, for consumption off the licensed premises, any alcoholic beverage, the price of which has been filed with the Director, at less than its filed price. [; provided, however, that prior written authorization so to do may be granted by the Director for good cause shown, or a special permit so to do may be granted by the Director pursuant to Rule 7 hereof. In the case of malt alcoholic beverages, the prohibitions of this Rule shall apply to each of the trading areas established by Rule 8 hereof and the sale shall be deemed to have been made at the place of delivery .]

Rule 6.(a) No licensee shall advertise, directly or indirectly, in any periodical, publication, circular, handbill or direct mailing piece, the retail price of any alcoholic beverage, [other than malt alcoholic beverages,] for consumption off the licensed premises, not listed in the then currently effective

Minimum Consumer Resale Price List published by the Director; provided, however, that nothing herein contained shall prohibit such price advertising, at the price filed with the Director, of a private label brand or exclusive brand of alcoholic beverage, confined to, or owned, controlled or distributed by a single retailer, and stated to be such in the advertisement.

(c) No licensee shall sell or advertise for sale at retail, for consumption off the licensed premises, any private label brand or exclusive brand of alcoholic beverages, unless (1) the minimum consumer resale price thereof filed with the Director is contained in a schedule which shall be kept upon the retailer's licensed premises available for inspection by the public and by agents of the Director and (2) the retailer displays upon the licensed premises in such plain view as to be easily read by all persons visiting such premises, a sign, in letters not smaller than three-quarters of an inch in height and one-half inch in width, bearing the following legend:

"Pursuant to Rule 6(c) of State Regulation No. 30 of the Division of Alcoholic Beverage Control, a schedule of minimum consumer resale prices filed with said Division for all of our private label brands and exclusive brands of alcoholic beverages is maintained on these premises and is available for inspection by our patrons."

[Rule 7. The director, for good cause shown, may issue to a licensee privileged to sell alcoholic beverages at retail a special permit authorizing the sale of a particular alcoholic beverage at less than its filed price where (a) the licensee is actually and permanently closing out his stock for the purpose of completely discontinuing the sale of such alcoholic beverage or (b) the sale of such alcoholic beverage is by an officer acting under order of any court.]

[Rule 9.] Rule 7. Price schedules filed with the Director setting forth minimum consumer resale prices for malt alcoholic beverages shall be available for inspection during regular business hours at the offices of the Division of Alcoholic Beverage Control by anyone filing such schedules until [4:00 P.M.] 11:00 A.M. of the first business day after the last day for filing such schedules. Price schedules for malt alcoholic beverages already filed for any [quarter-annual period] calendar quarter may be amended to meet a higher or lower and competing filed price, provided, however, that any such amended price schedule must be filed before [4:00] 1:00 P.M. of the first business day after the last day for filing schedules being amended.

Price schedules may be further inspected and amended between 1:00 P.M. and 3:00 P.M. of the first business day after the last day for filing the schedules being amended, to meet a lower amended price filed between 11:00 A.M. and 1:00 P.M.

Effective Date: September 2, 1975

REGULATION NO. 34
WHOLESALE PRICES AND MAXIMUM
REBATES, FREE GOODS, ALLOWANCES
AND OTHER INDUCEMENTS

Rule 2. (a) 2nd par. No manufacturer or wholesaler of distilled alcoholic beverages (including all distilled or rectified spirits, alcohol, brandy, whiskey, rum, gin and all similar distilled alcoholic beverages, and all dilutions and mixtures of one or more of the foregoing, such as liqueurs, cordials and similar compounds) shall file any such price or discount listing higher than the lowest price or lower than the highest discount at which any such alcoholic beverage will be sold by said manufacturer or wholesaler or by any New Jersey or other manufacturer or wholesaler to any wholesaler anywhere in any other state of the United States or in the District of Columbia, or to any state (or state agency) which owns and operates retail liquor stores, at any time during the period for which such listing shall be in effect. Manufacturers and wholesalers of distilled alcoholic beverages filing such price and discount listings shall, not later than the [fifteenth] fifth day of any month subsequent to the month of filing, file with the Director an amended reduced price and higher discount listing to become effective on the first day of the following month, to conform to the lowest price and highest discount at which any such alcoholic beverage shall be sold by such manufacturer or wholesaler or by any New Jersey or other manufacturer or wholesaler to any wholesaler anywhere in any other state of the United States or in the District of Columbia, or to any state (or state agency) which owns and operates retail liquor stores, at any time during such following month. Any such manufacturer or wholesaler may, upon prior written authorization granted by the Director for good cause shown, file an amended higher price and lower discount listing not later than the [fifteenth] fifth day of any month subsequent to the month of filing, to become effective on the first day of the following month. Manufacturers and wholesalers filing such amended price or discount listings shall serve upon each wholesaler to whom they intend to sell such alcoholic beverages a copy of such listings on or before the [fifteenth] fifth day of the month of filing, or shall mail to each such wholesaler such a copy on or before the [twelfth] second day of the month of filing, and shall file with the Director certification thereof on or before the last day for filing such listings.

Rule 6. Calendar quarter Wholesale Price Lists published by the Director shall be printed in pamphlet form and mailed to all retailers not later than three business days before the effective date of such price lists. The printer of such pamphlet may be selected by the price filers and the costs of printing and mailing such pamphlet may be negotiated by such filers directly with the printer so selected, but should the price filers not do so, the Director shall select the printer and negotiate such costs in accordance with any applicable State bidding laws. In either event, [A] all manufacturers and wholesalers whose minimum consumer resale price listings are included in the pamphlet shall be chargeable with a proportionate cost of the preparation by the Division and the printing and mailing of the pamphlet so published and mailed, which shall be paid by such manufacturer or wholesaler to the Director or the printer, or both, as determined by the Director, within sixty days after the effective date of the prices listed in the pamphlet. Failure by any manufacturer or wholesaler to pay such proportionate cost shall be deemed cause for the Director's refusal to accept any further price listings from such manufacturer or wholesaler while such proportionate cost remains unpaid.

Rule 8. (a) Any manufacturer or wholesaler who has filed with the Director prices for alcoholic beverages to be sold to wholesalers may, for the calendar month of February or March, reduce the price listing of any alcoholic beverage theretofore filed by him for the [quarter-annual] calendar quarter period beginning the first day of January; for the calendar month of May or June, reduce the price listing of any alcoholic beverage theretofore filed by him for the [quarter-annual] calendar quarter period beginning the first day of April; for the calendar month of August or September, reduce the price listing of any alcoholic beverage theretofore filed by him for the [quarter-annual] calendar quarter period beginning the first day of July; for the calendar month of November or December, reduce the price listing of any alcoholic beverage theretofore filed by him for the [quarter-annual] calendar quarter period beginning the first day of October; by complying with the procedure hereinafter set forth in this subdivision (a) and in subdivision (b) of this Rule:

By filing with the Director, on or before the [fifteenth] fifth day of the month preceding the month in which the reduction is to be effective, in the form prescribed in Rule 2 hereof, an amended price listing for such alcoholic beverage with a statement that the amended price therein is to become effective only for the calendar month immediately following the date of filing thereof. Such manufacturer or wholesaler shall file with the Director, on or before the [fifteenth] fifth day of the month preceding the month in which the reduction is to be effective, an affidavit stating that on or before the [fifteenth] fifth day of said month a copy of said amended price listing and statement was served upon each wholesaler to whom such manufacturer or wholesaler sold alcoholic beverages during the preceding three months or, that on or before the [twelfth] second day of said month such a copy was mailed to each such wholesaler. Upon compliance with the provisions hereinabove set forth and with the provisions of subdivision (b) of this Rule, the listings previously filed with the Director for the then current calendar quarter period shall be deemed amended for the calendar month only in which the amended prices are effective and shall otherwise remain in full force and effect.

(b) Any manufacturer or wholesaler filing such an amended price listing as provided in subdivision (a) of this Rule shall also file with the Director simultaneously therewith a statement that he will grant and, pursuant to said statement, shall grant to each of his wholesale customers a depletion credit or rebate in the same amount as the price reduction filed, as hereinabove provided, for each case of the brand and size of alcoholic beverage, upon which the price listing was reduced, sold by the wholesaler to retailers during the month in which the price reduction is in effect, but such depletion credit or rebate shall be limited to and shall not exceed the prescribed credit or rebate multiplied by the number of cases sold by such wholesaler to retailers out of inventory which the wholesaler had on hand at the beginning of the month in which the reduction is effective.

(c) Any manufacturer or wholesaler, instead of filing an amended price listing as provided in subdivision (a) of this Rule, may file with the Director a statement that he will grant and, pursuant to said statement, shall grant to each of his wholesale customers a depletion credit or rebate (stating the amount) for each case of the brand and size of alcoholic beverage

to which said depletion credit or rebate is to be applicable, sold by the wholesaler to retailers during the month in which the depletion credit or rebate is to be in effect.

(d) A manufacturer or wholesaler may not reduce the price of or allow a depletion credit or rebate on the same brand and type of alcoholic beverage in more than one month of any quarter-annual calendar quarter period, regardless of alcoholic content or size of container.

(e) No manufacturer or wholesaler shall require a wholesaler to whom a purchase price reduction or depletion credit or rebate is granted as provided in this Rule, to accept any brand, type or size of alcoholic beverage in satisfaction of said purchase price reduction or depletion credit or rebate.

Rule 9. (a) Any wholesaler who has filed with the Director prices for alcoholic beverages to be sold to retailers may, for the calendar month of February or March, reduce the price listing of any alcoholic beverage theretofore filed by him for the quarter-annual period beginning the first day of January; for the calendar month of May or June, reduce the price listing of any alcoholic beverage theretofore filed by him for the quarter-annual period beginning the first day of April; for the calendar month of August or September, reduce the price listing of any alcoholic beverage theretofore filed by him for the quarter-annual period beginning the first day of July; for the calendar month of November or December, reduce the price listing of any alcoholic beverage theretofore for the quarter-annual period beginning the first day of October; by filing with the Director, on or before the eighteenth tenth day of the month preceding the month in which the reduction is to be effective, in the form prescribed in Rule 2 hereof, an amended price listing for such alcoholic beverage with the statement that the amended price therein is to become effective only for the calendar month immediately following the date of filing thereof, and shall file with the Director, before the first day of said month, an affidavit that a copy of said amended price listing and statement has been mailed to each retailer to whom such wholesaler sold alcoholic beverages during the preceding three (3) months.

Rule 12. No manufacturer or wholesaler shall deliver or transport, directly or indirectly, any alcoholic beverage to any retail licensee unless such beverage is accompanied by a bona fide, authentic and accurate delivery slip, invoice, manifest, waybill or similar document stating the name and address of the retail licensee, the brand, size of container and quantity of each kind of alcoholic beverage being delivered or transported, and the price and terms of sale.

Two copies of such delivery slip, invoice, manifest, waybill or similar document shall be truly dated and signed by the retail licensee or his agent at the time and on the date of actual delivery of any alcoholic beverages, one of which copies shall be retained for a period of one year from the date thereof by the manufacturer or wholesaler and the other by the retail licensee for a like period at their respective licensed premises, available for inspection by agents of the Director, unless the Director shall have granted written permission to the manufacturer, wholesaler or retailer to keep his copies at another designated place.

If alcoholic beverages are picked up at the licensed premises of a manufacturer or wholesaler by a retail licensee or by a solicitor for ultimate delivery to a retail licensee, proper invoices shall accompany the order and the manufacturer or wholesaler must, within forty-eight hours of pickup, mail a copy of the invoice to the retailer. Such copy of the invoice must have prominently printed or stamped thereon the following legend: "To the retailer-- If you have not already received the merchandise herein, you must immediately

give written notice to the Division of Alcoholic Beverage Control of such fact." Every retail licensee receiving such copy of the invoice shall immediately given written notice to the Division of Alcoholic Beverage Control if he shall not have already received such merchandise.

No retailer shall return any alcoholic beverages other than malt alcoholic beverages for credit or replacement and no manufacturer or wholesaler of alcoholic beverages other than malt alcoholic beverages shall accept from any retailer any return of alcoholic beverages for credit or replacement unless such alcoholic beverages were originally delivered to the retailer by the manufacturer or wholesaler [not more than 12 days prior to such return, except pursuant to waiver of the provisions of this Rule granted by the Director upon petition setting forth good cause] and unless permission is granted by the Director upon petition by manufacturer or wholesaler setting forth good cause, as shown on the following form signed by the retail licensee or his agent:

X Y Z Distributing Co.
123 Blank Street
Anytown, N. J. 01234.

Please pick up for _____ the following
(credit or replacement)
alcoholic beverages purchased from you on _____

Invoice No. _____ for the following reason.

Items _____

Name of Licensee _____

Address _____

Town _____

Signature of licensee or agent _____

Effective Date: September 2, 1975

REGULATION NO. 39
EXTENSION OF CREDIT BY
MANUFACTURERS AND WHOLESALERS
TO RETAIL LICENSEES

Rule 1. No manufacturer or wholesaler shall sell or offer for sale to any retail licensee any alcoholic beverages, and no retail licensee shall purchase or offer to purchase from any manufacturer or wholesaler any alcoholic beverages except for payment before or upon delivery of such alcoholic beverages or on credit terms which require that payment therefor be made not later than the same date of the month following the date of delivery. When, in the month following the date of delivery, there is no equivalent date, payment shall be made not later than the last day of the month following the date of delivery. If the payment date falls on Saturday, Sunday, or a legal holiday, the payment shall become due on the first business day thereafter. Nothing in these regulations shall require any manufacturer or wholesaler to extend credit to any retail licensee.

Rule 3. On Wednesday of each week (or on the next business day thereafter in the event that Monday, Tuesday or Wednesday is a legal holiday) the Director of the Division of Alcoholic Beverage Control shall cause to be published and mailed to each manufacturer and wholesaler two lists, one known as a "Default List" setting forth the names and addresses of the retail licensees reported in default in accordance with Rule 2(a) hereof as of the preceding Monday at 4:00 P.M., and the other known as a "Non-Delivery List," setting forth the names and addresses of any retail licensees who have appeared on thirty-nine or more consecutive weekly Default Lists. Such weekly lists shall become effective on the Monday following their publication. The printer of such lists may be selected by manufacturers and wholesalers who sell to retail licensees and the costs of printing and mailing such lists may be negotiated by such manufacturers and wholesalers directly with the printer so selected, but should such manufacturers and wholesalers not do so, the Director shall select the printer and negotiate such costs in accordance with any applicable State bidding laws. In either event, such manufacturers and wholesalers shall be chargeable with a proportionate cost of the preparation by the Division and the printing and mailing of such lists which shall be paid by such manufacturer or wholesaler to the Director or the printer, or both, as determined by the Director, within sixty days after billing. Failure by any manufacturer or wholesaler to pay such proportionate cost shall be deemed cause for the Director's refusal to accept any further price listings under Regulation No. 30 or 34 while such proportionate cost remains unpaid.

Rule 4.(a) No manufacturer or wholesaler shall sell or delivery any alcoholic beverages except for payment in cash on or before delivery to any retail licensee who is at the time of delivery listed on the Default List, and no retail licensee who is at the time listed on the Default List shall purchase or accept delivery of any alcoholic beverages except for payment in cash on delivery.

Such payment must be in the office of the manufacturer or wholesaler within forty-eight hours following the delivery.

(b) No manufacturer or wholesaler shall sell or deliver any alcoholic beverages to any retail licensee whose name appears on the Non-Delivery List at the time of such sale or delivery, and no retail licensee shall purchase or accept delivery of any alcoholic beverages when his name

appears on the Non-Delivery List at the time of such purchase or delivery, unless the Director has issued written authorization for such sale and delivery by reason of (1) special cause shown, provided, however, that any such written authorization by the Director shall not extend beyond a period or periods in excess of twenty-six weeks in aggregate, or (2) the Director having received notice, as provided by Rule 5 [d] (c) hereof, that such retail licensee ceases to be in default to any manufacturer or wholesaler.

Rule 5. [(a)] Each manufacturer or wholesaler, excepting manufacturers or wholesalers of malt alcoholic beverages only, shall give written warning notice, personally or by first-class mail, to each retail licensee indebted to him for the purchase of alcoholic beverages, not earlier than ten (10) days and not later than five (5) days before the expiration of the credit period provided in Rule 1. The warning notice shall contain the following statement:

"Pursuant to Rule 5 (a) of State Regulation No. 39, you are hereby given advance notice that payment for alcoholic beverages delivered to you on....., invoiced in the amount

(Date)

of \$.....has not as yet been made in full. Unless full payment is made by (here insert date when the credit period expires), a notice of default must be filed against you with the Director of the Division of Alcoholic Beverage Control. Any single default brings into operation the restrictions of Rule 4 of said Regulation which provides that a retail licensee in default may purchase only for cash."

Rule 5. [(b)] (a) Each manufacturer or wholesaler shall, within three (3) days after a retail licensee becomes in default to such manufacturer or wholesaler under Rules 1 and 2 hereof, file with the Director a notice of default in the following form:

"Pursuant to Rule 5 [(b)] (a) of Regulation No. 39, notice is hereby given that a default in payment for purchase of alcoholic beverages has occurred as follows:

Name of Licensee.....
Address.....
Date of Delivery.....
Amount Unpaid....."

[Manufacturers and wholesalers required to serve warning notices on retail licensees shall add the following certification:

"The undersigned certifies that a warning notice as required by Rule 5(a) was sent to said retail licensee on the _____ day of _____, 19 _____"

Rule 5. [(c)] (b) Each manufacturer or wholesaler who files with the Director pursuant to Rule 5 [(b)] (a) hereof a notice of default shall, at the same time, mail by first-class mail to the retail licensee named therein a copy of such notice of default containing the following additional notice over the signature of such manufacturer or wholesaler:

"NOTICE TO RETAIL LICENSEE: The original of the foregoing notice of default has been filed with the Director of the Division of Alcoholic Beverage Control. Rule 4 of State Regulation No. 39 prohibits you from accepting delivery of any alcoholic beverages from any manufacturer or wholesaler except for cash while your name remains on the Default List."

Rule 5. [(d)] (c) When a retail licensee ceases to be in [a] default to a manufacturer or wholesaler, such manufacturer or wholesaler shall, within three days thereafter, file with the Director a notice to that effect. The notice shall state the name and address of the retail licensee, the date or dates of deliver[y] ies in respect to which the default or defaults existed, the amount paid to terminate the default or defaults and any late payment fees or interest due, if applicable, and the date or dates and form or forms of such payments.

Rule 5. [(e)] (d) If a notice of default and a notice of payment of such default are received by the Director during the same calendar week, the default shall be listed in the Default List to be published the following Wednesday, and the notice of payment shall be given effect in the Default List to be published the succeeding week.

Rule 5. [(f)] Manufacturers or wholesalers who are hereinabove required to file notices of default and notices of payment shall be chargeable with a proportionate cost of publishing and mailing the weekly Default List and Non-Delivery List pursuant to Rule 3 hereof.]

Rule 5. [(g)] (f) Notices required to be filed with the Director pursuant hereto shall be eight [(8)] inches in width and five [(5)] inches in length. They shall be available for inspection at the Director's offices during regular business hours.

[Rule 6. No manufacturer or wholesaler shall deliver or transport, directly or indirectly, any alcoholic beverage to any retail licensee unless such beverage is accompanied by a bona fide, authentic and accurate delivery slip, invoice, manifest, waybill or similar document stating the name and address of the retail licensee, the brand, size of container and quantity of each kind of alcoholic beverages being delivered or transported, and the price and terms of sale, and bearing a printed or stamped legend reading as follows:

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

on.....
(Date)

....."
(Signature by or for retail licensee)

Two (2) copies of such delivery slip, invoice, manifest, waybill or similar document shall be truly dated and signed by the retail licensee or his agent at the time and on the date of actual delivery of any alcoholic beverage, one of which copies shall be retained for a period of one year from the date thereof by the manufacturer or wholesaler and the other by the retail licensee for a like period at their respective licensed premises, available for inspection by agents of the Director, unless the Director shall have granted written permission to the manufacturer, wholesaler or retailer to keep his copies at another designated place.]

4. STATE REGULATIONS - REVISIONS TO PORTIONS OF REGULATION NO. 13.

Leonard D. Ronco, Director of the Division of Alcoholic Beverage Control, pursuant to authority of N.J.S.A. 33:1-39, does hereby adopt revised rules concerning employment of persons failing to qualify as a licensee, as follows (additions indicated in bold face thus, deletions in brackets [thus]):

REGULATION NO. 13
EMPLOYMENT BY LICENSEES OF A PERSON
FAILING TO QUALIFY AS A LICENSEE

Rule 3. No licensee, except a retail licensee conducting a bona fide hotel or public restaurant, shall employ any person under the age of eighteen years, or shall allow, permit or suffer the employment of any such person, in or upon the licensed premises unless such person shall (a) have first obtained an employment permit from the Director of the Alcoholic Beverage Control or (b) within ten days after becoming employed, have filed with the Director of the Division of Alcoholic Beverage Control the application and fee for his employment permit or (c) be covered under a blanket employment permit issued to his employer pursuant to Rule 10 hereof. The fee for an individual permit is Five Dollars per annum, or any part thereof. No permit shall be issued to any person under the age of sixteen years, except caddies, pinboys and persons employed by a Plenary or Limited Retail Distribution Licensee. Nor shall any permit be issued to any person under eighteen years of age to be employed as an entertainer on any premises where the consumption of alcoholic beverages is permitted.

Rule 4. Any person convicted [, as a first offender,] of a crime or crimes involving moral turpitude may apply to the Director, in the manner and form prescribed by the Director, for a Rehabilitation Employment Permit. Whenever any such application is made, and it appears to the satisfaction of the Director that such person's employment in the alcoholic beverage industry will not be contrary to the public interest, the Director may, in his discretion, issue such employment permit. No denial of such a permit shall be made until the applicant has been afforded an opportunity to have a hearing.

[Rule 7. No licensee shall employ in any manner whatsoever in or upon the licensed premises any person under the age of fifteen (15) years or allow, permit or suffer the employment of any such person in or upon the licensed premises.]

[Rule 8.] Rule 7. No licensee shall continue to employ in any manner whatsoever on the licensed premises any person disqualified [by reason of age] as aforesaid when the application of such person for employment permit has been denied or the employment permit has been cancelled, suspended or revoked, or has expired.

[Rule 9.] Rule 8. Employment permits are not transferable from person to person. All such individual permits, except rehabilitation permits, expire on the March 31st following their issuance unless otherwise specified therein. Each applicant for his first such permit shall accompany his application with one passport-type photograph, two inches by two inches, taken not more than thirty days prior to the date of the application. Each applicant for a rehabilitation permit shall be fingerprinted, without charge, under the supervision of the Director of Alcoholic Beverage Control at such time and place as shall be designated from time to time by the Director. The fingerprints shall be marked "non-criminal" and shall be filed with the Director.

Effective: August 8, 1975

LEONARD D. RONCO
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - LEWDNESS - INDECENT ENTERTAINMENT - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against)

Joseph Scognamiglio)
and Teddy C. LaBarco)
t/a Red Baron)
3248 Highway #35)
Hazlet, N.J.,)

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Hazlet.)

Alfred T. Hennessy, Jr., Esq., Attorney for Licensees
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensees plead "not guilty" to a charge alleging that on December 20, 1974 they permitted immoral activity upon their licensed premises, in that they allowed a female person to entertain patrons in an indecent and immoral manner; in violation of Rule 5 of State Regulation No. 20.

ABC Agent B, C and S testified that, on December 20, 1974, they visited the licensed premises shortly after noon, and observed the performance of a "go-go" dancer, identified as Pat, who was attired in a two-piece bikini-type costume. During her dance she covered the upper part of her body with a shirt, similar to a man's shirt and, moments later, unclasped her bra underneath, placing it on the floor. Thereupon, she unbuttoned the shirt, exposing first one breast, then the other, to the applause of the patrons. Near to the close of the dance, she lifted the shirt so that both breasts were exposed simultaneously.

Bartenders Robert Reamer and Archie Napolitano testified that Pat made no exposure of her breasts. Each denied that, after removing her bra, Pat exposed her breasts, which they declared were covered by pasties affixed to an inner flesh-colored bra made of nylon-like material.

A regular patron of the licensee's premises, Joseph Vena, Jr., testified that he observed Pat's performance on the date and time charged herein, and observed her remove her shirt and expose her breasts covered by pasties. He described his

reaction: "At first I thought Pat had a bare breast, but if you looked real close, you could see a thin strip on her back which was a slightly different color than her skin." He admitted that his observation was made when he brought ice behind the bar; he was, then, two feet away from the girl.

ABC Agents B and C, testifying in rebuttal, denied that any mention of any covering of the girl under her bra, was made by either bartender or the girl herself. When they had identified themselves to the bartender and indicated the potential violation, neither the bartender nor Pat made any remonstrance that an additional covering of the breast existed. Additionally, when the girl was asked to provide her bra as evidence, only the outer covering, which she had removed during the performance, was given to the agents.

Disciplinary proceedings against liquor licensees are civil in nature and thus require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

I have carefully evaluated the testimony herein and have had the opportunity to observe the demeanor of the witnesses as they testified. A study of the entire record together with my observation of the witnesses gives rise to the inescapable conclusion, and I find that the charge has been amply supported by the credible and forthright testimony of the agents.

The agents' version of what occurred in the licensed premises was factual and believable. On the contrary, I was unimpressed with the credibility of the licensees' bartenders and their witness. Their testimony was in substantial conflict from one another. Reamer denied Pat had removed her shirt; Vena admitted she removed it and held it in her hands in front of her breasts. Their descriptions of the "flesh-colored" bra was vague and indecisive.

The defense, which revolves about the existence of this "flesh-colored" bra is patently contrived. Although the licensees were unable to locate Pat in order to obtain her testimony for their defense, it is to be noted that the offense charged occurred on December 20, 1974, and the charges preferred upon the licensee January 18, 1975. At that time, the inner bra relied upon for defense could have been secured for the purpose of introducing the said item into evidence. This was not done.

Additionally, the actions of the bartenders and the dancer, upon being apprised by the agents of the apparent violation, were then completely silent as to the existence of such alleged inner garment. The natural consequence of the existence of such protective device would have given rise to

some comment about it, if not a protestation that the seizure by the agents of Pat's upper garments was incomplete.

After examining all of the evidence herein, I conclude that the Division has met its burden of establishing the truth of the charge by a fair, preponderance of the credible evidence. Accordingly, I recommend that the licensees be found guilty of the charge.

Absent prior record, I recommend that the license be suspended for thirty days.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

However, following submission of the Hearer's report, counsel for the licensee requested a supplementary hearing in order to introduce testimony of a material witness unavailable for testimony at the initial hearing. Such opportunity was afforded to the licensee; however, the licensee failed to produce the said witness.

Having examined the entire record herein, including the transcript of the testimony, the exhibits, and the Hearer's report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 21st day of August 1975,

ORDERED that Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Hazlet to Joseph Scognamiglio and Teddy C. LaBarco, t/a Red Baron, for premises 3248 Highway #35, Hazlet, be and the same is hereby suspended for thirty (30) days commencing at 2:00 a.m. Tuesday, September 9, 1975 and terminating at 2:00 a.m. on Thursday, October 9, 1975.

Leonard D. Ronco

Leonard D. Ronco
Director