

CHAPTER 2

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Authority

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

Source and Effective Date

R.2000 d.342, effective July 24, 2000.
See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 2, Division of Alcoholic Beverage Control, expires on January 20, 2006. See: 37 N.J.R. 3221(a).

Chapter Historical Note

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

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Carriers, Subchapter 34, Alcohol Permits, and Subchapter 37, Contracts of Employment and Conduct of Solicitors, were repealed by R.1990 d.412, effective August 20, 1990.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

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

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Retail Privileges, Subchapter 28, Decanting of Wine, Subchapter 32, Sales of Forfeited Property, and the Appendix were repealed and Subchapter 34, Restricted Brewery, Subchapter 37, Consumer Alcoholic Beverage Tastings and Tasting Dinners, and Subchapter 41, Issuance or Transfer of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

Pursuant to Executive Order No. 66(1978), Chapter 2, Division of Alcoholic Beverage Control, was readopted as R.2000 d.342, effective July 24, 2000, and Subchapter 13, Execution of Questionnaire by State Licensees, and their Principals and Employees, was repealed by R.2000 d.342, effective August 21, 2000. See: Source and Effective Date. See, also, section annotations.

Law Review And Journal Commentaries

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

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Attempt to revoke liquor license by converting renewal proceedings into disciplinary proceedings was improper. *What's Your Beef v. Plainfield*, 95 N.J.A.R.2d (ABC) 24.

13:2-4.2 Application to the Director

(a) Application to the Director shall be made upon the same application forms used in all applications for municipal licenses (copies are obtainable from the clerk of the municipality wherein the premises sought to be licensed are situated).

(b) The application shall be fully executed and submitted in triplicate.

Amended by R.1985 d.332, effective July 1, 1985.
See: 17 N.J.R. 1052(a), 17 N.J.R. 1661(a).

Duplicate changed to triplicate.
Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
Stylistic revisions.

13:2-4.3 New or renewal license fees; certification by issuing authority

(a) Applications for a new license or for a renewal of an existing license shall be accompanied by a fee of \$50.00 payable to the order of the Division of Alcoholic Beverage Control.

(b) A certification shall also be submitted from the municipal clerk, board secretary, or other responsible municipal official stating that the appropriate municipal fee has been paid and the amount of such fee.

Amended by R.1973 d.234, effective August 30, 1973.
See: 5 N.J.R. 356(a).

Amended by R.1980 d.304, effective July 3, 1980.
See: 12 N.J.R. 343(b), 12 N.J.R. 494(b).
Amended by R.1985 d.332, effective July 1, 1985.
See: 17 N.J.R. 1052(a), 17 N.J.R. 1661(a).

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

In (a), deleted submission of supplemental forms requirement; re-designated (a)2. as (b) and added "board secretary".
Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Deleted requirement that checks be certified.
Amended by R.2000 d.342, effective August 21, 2000.
See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).

In (a), substituted "payable" for "in cash, money order or check drawn" following "\$50.00".

13:2-4.4 Fee for license transfer to other persons or other premises; certification

(a) Applications for transfer of license to other persons only, or applications for transfer of license to other premises only (not combined) shall be accompanied by:

1. A fee of \$50.00 payable to the order of the Division of Alcoholic Beverage Control and retained by the Director whether or not the transfer is granted, and accounted for as are other license fees.

2. A certification shall be submitted from the municipal clerk, board secretary, or other responsible municipal official that 10 percent of the full municipal annual license fee for said license has been paid and the amount of the fee.

Amended by R.1985 d.332, effective July 1, 1985.
See: 17 N.J.R. 1052(a), 17 N.J.R. 1661(a).

Added text "to the municipality . . . shall be paid."
Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

In (a), added text on license transfer to "other premises only"; 10 percent fee requirement revised and designated (a)2.
Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Deleted requirement that checks be certified.
Amended by R.2000 d.342, effective August 21, 2000.
See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).

In (a)1, substituted "payable" for "in cash, money order or check drawn" following "\$50.00".

13:2-4.5 Fee for combined transfers; certification

(a) Transfers of license both as to person and place may be applied for simultaneously and in a single application, accompanied by a fee of \$50.00 payable to the order of the Division of Alcoholic Beverage Control.

(b) A certification shall also be submitted by the municipal clerk, board secretary or other responsible municipal official stating that 20 percent of the full municipal annual license fee for said license has been paid and the amount of the fee.

(c) Where there is a combined transfer application, the Director shall not approve a person-to-person transfer of the license if the place-to-place transfer is denied.

Amended by R.1985 d.332, effective July 1, 1985.
See: 17 N.J.R. 1052(a), 17 N.J.R. 1661(a).

Added text "to the municipality . . . shall be paid."
Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Recodified from 13:2-4.6. Twenty percent fee requirement revised and designated (b); Director's duties clarified. Prior text at 13:2-4.5, "Fee for license transfer to other premises", repealed. The following annotations pertain to that section:

Amended by R.1973 d.234, effective August 30, 1973.
See: 5 N.J.R. 356(a).

Amended by R.1985 d.332, effective July 1, 1985.
See: 17 N.J.R. 1052(a), 17 N.J.R. 1661(a).

Added text "to the municipality . . . shall be paid."
Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Deleted requirement that checks be certified.
Amended by R.2000 d.342, effective August 21, 2000.
See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).

In (a), substituted "payable" for "in cash, money order or check drawn" following "\$50.00".

13:2-4.6 Submission of issuing authority's resolution

There shall also be submitted to the Director a certified copy of a resolution adopted by the issuing authority of the municipality wherein the premises sought to be licensed are situated, setting forth that said issuing authority has no objection to the issuance, renewal or the transfer, as the case may be of the license applied for and consents thereto, and, furthermore, is not aware of any circumstances or provisions of law or local ordinance which would prohibit the issuance, renewal or the transfer, as the case may be of the license.

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

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

Recodified from 13:2-4.7. Submission "to the Director" clarified. Prior text at 13:2-4.6, "Combined transfers", recodified to 13:2-4.5.

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

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

Provided for license renewal.

13:2-4.7 Advertising notice of application

The rules applicable to the application, advertising and hearing rights concerning a municipal license or the transfer thereof (N.J.A.C. 13:2-2 and N.J.A.C. 13:2-7) shall apply when application is made to the Director. However, the notice of application, as published, shall state that such application has been made to, and objections if any should be addressed to: Director of the Division of Alcoholic Beverage Control, PO Box 087, Trenton, New Jersey 08625-0087.

Amended by R.1985 d.332, effective July 1, 1985.

See: 17 N.J.R. 1052(a), 17 N.J.R. 1661(a).

Change of address.

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

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

Recodified from 13:2-4.8. Added "hearing rights" and change of address. Prior text at 13:2-4.7, "Submission of issuing authority's resolution", recodified to 13:2-4.6.

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

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

Changed Director's address.

13:2-4.8 Refund of fees

(a) If the application for license issuance is denied for any reason whatsoever or withdrawn, a statutory refund of 90 percent of the fee deposited with the municipality shall be made by the municipality to the applicant. The remaining 10 percent shall be deemed an investigation and processing fee and shall be retained by the municipality. The \$50.00 State fee required to accompany the application shall be retained as a processing fee by the Director. If an application for a renewal of license is denied, refund of fees shall be in accordance with N.J.A.C. 13:2-11.

(b) If an application for license transfer is denied or withdrawn, the 10 percent of the full annual fee deposited with the municipality shall be retained by the municipality. The \$50.00 State fee required to accompany the application shall be retained as a processing fee by the Director.

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

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

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

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

Amended by R.1985 d.332, effective July 1, 1985.

See: 17 N.J.R. 1052(a), 17 N.J.R. 1661(a).

Fee changed from \$55.00 to \$50.00.

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

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

Recodified from 13:2-4.9. Added "processing fee" language. Prior text at 13:2-4.8, "Advertising notice of application", recodified to 13:2-4.7.

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

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

Provided for refund of fees upon denial of license renewal application.

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

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

Rewrote the section.

13:2-4.9 Proration of fee

If the application for a new license is granted, except in connection with the issuance of a new license upon failure to timely renew under N.J.S.A. 33:1-12.18, the license fee shall be prorated from the effective date of the license and where the amount deposited exceeds the prorated license fee, the applicant shall be entitled to a refund of the excess. Any renewal or new license issued pursuant to N.J.S.A. 33:1-12.18 will be effective immediately following the last day of the preceding license term, and no prorating of fee is permitted.

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

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

Recodified from 13:2-4.10. Added N.J.S.A. 33:1-12.18 exceptions. Prior text at 13:2-4.9, "Refund of fees", recodified to 13:2-4.8.

13:2-4.10 Notice of change in facts in application

The rules applicable to filing a notice of change in the facts set forth in the application for a retail license and to publishing a notice of change in corporate structure and furnishing proof thereof (N.J.A.C. 13:2-2.14 through 2.16) shall apply to all retail licensees holding licenses issued by the Director. However, the licensee shall file such notice with and furnish such proof directly to the division; and where the notice concerns a change in corporate structure, the notice as published shall state that information concerning the qualifications of any of the stockholders of the corporate licensee shall be addressed to the Director of the Division of Alcoholic Beverage Control, PO Box 087, Trenton, New Jersey 08625-0087.

Amended by R.1985 d.332, effective July 1, 1985.

See: 17 N.J.R. 1052(a), 17 N.J.R. 1661(a).

Address changed.

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

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

Recodified from 13:2-4.11. Deleted filing "with a municipal issuing authority" and stipulated filing of notice "directly to the Division"; cross-references correction; change of address. Prior text at 13:2-4.10, "Proration of fee", recodified to 13:2-4.9.

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

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

Changed Director's address.

13:2-4.11 (Reserved)

Recodified to 13:2-4.10 by R.1990 d.412, effective August 20, 1990.

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

Section was "Notice of change in facts in application".

SUBCHAPTER 5. ISSUANCE OF SPECIAL PERMITS BY DIRECTOR

13:2-5.1 Social affair permit

(a) Application for social affair permit may be made to the director by organizations operating solely for civic,

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

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

(d) Within 10 days subsequent to the filing of application with the Director, applicant shall cause to be published a notice of application once, in a newspaper printed in the English language, published and circulated in the municipality in which the premises sought to be authorized are located. If, however, there shall be no such newspaper, then such notice shall be published in a newspaper printed in the English language, published and circulated in the county in which said premises are located.

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

-NOTICE-

ALCOHOLIC BEVERAGE PERMIT

TAKE NOTICE THAT _____
(Name of Applicant)

has applied to the DIRECTOR of the New Jersey DIVISION OF ALCOHOLIC BEVERAGE CONTROL for a SPECIAL CONCESSIONAIRE PERMIT for premises situated at

(No.) (Street) (Municipality)

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

See *

See ** to insert other information applicable

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

(Name of Applicant)

(Address of Applicant)

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

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

corporation that is a stockholder in the applicant corporation.

If the applicant is a partnership, insert the name of the partnership and the names and residence address of all partners and any limited partners holding an interest of one percent or more.

If applicant is a club, insert the names and residence address of the officers and the offices they fill respectively, and the names and residences of the directors, trustees or other governing officials.

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

(f) Upon timely receipt of a duly signed written objection to the issuance of a special concessionaire permit, the Director will afford a hearing to all parties and notify the applicant and the objector of the date, hour and place thereof. No hearing need be held if no objection shall be lodged, but the application shall not be denied without first affording the applicant an opportunity to be heard.

(g) The holder of a special concessionaire permit shall be entitled to purchase alcoholic beverages only from the holders of New Jersey wholesale licenses. Said permittee is expressly prohibited from purchasing alcoholic beverages from retail licensees and from selling or offering for sale alcoholic beverages for off-premises consumption, unless specifically authorized in the permit issued by the Director upon a showing of good cause therefor.

(h) The Director may, in the exercise of sound discretion, impose special conditions on any permit.

(i) The holder of a special concessionaire permit must abide by all provisions of the New Jersey Alcoholic Beverage Control Act, Division rules and regulations and municipal ordinances as they pertain to retail licensees. Failure to do so may result in disciplinary proceedings against the permittee. Hours of sale shall not exceed those permitted in the municipality in which the public building or land is located.

As amended, R.1979 d.138, eff. May 1, 1979.
See: 11 N.J.R. 143(a), 11 N.J.R. 257(c).
Amended by R.1986 d.181, effective May 19, 1986.
See: 18 N.J.R. 545(a), 18 N.J.R. 1104(a).
Substantially amended.
Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
In (a), added "or on any property" owned or controlled by State; in (b), clarified payment of fee with application; in (c)1, added public "buildings or" lands. Substantially revised application form. In (f), "Upon timely receipt" was "Upon receipt"; in (i), stipulated public building "or land".
Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Changed Director's address.
 Amended by R.2000 d.342, effective August 21, 2000.
 See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).
 In (a), deleted "or" following "partnership," and added "; or other type of legal entity" following "corporation"; and rewrote (b).
 Special amendment, R.2003 d.311, effective July 3, 2003 (to expire January 3, 2004).
 See: 35 N.J.R. 3707(a).
 In (b), substituted "\$2,000" for "fixed by the Director" following "for the permit shall be".
 Adopted concurrent amendment, R.2003 d.470, effective November 5, 2003.
 See: 35 N.J.R. 3707(a), 35 N.J.R. 5427(a).
 Provisions of R.2003 d.311 adopted without change.

Case Notes

Applicant's request for a special concessionaire permit denied; applicant bears the burden of proof with respect to establishing fitness for licensure, lack of an arrest record and meeting the legal age limit do not establish a "threshold of licensure" but merely indicate that an applicant is not statutorily disqualified from licensure; applicant no longer had the required possessory interest in the premises and was not entitled to the issuance of a special concessionaire's permit (Director's final decision). In Re: Dunn, 10 N.J.A.R. 1 (1984).

13:2-5.3 Special permit for a golf facility

(a) Application for a special permit may be made to the Director by any individual, partnership, corporation, or other type of legal entity which owns and operates or leases and operates a golf facility whereby said golf facility is authorized to sell open containers of alcoholic beverages for immediate consumption to members, guests of members and guests of the facility. For the purposes of this subsection:

1. A "golf facility" is defined as a golf course consisting of a minimum of 18 holes spaced over at least 5,000 linear yards;
2. A "member" is defined as a person who, by virtue of the payment of not less than \$500.00 or other reasonable consideration, receives the right to use the golf facility for a period of not less than one year, after filing a membership application and waiting at least three days subsequent to the filing thereof;
3. A "guest of a member" is defined as an individual who is expressly invited to the golf facility by an individual member and who is personally attended by the individual member at the golf facility; and
4. A "guest of the facility" is defined as an individual specifically invited to the golf facility by the owner or management of the facility without charge.

(b) The term of a special permit for a golf facility shall be from July 1 through June 30 unless otherwise specified. The fee for the permit shall be \$2,000, payable with the application to the Division of Alcoholic Beverage Control.

(c) All applicants for a special permit for a golf facility must be qualified to hold an alcoholic beverage license as provided in the Alcoholic Beverage Control Act, N.J.S.A 33:1-1 et seq. The application must be supported by the following documents before the special permit may be issued by the Director:

1. A letter of applicant detailing manner and method of proposed operation under permit;
2. A plan or sketch of the premises to be used in accordance with permit;
3. If the applicant is incorporated, a copy of its certificate of incorporation; if the applicant is an association, a copy of its charter;
4. Evidence that a copy of the application has been filed with the municipal issuing authority of the municipality in which the facility is located;
5. Affidavit of publication by newspaper in which notices of application has appeared, as hereinafter provided; and
6. Any other information or documents requested by the Director.

(d) Within 10 days subsequent to the filing of the application with the Director, the applicant shall cause to be published a notice of application once a week, for two weeks successively, at least seven days apart, in a newspaper printed in the English language, published and circulated in the municipality in which the premises sought to be authorized are located. If, however, there shall be no such newspaper, then such notice shall be published in a newspaper printed in the English language, published and circulated in the county in which said premises are located.

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

-NOTICE-

ALCOHOLIC BEVERAGE PERMIT

TAKE NOTICE THAT _____
 (Name of Applicant)
 has applied to the DIRECTOR of the New Jersey DIVISION OF ALCOHOLIC BEVERAGE CONTROL for a SPECIAL PERMIT FOR A GOLF FACILITY for premises situated at

 (No.) (Street) (Municipality)

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

See *

See ** to insert other information applicable

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

 (Name of Applicant)

 (Address of Applicant)

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

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

If the applicant is a partnership, insert the name of the partnership and the names and residence address of all partners and any limited partners holding an interest of one percent or more.

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

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

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

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

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

least 72 hours before the event. The list shall contain the date and time of the social gathering, and the name of the member or members hosting such gathering and to be in attendance with the guests at the gathering or a statement that the golf facility is the host of the social gathering.

(i) No alcoholic beverages shall be consumed on the permittee's premises other than that sold by the permittee. All payments for alcoholic beverages consumed by a member or the guests of a member shall be made by that member or guest to the permitted facility. Alcoholic beverages consumed by guests of the facility must be purchased either by the guest of the facility himself or herself or by the facility in a recorded transaction. The facility shall be required to maintain a list of such guests of the facility by date.

(j) The Director may impose special conditions on any permit.

(k) The holder of a special permit for a golf facility must abide by all provisions of the New Jersey Alcoholic Beverage Control Act, Division rules and municipal ordinances as they pertain to retail licensees. Failure to do so may result in disciplinary proceedings against the permittee. Hours of sale shall not exceed those permitted in the municipality in which the golf facility is located.

New Rule, R.2003 d.17, effective January 6, 2003.

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

Former N.J.A.C. 13:2-5.3, Special permit for the sale or purchase of alcoholic beverages, recodified to N.J.A.C. 13:2-5.4.

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

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

In (b), substituted "\$2,000" for "\$1,000" following "for the permit shall be".

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

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

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

13:2-5.4 Special permit for the sale or purchase of alcoholic beverages

(a) The Director, for good cause shown, may issue a special permit to authorize the sale of alcoholic beverages by a receiver, trustee, executor, or other court appointed or authorized person, or judgment creditors or secured parties where such sale is authorized in accordance with law or a specific court order.

(b) An application for such special permit shall be filed with the Division at least seven days before the proposed sale on forms to be prescribed by the Director and accompanied by payment of fees as set forth by the Director. The fees for such permits shall not be less than \$10.00 nor more than \$2,000.

(c) Upon issuance of the special permit, the temporary storage and transportation of alcoholic beverages pending

sale shall be authorized, as well as the sale to and transportation by the purchaser.

(d) Within 10 days after the sale, the permittee shall file with the Director a signed inventory report on forms prescribed by the Director identifying the type and quantity of all alcoholic beverages sold, the name and address of the purchaser, the State-assigned license number of the purchaser if it was a New Jersey licensee, and the sales price per item or lot. Failure to file the inventory report shall be cause for denial of future special permit applications.

(e) List of special permits issued by the Director and the required fees.

TYPE OF PERMIT	PERMIT FEE
Temporary Extension to Administrator/Executor	\$ 50.00
Ad Interim	\$ 75.00
Bulk Sale	\$ 75.00
Close Out	\$ 25.00
Donation	\$ 50.00
Extension of Premises	\$ 75.00
Food and Pharmaceutical	\$ 25.00
Gratuitous Gift	\$ 75.00
Gratuitous Service	\$ 50.00
Merchandising Show	\$100.00
Merchandising Show—Out-of-State Importers	\$200.00
Omnibus	\$750.00
Import for Personal Consumption	\$ 50.00
Retailer to Retailer Sale	\$ 75.00
Sacramental Wine	\$ 50.00
Sampling/Display	\$ 75.00
Storage in Transit	\$ 50.00
Temporary Authorization to Operate	\$200.00
Temporary Storage	\$ 75.00
Temporary Warehousing	\$ 75.00
Wine Parcel Delivery	\$ 75.00 to \$200.00
Wine Festival	\$ 25.00
Wine Seminar	\$ 50.00

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13:2-5.5 Temporary miscellaneous contingency permits; fees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER 6. EXTENSION OF LICENSE

13:2-6.1 Petition for extension of license

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

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

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

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

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

13:2-6.2 Special permit to operate licensed business

Where an application for extension of license cannot be made immediately because the fiduciary has not yet qualified, the Director, Division of Alcoholic Beverage Control,

may issue a special permit to allow the licensed business to continue operations temporarily until the license is formally extended. The issuance of any special permit shall not indicate any opinion as to the merits of the formal petition to extend the license.

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

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

13:2-6.3 Proof of appointment; assignments

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

(b) A license may not be extended to an assignee for the benefit of creditors, unless said assignee presents to the issuing authority a court order authorizing him to continue assignor's business during a period set forth in said order, as provided for in N.J.S.A. 2A:19-16.

13:2-6.4 Endorsement of licenses

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

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

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
Deleted references to “local issuing authority” and “proper municipal official”; deleted (b), regarding endorsement in license book.
Amended by R.2000 d.342, effective August 21, 2000.
See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).

13:2-6.5 (Reserved)

Repealed by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
Section was “Daily certification of license extensions”.

SUBCHAPTER 7. TRANSFERS OF STATE AND MUNICIPAL LICENSES

13:2-7.1 Transferability of license

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

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

Case Notes

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

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

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

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

Division of Alcoholic Beverage Control without statutory authority to prevent person-to-person transfer of liquor license which may be only asset of corporation which may owe unliquidated debt to transfer objector; liquor license is not property subject to lien, levy or execution; creditor cannot prevent sale of license or obtain satisfaction from proceeds. Mannies Cigarette Service, Inc. v. Aidan Corp., 4 N.J.A.R. 197 (1980).

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

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

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

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

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

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

Stylistic revisions.
Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).
Added provisions for expansion and reduction of licensed premises at (c) and (d).
Amended by R.2000 d.342, effective August 21, 2000.
See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).
Rewrote (d).

Case Notes

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

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

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

Evidence that did not exist until after request for place-to-place transfer of liquor license was granted could not be considered in

determining reasonableness of that transfer. Borough of Pitman v. Township of Mantua and J.G. Cook's Bar and Grill, 96 N.J.A.R.2d (ABC) 118.

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

Denial of request for place-to-place transfer of liquor license to site in vicinity of two churches was not unreasonable. Application of Maxine's Tavern, 95 N.J.A.R.2d (ABC) 124.

Transferee of inactive license required place-to-place transfer to re-site in original location. Innkeeper v. Remington, 95 N.J.A.R.2d (ABC) 113.

Temporary loss of possession of foreclosed licensed premises; place-to-place transfer. Innkeeper, Inc., v. Mahwah Township Council, 94 N.J.A.R.2d (ABC) 13.

Filing of an appeal takes place upon the receipt of the Notice and Petition of Appeal by the Director, rather than upon their mailing; appeal dismissed as filed out of time. Van Holt v. Mayor and Council, Boro. of Sea Bright, 3 N.J.A.R. 183 (1981).

13:2-7.3 Application for person-to-person license transfer

Application for transfer of license to another person, or other person and other premises, signed and sworn to by the person who seeks the transfer, and bearing the consent in writing to such transfer by the current licensee, must be filed with the Director, or other issuing authority, as the case may be, at or before the first insertion of the advertisement of the notice of application on forms prescribed by the Director.

Amended by R.1990 d.412, effective August 20, 1990.
 See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
 Clarified transfer by "current licensee"; added text regarding forms promulgated by Director.
 Amended by R.1995 d.450, effective August 21, 1995.
 See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).
 Substituted "prescribed" for "promulgated"

Case Notes

Court could order transfer of liquor license without holders' consent as temporary relief measure in breach of contract action arising out of failed liquor license transfer agreement. Parkway Liquor & Deli, Inc. v. P.P.P. USA, Inc. et al., 96 N.J.A.R.2d (ABC) 151.

Mutual interest of city and liquor license transferee's landlord in cross access property agreement and sewer regulator agreement was not conflict of interest, and thus city's approval of liquor license transfer was not prohibited. Cromwell Liquors, Inc. v. Western Beverage Corporation, et al., 96 N.J.A.R.2d (ABC) 143.

Person-to-person transfer of liquor license was denied based upon finding that applicant was unqualified to run restaurant business and that applicant's father owned undisclosed interest in business. Varalli and Sons, Inc. v. Municipal Board of Alcoholic Beverage Control of Atlantic City, 96 N.J.A.R.2d (ABC) 122.

Filing of an appeal takes place upon the receipt of the Notice and Petition of Appeal by the Director, rather than upon their mailing; appeal dismissed as filed out of time. Van Holt v. Mayor and Council, Boro. of Sea Bright, 3 N.J.A.R. 183 (1981).

Town Council's action denying license transfer not reversible unless based upon mistakes or abuse of discretion; burden of proof upon transfer applicant; denial of transfer reasonable as founded on residents' objections and problems caused by large number of liquor establishments in transferral area. Stonehenge Gardens, Inc. v. Mayor and Town Council, Town of Phillipsburg, 2 N.J.A.R. 417 (1980) affirmed.

13:2-7.4 Notice of transfer application, form

(a) Notice of application for transfer of a license shall be published in the following form:

-NOTICE-

ALCOHOLIC BEVERAGE CONTROL

Take notice that application has been made to _____
 _____ of _____
 (Name of Issuing Authority) (Address)

to transfer to _____
 (Name of transferee)
 trading as _____ for premises located at
 (Trade Name, if any)

_____ (Address of premises to which transfer is sought)
 the _____ heretofore issued to
 (Type of License and Number)
 _____, trading as _____
 (Name of Licensee in full) (Trade Names, if any)
 for premises located at _____
 (No.) (Street) (Municipality)

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

 (Name(s))

See*

(See ** to insert other information if applicable)

Objections, if any, should be made immediately in writing to:

_____, of _____
 (Municipal Clerk or Director, Division of Alcoholic Beverage Control) (Address)

 (Name of Applicant)

 (Address of Applicant)

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

If the applicant is a corporation, partnership or other legal entity, insert the names and residence of all officers, directors, stockholders holding one percent or more of any of the stock of the applicant corporation, general partners, members, and limited partners holding an interest of one percent or more. If, in listing those, another corporation, partnership, or other legal entity is noted, the application and notice must contain the required information concerning officers, directors, stockholders, partners, or members, of that corporation, partnership, or other legal entity.

If the applicant is a club, insert the names and residence address of all officers and the offices they fill respectively, and the names and residences of the directors, trustees or other governing officials.

**If the application is for transfer of a municipal license to a building not yet constructed, insert in the Notice the following: "Plans of building to be constructed may be examined at the office of the Municipal Clerk."

If the application is for a State license for a building not yet constructed, insert "Plans of building to be constructed may be examined at the office of the Division of Alcoholic Beverage Control."

If the application is for a place-to-place transfer which involves an expansion or reduction of the premises, insert "Plans of the current license premises and proposed licensed premises may be examined at the office of the municipal clerk (or Division of Alcoholic Beverage Control, if appropriate)."

If the applicant intends to conduct retail sales of alcoholic beverages as may be authorized under a State issued license, insert in the Notice the following: "The applicant intends to engage in the retail sale of _____

_____ at _____
(Alcoholic beverage type) (No.) (Street)
_____ under the terms and conditions allowed by law."

(b) "Name of issuing authority" in the form in N.J.A.C. 13:2-7.4(a), usually means the governing board or body of the municipality, whatever the name may be, for instance, the mayor and common council, the township council, and so forth, except where a municipal board of alcoholic beverage control has been created, in which case such board is the issuing authority. If the application is made by a member of any issuing authority, or by a corporation, organization or association in which any member of an issuing authority is interested directly or indirectly, or if the license sought to be transferred was issued in the first instance by the Director, the Director is the "issuing authority" and in that event the notice must state that objections be addressed to the Director of the Division of Alcoholic Beverage Control, PO Box-087, Trenton, New Jersey 08625-0087. This subsection shall not apply to club licenses.

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

(d) Proof of publication of notice of application for transfer of a license shall be furnished after second publication with a copy of the dated advertisements attached.

Amended by R.1974 d.4, effective January 4, 1974.
See: 6 N.J.R. 82(a).

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

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

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

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

Substantially revised application for transfer form. Incorporated 13:2-7.5, "Issuing authority defined in form", as (b); and 13:2-7.7, "Publication of notice of application", as (c). Added (d).

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

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

In (a) inserted provisions for expansion or reduction of the licensed premises.

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

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

In (a), rewrote the notice.

Case Notes

Approval of expansion of licensed premises to include deck area was not abuse of discretion with imposition of special conditions. Property Owners Association v. Seaside Heights, 95 N.J.A.R.2d (ABC) 76.

13:2-7.5 Objections; hearing

Each issuing authority, immediately upon receipt of a written objection duly signed by an objector, shall set the matter down for a hearing and notify all parties of the date, hour and place thereof. Said hearing shall be stenographically or electronically recorded.

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

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

Recodified from 3:2-7.8. "Each issuing authority" was "Each municipal clerk"; clarified hearing and notification requirements. Prior text at 3:2-7.5, "Issuing authority defined in form", incorporated into 13:2-7.4 as (b).

Case Notes

Distance-between-premises ordinance did not preclude transfer of license to within 1000 feet of original premises. Innkeeper v. Mahwah Township Council, 95 N.J.A.R.2d (ABC) 115.

Approval of expansion of licensed premises to include deck area was not abuse of discretion with imposition of special conditions. Property Owners Association v. Seaside Heights, 95 N.J.A.R.2d (ABC) 76.

Transfer of retail distribution license for mixed use as convenience store with package liquor sales was approved. Zafar v. City of Summit, 95 N.J.A.R.2d (ABC) 63.

Entrance of premises to which liquor license transferred was not less than 200 feet from church. St. Paul's v. Paulsboro, 95 N.J.A.R.2d (ABC) 46.

Denial of liquor license transfer application without evidence of detrimental affect was clear abuse of discretion. Midlantic v. Mayor and Borough Council, 95 N.J.A.R.2d (ABC) 7.

Denial of place-to-place transfer of liquor license; abuse of discretion. Midlantic Development, Inc. v. Mayer and Borough Council of Point Pleasant Borough, 95 N.J.A.R.2d (ABC) 7.

City failed to establish that transfer of license would result in overconcentration. City of Garfield v. Bonanno and Bonanno, 94 N.J.A.R.2d (ABC) 79.

Denial of transfer of liquor license was unreasonable. Grand Victorian Hotel v. Spring Lake Borough Council, 94 N.J.A.R.2d (ABC) 43.

Applicant failed to establish by that transfer of license was necessary or was in the public's best interest. In the Matter of Sam's Beer Outlet, Inc., 94 N.J.A.R.2d (ABC) 9.

Person-to-person and place-to-place transfer of plenary retail consumption liquor license was warranted. N.J.S.A. 33:1-76. G & P Restaurant Co., Inc. v. Municipal Bd. of Alcoholic Beverage Control, Passaic County, 92 N.J.A.R.2d (ABC) 5.

13:2-7.6 Date of hearing

The date fixed for hearing shall not be sooner than five days after the second notice was published (excluding Saturdays, Sundays and legal holidays) and should not be later than 14 days thereafter. For good cause, each issuing authority in the exercise of sound and fair discretion may fix a date for hearing later than said 14 days and may adjourn the hearing, upon notification to all parties.

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

Recodified from 13:2-7.9. Clarified fixing of hearing date and exception to time limitation. Prior text at 13:2-7.6, "Type of license defined in form", repealed.

13:2-7.7 Hearing not required; reasons

(a) If there is no written objection and the issuing authority determines to approve the application, no hearing is required; but this in no way relieves the issuing authority from the duty of making a thorough investigation on its own initiative. This investigation should include fingerprinting and a criminal background check and financial disclosure documentation.

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

1. The submitted application form is complete in all respects;
2. The applicant is qualified to be licensed according to all standards established by Title 33 of the New Jersey statutes, the regulations promulgated thereunder as well as the pertinent local ordinances and conditions imposed consistent with Title 33;
3. The applicant has disclosed and the issuing authority has reviewed the source of all funds used in the purchase of the license and the licensed business and all additional financing obtained in connection with the licensed business and;
4. The transferee has executed a valid consent to transfer the license.

(c) No application shall be disapproved without first affording the applicant an opportunity to be heard, and providing the applicant with at least five days notice thereof. The hearing need not be of the evidentiary or trial type and the burden of establishing that the application should be approved shall rest with the applicant. In every action adverse to any applicant or objector, the issuing authority shall state the reasons therefor.

(d) In the event no action is taken on an application for transfer of a municipally issued license within 60 days of the date of filing of the application, the applicant may file an appeal with the Director from such failure to act on the transfer application.

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

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

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

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

(a)3: "and" added after "licensed business"; (a)4 added.

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

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

Deleted old (b)4.

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

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

Recodified from 13:2-7.10. In (b), "certifies" was "reduces to resolution"; in (d), "municipally issued" license specified, and appeal from application denial changed to appeal from failure to act on transfer. Prior text at 13:2-7.7, "Publication of notice of application", incorporated into 13:2-7.4 as (c).

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

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

In (a), inserted provision for fingerprinting and criminal background checks as part of investigation and added (b)4.

Case Notes

License was granted to drive-in beverage distributor over competitors' objections. In the Matter of Objections to State Beverage Distributors License Application by Roadside Beverage Inc., 94 N.J.A.R.2d (ABC) 69.

Denial of license transfer without hearing upheld; borough could not grant transfer due to passage of licensee minimum distance ordinance after filing of transfer application. Lo-Ran, Inc. v. Boro. of Bound Brook, 3 N.J.A.R. 357 (1981).

13:2-7.8 Application for place-to-place license transfer

Application for transfers of licenses to other premises shall be on forms prescribed by the Director and shall set forth the same information required to be set forth in connection with an original application for license.

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

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

Recodified from 13:2-7.12. Specified "forms promulgated by the Director". Prior text at 13:2-7.8, "Hearing granted upon written objection", recodified to 13:2-7.5.

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

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

Substituted "prescribed" for "promulgated".

13:2-7.9 Application for person-to-person transfer

Applications for transfers of licenses to other persons shall be on forms prescribed by the Director and shall set forth the same information required to be set forth in connection with an original application for license.

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

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

Recodified from 13:2-7.13. Specified "forms promulgated by the Director". Prior text at 13:2-7.9, "Date of hearing", recodified to 13:2-7.6.

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

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

Substituted "prescribed" for "promulgated".

13:2-7.10 Combined transfer

Transfers of license both as to person and place may be applied for simultaneously and in a single application; but if there is such combined application for person-to-person and place-to-place transfer, the person-to-person application shall not be approved unless the place-to-place transfer is also granted.

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

Recodified from 13:2-7.14. Clarified dual approval requirement. Prior text at 13:2-7.10, "Hearing not required; reasons", recodified to 13:2-7.7.

Case Notes

Denial of license transfer without hearing upheld; borough could not grant transfer due to passage of licensee minimum distance ordinance after filing of transfer application. Lo-Ran, Inc. v. Boro. of Bound Brook, 3 N.J.A.R. 357 (1981).

13:2-7.11 Fee for license transfer to other premises or to another person

Applications for transfers of license to other premises only, or applications for transfer of license to another person only, shall be filed in triplicate and accompanied by a fee of 10 percent of the full annual license fee for said license, which fee shall be retained by the Director or other issuing authority as the case may be, whether or not the transfer is granted, and is to be accounted for as are other license fees. If the application is for transfer of a retail license to be acted upon locally, it must also be accompanied by a filing fee of \$200.00 to be forwarded to the Director of the Division of Alcoholic Beverage Control along with the original of the application.

Amended by R.1973 d.234, effective August 30, 1973. See: 5 N.J.R. 356(a).

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

Recodified from 13:2-7.15. Added text regarding transfer "to another person only (not combined)"; specified forwarding of original of application for transfer of retail license. Prior text at 13:2-7.11, "Proof of publication of notice of application; form", repealed.

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

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

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

Substituted "\$200.00" for "\$100.00".

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

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

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

13:2-7.12 Fee for combined license transfer

Applications for transfer of license to other premises and other persons shall be filed in triplicate and accompanied by a fee of 20 percent of the full annual license fee for said license, which fee shall be retained by the Director or other issuing authority as the case may be, whether the transfer is granted or not, and accounted for as are other license fees. If the application is for transfer of a retail license to be

acted upon locally, it must also be accompanied by a filing fee of \$200.00 to be forwarded to the Director of the Division of Alcoholic Beverage Control along with the original of the application.

Amended by R.1973 d.234, effective August 30, 1973. See: 5 N.J.R. 356(a).

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

Recodified from 13:2-7.17. Specified forwarding of application original for transfer of retail license. Prior text at 13:2-7.12, "Information for premises license transfer", recodified to 13:2-7.8.

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

Deleted enumeration of (a) and increased the filing fee. Special amendment, R.2003 d.311, effective July 3, 2003 (to expire January 3, 2004).

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

Substituted "\$200.00" for "\$100.00" following "filing fee of".

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

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

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

13:2-7.13 Special condition for early grant

If a resolution or certification granting application for transfer is adopted sooner than five business days (excluding Saturdays, Sundays and legal holidays) after publication of the second notice of application, the resolution or certification shall set forth a special condition that the transfer shall not be effective until five business days have elapsed. If within such period a written objection to the transfer is filed, the transfer shall not be effective pending the further determination of the issuing authority.

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

Recodified from 13:2-7.18. Clarified "five business days" requirement; "certification" was "motion". Prior text at 13:2-7.13, "Information of persons seeking transfer", recodified to 13:2-7.9.

13:2-7.14 License certificate

(a) Upon the grant of a transfer, the Director or other issuing authority as the case may be shall cause the following written endorsement to be made upon the face of the license certificate:

The license, subject to all of its terms and conditions, is hereby transferred, effective _____, 20 _____.

(Date)

from _____ (Name) and/or (Address)

to _____ (Name) and/or (Address)

(Name of Issuing Authority)

By: _____ (Duly authorized official)

Dated: _____, 20 _____.

(b) Unless another specific date is identified in the resolution approving the transfer of license, the effective date

for municipally issued licenses shall be the date of adoption of the resolution by the issuing authority, and for State issued licenses, the date the Director certifies on the license certificate.

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

Recodified from 13:2-7.19. Added (b). Prior text at 13:2-7.14, "Combined transfer", recodified to 13:2-7.10.

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

13:2-7.15 Certification of license transfers

Each municipal issuing authority shall make or cause to be made certification to the Director of all license applications filed transferred denied or withdrawn during the preceding business week, which certification shall include the original of the filed application, any fees to be remitted to the Director and any resolution adopted.

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

Recodified from 13:2-7.23. Municipal certification requirements delineated on weekly basis. Prior text at 13:2-7.15, "Fee for license transfer to other premises", recodified to 13:2-7.11.

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

Deleted enumeration of (a).

13:2-7.16 (Reserved)

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

Section was "Fee for license transfer to other persons".

13:2-7.17 (Reserved)

Recodified to 13:2-7.12 by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Section was "Fee for combined license transfer".

13:2-7.18 (Reserved)

Recodified to 13:2-7.13 by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Section was "Special condition for early grant".

13:2-7.19 (Reserved)

Recodified to 13:2-7.14 by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Section was "License certificate".

13:2-7.20 (Reserved)

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

Section was "Endorsement; stub in license book".

13:2-7.21 (Reserved)

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

Section was "Endorsement signature".

13:2-7.22 (Reserved)

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

Section was "Order or resolution of endorsement".

13:2-7.23 (Reserved)

Recodified to 13:2-7.15 by R.1990 d.412, effective August 20, 1990.

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

Section was "Daily certification".

13:2-7.24 (Reserved)

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

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

Section was "Accompanying resolution".

SUBCHAPTER 8. CLUB LICENSES

13:2-8.1 Definitions

The following words and terms when used in this subchapter shall have the following meanings unless the context clearly indicates otherwise.

"Club" means an organization, corporation or association controlled by and consisting of 60 or more persons, of legal drinking age, operating solely for benevolent, charitable, fraternal, social, religious, recreational, athletic or similar purposes and not for private gain.

"Club member" means any individual in good standing who has been admitted to voting membership in the manner regularly prescribed by the bylaws of a club, and who maintains such membership in a bona fide manner and whose name and address are entered on the list of members. No individual shall be eligible for such club membership unless he has filed written application with the appropriate body, as set forth in the club bylaws, and such application is approved by said body at least three days subsequent to the filing thereof. Persons holding limited or auxiliary club membership shall not be deemed to be club members.

"Guest of club member" means an individual who is expressly invited to the club licensed premises by an individual member of the club and who is sponsored by and personally attended by the member at such premises. An individual club member may have as his guest no more than nine individuals on any one occasion unless such individuals are attending a private affair, such as a wedding, anniversary, confirmation, bar mitzvah or birthday party, honoring a spouse, child, parent, brother or sister of a club member.

Administrative Correction:

See: 15 N.J.R. 1876(b).

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

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

Stylistic revision.

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

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

Amended definition of "Club".

Case Notes

Country club was not a bona fide club and, hence, could not hold club liquor license. *Alcoholic Beverage Control v. Medford Village Resort*, 95 N.J.A.R.2d (ABC) 96.

Club license; valid ordinance limiting the number of licenses. Boricua Social Club, Inc. v. Perth Amboy City Council, 94 N.J.A.R.2d (ABC) 36.

13:2-8.2 Bona fide clubs

Club licenses shall be issued only to bona fide clubs.

13:2-8.3 Previous period of continuous, active operation

Except as provided in N.J.A.C. 13:2-8.5, no license shall be issued to any club unless it shall have been in active operation in the State of New Jersey for at least three years continuously immediately prior to the submission of its application for a license.

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

SUBCHAPTER 9. RULES OF GENERAL APPLICATION

Authority

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

Source and Effective Date

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

13:2-9.1 Relaxation

The rules of this chapter may be relaxed by the Director upon a showing of undue hardship, economic or otherwise, on a licensee; that the waiver of the rule would not unduly burden any affected parties; and that the waiver is consistent with the underlying purposes of Title 33 and the implementing rules. Waiver requests must be submitted in writing to the Director and shall include all documentation which supports the applicant's request for a waiver.

13:2-9.2 Licensee qualification

(a) Each holder of an alcoholic beverage license, and each owner thereof, must continually meet the following qualifications:

1. At least 18 years of age;
2. Has not been convicted of a crime involving moral turpitude, unless the Director has removed said disqualification pursuant to N.J.A.C. 13:2-15;
3. Is not a law enforcement officer, peace officer or any other person whose powers or duties include the enforcement of the Alcoholic Beverage Control Act;
4. Does not have an interest in any manufacturer or wholesaler of alcoholic beverages and is not employed as a solicitor, if a Class C license;
5. Has not had an interest in any alcoholic beverage license or permit which has been revoked within the past two years;
6. Does not have an interest in more than two retail licenses if a Class C license or an interest in any retail license if a Class A or Class B license, unless covered by an exception; and
7. Is a corporation, partnership or other legal entity in good standing, if the licensee is other than an individual.

13:2-9.3 Possession and control of licensed premises

Each licensee must have and maintain a continuing possessory interest and control over the licensed premises.

13:2-9.4 Withdrawal of application by applicant

(a) No applicant or any shareholder, partner or other person applying for an interest in a license or permit shall refuse to submit to fingerprinting when so required by the Director or the local issuing authority. Such refusal shall constitute a withdrawal of the application.

(b) No applicant or any shareholder, partner or other person applying for an interest in a license or permit shall refuse to submit full disclosure in a financial investigation, including but not limited to all savings, checking, or other bank or financial accounts held by or for such person or entity individually, jointly, or in trust (for himself or another person or entity), when so required by the Director or the local issuing authority. Such refusal shall constitute a withdrawal of the application.

13:2-9.5 Increased license fee for 2003-2004 licensed term

Notwithstanding N.J.A.C. 13:2-23.33, any applicant for a license or license renewal who has submitted the license fee for an application for a license issued or transferred on or after July 1, 2003, or renewed for a license term commencing on or after July 1, 2003, shall submit immediately any outstanding portion of the total license fee as increased by P.L. 2003, c.117. If the increased portion of the license fee has not been paid in full by October 1, 2003, the applicant shall be deemed to be in violation of N.J.S.A. 33:1-27 and the Director may issue an ex parte order revoking the license or indefinitely suspending it until payment.

SUBCHAPTER 10. PLENARY AND FARM WINERY LICENSES; WINE BLENDING LICENSES; RETAIL PRIVILEGES; PARCEL DELIVERY SERVICE

13:2-10.1 Application for plenary and farm winery licenses; statement of intent

(a) All applicants for plenary winery licenses shall comply with the application, advertising and hearing provisions of this chapter. The application shall be filed on a form prescribed by the Director in which the applicant shall demonstrate its ability to comply with the requirements of N.J.S.A. 33:1-10.2a. The applicant shall file a statement of intent which shall include the following information: number of acres engaged in cultivating grapes or growing fruit; location of acreage in respect to the proposed licensed premises; type of products to be produced (for example, naturally fermented wines, fortified wines, treated wines); intent to sell products to wholesalers, retailers, or consumers; and intent to utilize other premises for retail sales.

(b) All applicants for a farm winery license shall comply with the application, advertising and hearing provisions of this chapter. The application shall be filed on a form

prescribed by the Director in which the applicant shall demonstrate its ability to comply with the requirements of N.J.S.A. 33:1-10.2b. The applicant shall file a statement of intent which shall include the following information: number of acres engaged in cultivating grapes or growing fruit; location of acreage with respect to the proposed licensed premises; means by which acreage is under the applicant's control; plan under which New Jersey grown fruit will constitute at least 51 percent of wine product initially with plans to increase that percentage over five years; intent to sell products to wholesalers, retailers, and/or consumers; number of gallons projected to be produced annually; and intent for off winery premises retail sales locations.

(c) Any winery licensee who seeks permission for additional retail sales premises shall file an application on a form prescribed by the Director which shall be accompanied by a sketch of the proposed licensed premises which depicts the area to be included under the license and includes the perimeter measurements. If the additional sales location is to be within a premises where another mercantile business is operating, the application shall be accompanied by a description of the business relationship with the other mercantile business and shall include, a copy of the lease agreement; a statement of how the winery will maintain separate accounting for sales; a description of how the applicant will compensate its sales employees, and shall identify whether any consumption or sampling will take place, and if so, how this will be controlled, and will state its plan for demarcating the licensed premises.

Repeal and New Rule, R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Section was "Application for license, form; date for filing".
Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Added provisions for farm winery licenses in (b) and renumbered former (b) as (c).

13:2-10.2 License certificate endorsement

Whenever the holder of a plenary or farm winery license is granted the privilege of selling its wine products at retail at a premises other than the winery licensed premises, the license certificate shall be appropriately endorsed by the Director and will set forth the retail privileges conferred thereunder, and no plenary or farm winery licensee whose certificate does not bear such endorsement shall sell or deliver or allow, permit or suffer the sale or delivery at retail of wine at other than the winery licensed premises.

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

Recodified from 13:2-10.6. Deleted text regarding sale of "other alcoholic beverages"; added language on sale of wine at other than licensed premises. Prior text at 13:2-10.2, "Application for retail wine privilege, form and content", repealed.

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

Added provisions for farm winery licenses.

13:2-10.3 Labeling wine sold at retail

(a) Unless the container in which the wine product is sold shall bear a label approved pursuant to the provisions of the Federal Alcoholic Administration Act, each plenary winery licensee having the privilege of selling wine at retail shall attach a label to each container in which wine is sold to consumers, which label shall bear the brand name, type, alcoholic content of the wine stated in percentage of alcohol by volume within an accuracy of one percent, net contents of the container, and name or trade name and address of the licensee.

(b) Unless the container in which the wine is sold shall bear a label approved pursuant to the provisions of the Federal Alcoholic Administration Act, each farm winery licensee shall attach a label to each container in which wine is sold to consumers, which label shall bear the brand name, type, alcoholic content of the wine stated in percentage of alcohol by volume within an accuracy of one percent, net contents of the container, and the name and address of the licensee. Every container's label must indicate that it is "New Jersey Wine" and its wine contents shall comply with the requirements of N.J.S.A. 33:1-10.2b.

(c) All wine products which a plenary or farm winery license shall offer for resale to another authorized New Jersey licensee or to sell to consumers at retail shall be brand registered pursuant to the provisions of N.J.A.C. 13:2-33.1.

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

Recodified from 13:2-10.7. Deleted "off-premises consumption" reference. Prior text at 13:2-10.3, "Application for retail wine and other privilege; form", repealed.

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

Designated existing text as (a) and added (b) and (c) regarding labeling of plenary and farm winery products.

13:2-10.4 Hours of retail sales

No plenary or farm winery licensee privileged to sell at retail shall sell, serve or deliver, or allow, permit or suffer the sale, service or delivery of any wine at retail during any hours where the retail sale of alcoholic beverages is prohibited in the municipality where the winery retail sale would occur.

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

Recodified from 13:2-10.8. Added "serve" to "sell or deliver" and "service" to "sale or delivery" and deleted "or other alcoholic beverages"; replaced existing language on hours of retail sale. Prior text at 13:2-10.4, "Existing licensee application for additional retail privilege", repealed.

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

Added provision for farm winery.

13:2-10.5 Application for wine blending license; form

All applicants for a wine blending license shall comply with the application, advertising and hearing provisions of this chapter. The application shall be filed on a form prescribed by the Director in which the applicant shall demonstrate its ability to comply with the requirements of N.J.S.A. 33:1-10.2c. The applicant shall file a statement of intent which shall include the following information: type of process to be implemented, for example, blending, treating, mixing, or bottling; products to result from process; and intended sales to wholesalers or retailers.

Repeal and New Rule, R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Section was "Prior consideration given vineyard-owning applicants".
Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Inserted requirement that application be on a form prescribed by the Director.

13:2-10.6 Joint retail salesroom

(a) A "joint retail salesroom" is defined as a jointly controlled and operated retail salesroom by at least two plenary or farm winery licensees. Products of any plenary or farm winery licensee may be sold at retail in joint retail salesrooms for consumption on and off the joint licensed salesroom premises and for sampling purposes on the joint licensed salesroom premises.

(b) Applicants for a joint retail salesroom permit shall comply with the application, advertising, and hearing provisions of this chapter. The application shall also be accompanied by a sketch of the proposed joint salesroom premises depicting the area to be included within the scope of the license and the perimeter measurements. If the sales location is to be within another mercantile business operation, the application shall be accompanied by a description of the business relationship with the other business and shall in-

clude at a minimum, a copy of the lease agreement; a statement of how the winery sales outlet will maintain separate accounting for sales; a description of how the applicant will compensate the sales employees; and a description of any consumption or sampling to take place including how this will be controlled, and will state its plan for demarcating the licensed premises.

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

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

Recodified prior text at 13:2-10.6, "Certificate of endorsement", to 13:2-10.2.

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

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

Substituted "joint retail" for "combination enterprise retail"; decreased number of licensees from five to two and provided for consumption of plenary or farm wine products on the joint salesroom premises.

13:2-10.7 Parcel delivery service

Plenary and farm wineries, who wish to ship their wines in this State by parcel delivery services, must comply with the provisions of N.J.A.C. 13:2-20.3.

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

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

Recodified prior text at 13:2-10.7, "Labeling wine sold at retail", to 13:2-10.3.

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

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

Deleted existing (a) through (c) and made reference to applicable N.J.S.A. sections.

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

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

Substituted "N.J.A.C. 13:2-20.3" for "N.J.S.A. 33:1-28.1 through 28.4".

13:2-10.8 (Reserved)

Recodified to 13:2-10.4 by R.1990 d.412, effective August 20, 1990.

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

Section was "Hours of retail sales".

13:2-14.3 Permit; age restrictions

(a) No individual permit shall be issued to and no blanket permit shall cover any person under the age of 16 years except:

1. caddies, pinsetters or similar temporary or seasonal type employees as the Director may deem appropriate upon a showing of good cause and
2. Persons employed by a plenary or limited retail distribution licensee; such licensee may not employ any person under 15 years of age.

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

Recodified from 13:2-14.4. Added text regarding "temporary or transient type employees"; deleted language concerning entertainment employees under 18. Recodified prior text at 13:2-14.3, "Minor's employment permit; fees", to 13:2-14.2.

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

Divided existing text into (a)1 and (a)2 and made stylistic changes.

13:2-14.4 Blanket minors' employment permit

(a) A blanket minors' employment permit may be issued by the Director to a licensee to authorize the employment of persons disqualified by reasons of age, who are employed by the licensee as caddies, pinsetters, similar temporary or seasonal employees as the Director may deem appropriate upon a showing of good cause, and such persons covered by the licensee's blanket minors' employment permit need not hold or apply for individual employment permits.

(b) The fee for the blanket employment permit shall be based upon the number of anticipated employees to be hired under the permit, but shall not exceed \$1,000 per calendar year.

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

Recodified prior text at 13:2-14.4, "Permits; persons under 18 years of age", to 13:2-14.3.

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

Made gender neutral and substituted "seasonal" for "transient".
Special amendment, R.2003 d.311, effective July 3, 2003 (to expire January 3, 2004).

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

In (b), substituted "\$1,000" for "\$500.00" preceding "per calendar year".

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

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

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

13:2-14.5 Restrictions upon employing criminally disqualified persons

No licensee shall knowingly employ or have connected with him in any business capacity any person who has been convicted of a crime involving moral turpitude unless the statutory disqualification resulting from such conviction has been removed by order of the Director, in accordance with N.J.A.C. 13:2-15, or such person has first obtained the

appropriate rehabilitation employment permit or temporary work letter from the Director.

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

Recodified prior text at 13:2-14.5, "Application; rehabilitation employment permit"; to 13:2-14.6.

13:2-14.6 Application for a rehabilitation employment permit; temporary work letter

(a) Any person convicted of a crime involving moral turpitude may apply to the Director, in the manner and form prescribed by the Director, for a rehabilitation employment permit. Whenever that 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 the exercise of sound discretion, issue such employment permit.

(b) Upon the proper filing of an application and proof of promised employment, the Director may, in the exercise of sound discretion, issue the applicant temporary work letters not to exceed 90 days at any one time, authorizing employment upon a specified licensed premises pending determination on the application for a permit.

(c) A Temporary Work Letter may be issued if the applicant demonstrates to the Director's satisfaction, that the applicant has behaved in a law abiding manner and has not engaged in and will not participate in any conduct detrimental to the integrity of the alcoholic beverage industry or the public interest.

As amended, R.1971 d.24, effective March 1, 1971.

See: 2 N.J.R. 75(d), 3 N.J.R. 65(a).

As amended, R.1973 d.234, effective August 30, 1973.

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

As amended, R.1974 d.40, effective February 15, 1974.

See: 6 N.J.R. 17(a), 6 N.J.R. 119(c).

As amended, R.1975 d.237, effective August 8, 1975.

See: 7 N.J.R. 336(a), 7 N.J.R. 436(b).

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

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

Recodified from 13:2-14.5. Added (b). Recodified prior text at 13:2-14.6, "Types of rehabilitation employment permit; duration", to 13:2-14.7.

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

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

Added (c).

Case Notes

Rehabilitation employment permit was denied where five years had not elapsed since applicant's conviction for possession of gambling records, and during period following her conviction, applicant had worked at tavern without having permit to do so. *Balis v. Division of Alcoholic Beverage Control*, 96 N.J.A.R.2d (ABC) 129.

Rehabilitation employment permit was denied on grounds that too little time had passed since applicant's release from incarceration and that applicant was seeking re-employment at premises where disqualifying crime had occurred. *Scarlata v. Division of Alcoholic Beverage Control*, 96 N.J.A.R.2d (ABC) 126.

13:2-14.7 Rehabilitation employment permit; duration; types; fees

(a) A rehabilitation employment permit shall be issued for a one year period, and shall be renewable annually for the term of disqualification, as set forth in N.J.S.A. 33:1-31.2.

(b) Rehabilitation employment permits shall consist of the following types:

1. Unlimited employment permit: This permit shall allow the holder thereof to be employed by any class license, without restriction as to type of employment. Such permits may not be issued to persons who have been convicted of crimes which, in the opinion of the Director, present a special risk to the alcoholic beverage industry.

2. Limited employment permit: This permit shall allow the holder thereof to be employed by any class license in any non-managerial capacity, and may allow the holder to sell, serve or deliver alcoholic beverages.

(c) The fee for either type of rehabilitation employment permit shall be \$150.00 per annually, payable on the date of application.

As amended, R.1971 d.24, effective March 1, 1971.
See: 2 N.J.R. 75(d), 3 N.J.R. 65(a).

As amended, R.1973 d.234, effective August 30, 1973.
See: 5 N.J.R. 356(a).

As amended, R.1974 d.40, effective February 15, 1974.
See: 6 N.J.R. 17(a), 6 N.J.R. 119(c).

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

Recodification from 13:2-14.6. Added (c). Recodified prior text at 13:2-14.7, "Limitations", to 13:2-14.8.

Amended by R.1993 d.288, effective June 7, 1993.
See: 25 N.J.R. 1340(a), 25 N.J.R. 2485(a).

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

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

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

In (c), substituted "\$150.00" for "\$100.00" preceding "per annually". Adopted concurrent amendment, R.2003 d.470, effective November 5, 2003.

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

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

13:2-14.8 Restrictions upon limited rehabilitation employment permittee

No licensee shall allow, permit or suffer the holder of limited rehabilitation employment permit to act in a managerial capacity with respect to the licensed business or to sell, serve or deliver any alcoholic beverage if the limited permit so prohibits; nor shall the holder of a limited rehabilitation permit engage in any activity prohibited by the permit.

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

Recodified from 13:2-14.7. Stylistic revisions. Recodified prior text at 13:2-14.8, "Continued employment of disqualified person", to 13:2-14.9.

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

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

13:2-14.9 Termination of employment of disqualified person

No licensee shall employ in any manner whatsoever on the licensed premises any criminally disqualified person upon the withdrawal or denial of the application of such person for an Rehabilitation Employment Permit or upon the cancellation, suspension, revocation or expiration of a Rehabilitation Employment Permit or a Temporary Work Letter.

As amended, R.1975 d.237, effective August 8, 1975.

See: 7 N.J.R. 336(a), 7 N.J.R. 436(b).

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

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

Recodified from 13:2-14.8. Revised to specify "criminally disqualified" person; added withdrawal of application and cancellation of "temporary work letter" to termination criteria. Recodified prior text at 13:2-14.9, "Term of permit; applicant's photograph and fingerprints", to 13:2-14.10.

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

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

13:2-14.10 Nontransferability of permits; term of permit; applicant's photograph and fingerprints

(a) Employment permits are not transferable from person to person.

(b) All individual permits, except rehabilitation permits, expire on March 31st following their issuance unless otherwise specified therein.

(c) Each applicant for his first permit shall submit with the application one color passport-type photograph, two inches by two inches, taken not more than 30 days prior to the date of application.

(d) Applications for a rehabilitation employment permit shall require fingerprinting of the applicant and payment of the necessary fingerprinting processing fees attendant thereto.

As amended, R.1975 d.237, effective August 8, 1975.

See: 7 N.J.R. 336(a), 7 N.J.R. 436(b).

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

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

Recodified from 13:2-14.9. In (c), specified "color passport photo"; added (d). Prior text at 13:2-14.10, "Blanket employment permit", repealed.

13:2-14.11 Amendment of application

Whenever any change shall occur in any of the facts set forth in the application for a permit, the permittee shall file with the Director a notice in writing of the change within 10 days after its occurrence.

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

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

Stylistic revisions.

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

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

13:2-14.12 Prohibited conduct of permittee

No permittee shall engage in any conduct which is prohibited to his employer by the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq. or any regulation adopted thereunder, or by any valid municipal ordinance or regulation pertaining to employment upon licensed premises.

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

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

Stylistic revisions.

13:2-14.13 Cancellation, suspension and revocation of permit

(a) Any employment permit may be canceled or suspended or revoked by the Director for cause, including, but not limited to, any of the following:

1. Violation by the holder of any provision of the alcoholic beverage law or any regulation adopted thereunder;
2. For any fraud, misrepresentation, false statement, misleading statement, evasion or suppression of a material fact in the application for the permit;
3. Proof that the holder has a prohibited interest in any license issued by the Director or any other issuing authority;
4. The permit holder is disqualified from being employed by a licensee for reasons other than the disqualification referred to in the employment permit;
5. Any other act or happening, occurring after the time of making an application for an employment permit which, if it had occurred before said time, would have prevented issuance of the permit; and
6. With respect to rehabilitation employment permits or temporary work letters issued pursuant to N.J.A.C. 13:2-14.6, proof of arrest or conviction of the permit holder of any crime or disorderly persons offense.

Amended by R.1974 d.46, effective February 15, 1974.

See: 6 N.J.R. 17(a), 6 N.J.R. 119(c).

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

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

In (a)6, added "or temporary work letters", "proof of arrest or" conviction "of the permit holder".

Case Notes

Rehabilitation Employment Permit denied to former criminal probationer to work at his formerly-owned establishment, now owned by wife; permit to work elsewhere granted (Division's Final Decision). *Marini v. Div. of Alcoholic Beverage Control*, 1 N.J.A.R. 365 (1980).

SUBCHAPTER 15. REMOVAL OF STATUTORY DISQUALIFICATION

13:2-15.1 Time for petition filing; removal of statutory disqualification

Any person convicted of a crime involving moral turpitude may, after the lapse of five years from the date of

conviction, or release from incarceration, whichever is later, petition the Director of the Division of Alcoholic Beverage Control pursuant to N.J.S.A. 33:1-31.2 for an order removing the resulting statutory disqualification from obtaining or holding any license or permit.

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

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

Added "release from incarceration" as condition for filing.

13:2-15.2 Petition; contents

The petition for removal of disqualification shall be in verified form accompanied by payment of a filing fee of \$100.00. The petitioner shall be required to submit a set of fingerprints and a recent color passport photograph (two inches by two inches) with said application, as well as any fingerprinting processing fees attendant thereto.

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

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

Specified submission of "color passport" photo and "fingerprinting processing fees".

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

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

Increased filing fee.

13:2-15.3 Hearing

No petition shall be denied without first affording the petitioner a hearing, which the Director shall schedule to be held at this Division by the Director under N.J.S.A. 52:14F-8 or by an Administrative Law Judge as a contested case pursuant to N.J.A.C. 1:1-3.2. The petitioner and two character witnesses will be required to appear in person at said hearing and to testify under oath.

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

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

Prohibited petition denial without a hearing, and added text regarding N.J.S.A. 52:14F-8 and N.J.A.C. 1:1-3.2.

13:2-15.4 Removal of disqualifications; causes

(a) The Director may, in the exercise of sound discretion, enter an order removing the disqualification, if the Director is satisfied from the petitioner's testimony, the witnesses produced or the investigative record that:

1. At least five years have elapsed from the later of the date of conviction or release from incarceration;
2. The petitioner has behaved in a law-abiding manner during such period; and
3. The petitioner's association with the alcoholic beverage industry will not be contrary to the public interest.

(b) Any person, who applies for and is denied the removal of a disqualification for any reason, may not re-apply for a period of up to five years from the date of final administrative or judicial action, whichever is later, regarding the subject application. The Director shall set the period of time during which a disqualified person may not re-apply in

the Order denying the disqualification removal and shall specify the reasons therefor.

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

In (a), "or the investigative record" was "and the investigative record"; in (a)1, added "release from incarceration" to elapsed time requirement.

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

Added (b).

Case Notes

Request for removal of liquor license disqualification was denied due to applicant's extensive criminal record. In the Application of Vasser, 96 N.J.A.R.2d (ABC) 107.

Reasonable conditions were placed upon licensee in alcohol-abuse counseling to obtain renewal of liquor license. Hilcar v. New Brunswick, 95 N.J.A.R.2d (ABC) 49.

Petitioner entitled to removal of disqualification from alcoholic beverage license. Schoch v. Division of Alcoholic Beverage Control, 94 N.J.A.R.2d (ABC) 89.

No basis for removal of statutory disqualification from employment in liquor industry. Santorella v. Alcoholic Beverage Control Division, 94 N.J.A.R.2d (ABC) 65.

SUBCHAPTER 16. SOLICITOR'S PERMIT

13:2-16.1 Necessity of permit

No individual shall offer for sale or solicit any order in this State for the purchase or sale of any alcoholic beverage, whether such sale is to be made within or without this State, unless such individual holds a solicitor's permit and has such permit upon his person at the time of such solicitation. This, however, does not prohibit such offer or solicitation by any individual licensee himself or by the individual members of a licensed partnership or by any employee of any retail licensee in connection with and in the course of the licensed business.

13:2-16.2 Privileges of permit

A solicitor's permit, issuable by the Director of the Division of Alcoholic Beverage Control, authorizes the permittee to make offers and solicit for such sales of alcoholic beverages on behalf of the licensee represented by the solicitor and designated in the permit.

Amended by R.1973 d.234, effective August 30, 1973.
See: 5 N.J.R. 356(a).

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

Stylistic revisions.

13:2-16.3 Eligibility for permit

Solicitor's permits may be issued only to bona fide employees of Class A (N.J.S.A. 33:1-10) or Class B (N.J.S.A. 33:1-11) licensees with the exception that no solicitor's permits shall be issued to employees of a bonded warehouse bottling licensee which holds no other type of Class A or Class B license.

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

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

Recodified from 13:2-16.4. Replaced old text with text regarding Class A and Class B licenses. Prior text at 13:2-16.3, "Permit fees; terms; applicant's photographs and fingerprints", repealed. The following annotation pertained to that section:

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

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

13:2-16.4 Permits to enforcement officers or municipal officials

No solicitor's permit shall be issued to or held by any person charged or entrusted with the enforcement of the laws concerning alcoholic beverages in any manner whatsoever, except that nothing herein shall prohibit a member of a municipal governing body or municipal issuing authority from being issued or holding a solicitor's permit, provided, however, that no holder of a solicitor's permit shall, directly or indirectly, offer for sale or solicit any order for the purchase or sale of any alcoholic beverages in any municipality in which he is a member of the municipal governing body or municipal issuing authority.

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

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

Recodified from 13:2-16.8. Added "municipal officials" to heading. Recodified prior text at 13:2-16.4, "Eligibility for permit", to 13:2-16.3.

13:2-16.5 Permit fees

The fee for a solicitor's permit is \$15.00 per annum for solicitors employed exclusively by licensees whose license permits the sale of malt alcoholic beverages only, and \$25.00 per annum for solicitors employed by all other eligible licensees. A separate fee shall be paid for each licensee designated in the permit.

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

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

Section was "Restrictions on permittee".

13:2-16.6 Application for permit; photograph and fingerprints; affidavit of compliance with the Alcoholic Beverage Control Act

(a) Each applicant for the issuance or renewal of a solicitor's permit shall make application on a form promulgated by the Director accompanied with the appropriate fee.

(b) Applications for the issuance of a solicitor's permit shall be accompanied by one passport type color photograph of the applicant, two inches by two inches, taken not more than 30 days prior to the date of the application.

(c) Applications for the issuance of a solicitor's permit shall require the fingerprinting of the applicant and the payment of the fingerprinting processing fees attendant thereto.

(b) In cases in which a license has been extended pending the outcome of an appeal to the Director, the licensee must file a renewal application and the appropriate fees for each subsequent license term while the appeal is pending or the license shall be deemed to have expired.

(c) In cases in which a license has not been extended pending the outcome of an appeal to the Director, the licensee need not file a renewal application and appropriate fees for each subsequent license term while the appeal is pending. If the licensee prevails on appeal, then the licensee shall be required to file renewal applications and pay the appropriate fees for each term during which the appeal was pending, within 60 days of the date of the Director's decision or the license shall be deemed to have expired.

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

Recodified from 13:2-17.12. Added language regarding N.J.A.C. 13:2-2.10(b) time requirement and continuation of extension of license; deleted references to ALJ order. Recodified prior text at 13:2-17.9, "Subpoenas", to 13:2-17.7.

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

Stylistic changes.
Amended by R.2003 d.436, effective November 3, 2003.
See: 35 N.J.R. 2810(a), 35 N.J.R. 5122(a).
Rewrote the section.

13:2-17.10 Transfer, extension or renewal subject to appeal

When appeal is taken in any matter, any subsequent transfer, extension or renewal of the license involved in the appeal shall be subject to the ultimate outcome of such appeal, unless otherwise ordered in the final administrative determination of the case.

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

Recodified from 13:2-17.13. Added text regarding "subsequent" change of status of "the license" involved in appeal. Prior text at 13:2-17.10, "Failure to appear; failure to comply with orders or hearing requirements; obstructing the orderly conduct of proceedings", repealed.

13:2-17.11 Hearing procedure

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.

Amended by R.1979 d.393, effective October 1, 1979.
See: 11 N.J.R. 580(f).

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

Recodified from 13:2-17.14. Deleted exception "pursuant to N.J.A.C. 13:2-17.8". Recodified prior text at 13:2-17.11, "Stays", to 13:2-17.8.

Case Notes

Denial of liquor license for lewd conduct was moot absent objection prior to license expiration. Daniels v. Township of Neptune, 95 N.J.A.R.2d (ABC) 68.

Liquor license suspension reversed; Alcoholic Beverage Control board failed to appear at appeal hearing. Tucceri Tavern, Inc. v. Hoboken Municipal Board of the Division of Alcoholic Beverage Control, 94 N.J.A.R.2d (ABC) 55.

Granting of stay within Director's sound discretion. Canal Street Pub, Inc. v. Municipal Bd. of Alcoholic Beverage Control, City of Paterson, 6 N.J.A.R. 221 (1982).

Procedures and standards on appeal. Canal Street Pub, Inc. v. Municipal Bd. of Alcoholic Beverage Control, City of Paterson, 6 N.J.A.R. 221 (1982).

Requirements for appeal based upon agency declaratory ruling; examination and application of statute prohibiting issuance of liquor license to establishment within 200 feet of a church. Raritan Rd. Baptist Church v. Tp. of Cranford, 2 N.J.A.R. 218 (1980).

Admissibility of evidence; record includes exhibits marked at original disciplinary proceedings but not timely provided to administrative law judge (citing former rule) (Division's Final Decision). A.H.S., Inc. v. Tp. Committee, Tp. of Wall, 1 N.J.A.R. 284 (1979).

13:2-17.12 Renewal applications and appeals to the Appellate Division

(a) If the Director's decision revokes a license or affirms a municipal decision to revoke a license or deny renewal of a license and the Director's decision has not been stayed pending an appeal to the Appellate Division, the licensee need not file a renewal application and appropriate fees for each subsequent license term while the appeal to the Appellate Division is pending. If the licensee prevails on the appeal to the Appellate Division, then the licensee shall be required to file renewal applications and pay the appropriate fees for each term during which the appeal was pending, within 60 days of the date of the Appellate Division's decision or the license shall be deemed to have expired.

(b) In any other case involving an appeal to the Appellate Division from the Director's decision, the licensee must file a renewal application and the appropriate fees for each subsequent license term while the appeal to the Appellate Division is pending or the license shall be deemed to have expired.

Recodified to 13:2-17.9 by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Section was "Extension of license term".
New Rule, R.2003 d.436, effective November 3, 2003.
See: 35 N.J.R. 2810(a), 35 N.J.R. 5122(a).
Section was Reserved.

13:2-17.13 (Reserved)

Recodified to 13:2-17.10 by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Section was "Transfer, extension or renewal subject to appeal".

13:2-17.14 (Reserved)

Recodified to 13:2-17.9 by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Section was "Hearing procedure".

13:2-17.15 (Reserved)

Section was "Relaxation of appeals procedures".

**SUBCHAPTER 18. PETITION PROCEEDINGS;
DISCRIMINATION AGAINST
WHOLESALEERS**

13:2-18.1 Grounds for relief

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

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

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

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

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

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

5. The rendition of a final judgment by any competent court or tribunal against the wholesaler which remains unsatisfied for 30 days after the entry thereof and which is substantial in relation to the assets of such wholesaler; unless satisfaction of the underlying obligation is the subject of continuing negotiations, installment payments, or appeal;

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

7. The insolvency of the wholesaler;

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

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

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

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

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

2. The wholesaler is unable, by its available assets or the reasonable use of credit to pay its debts as they become due; provided, however, that where such inability does not put the refusing seller in reasonable fear of material economic loss from the transaction or transactions involved, refusal to sell shall not be authorized.

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

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

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

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

Stylistic revisions.

Case Notes

Incorporation of two authorized liquor wholesalers under Limited Liability Company Act did not deprive them of protection under wholesaler anti-discrimination regulations, which prohibit discrimination in sale of nationally advertised brand of alcoholic beverage to duly licensed wholesalers, even though limited liability company included transportation company to deliver products for wholesalers; formation of company did not dissipate supplier's control of its distribution system. *R & R Marketing, L.L.C. v. Brown-Forman Corp.*, 704 A.2d 1327, 307 N.J.Super. 474 (A.D. 1998).

Successor owner of distillery ordered to continue sales to wholesale distributor as under contracts with former owner; N.J.S.A. 33:1-93.6 et seq. constitutional. *Royal Liquor Distributors and Importers v. Brown-Forman Distillers Corp.*, 4 N.J.A.R. 248 (1982).

New Rule, R.2001 d.447, effective December 3, 2001.

See: 33 N.J.R. 2795(a), 33 N.J.R. 4135(c).

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

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

In (i), amended N.J.A.C. reference in Code, BOOKS1 and BOOKS2. Amended by R.2005 d.212, effective July 5, 2005.

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

In (f), substituted "date of disposition of any prior violation(s)" for "date of the first violation"; in (g), deleted "in writing" following "has been notified"; rewrote (i).

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. The Director will not consider an offer in compromise in any case being prosecuted by the Division after an Initial Decision is issued by the Office of Administrative Law, except under extraordinary circumstances. However, if the license is transferred and the current licensee had no interest in the license at the time that the violations in question were charged, the current licensee may apply to the Director for relaxation of this regulation pursuant to N.J.A.C. 13:2-9.1.

(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.

New Rule, R.2001 d.447, effective December 3, 2001.

See: 33 N.J.R. 2795(a), 33 N.J.R. 4135(c).

Amended by R.2005 d.212, effective July 7, 2005.

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

Rewrote (b).

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.

(e) In instances where a licensee fails to comply with a request for documents and/or testimony, the Director may indefinitely suspend the license until such time as the licensee complies, in addition to any other penalty for hindering an investigation.

New Rule, R.2001 d.447, effective December 3, 2001.

See: 33 N.J.R. 2795(a), 33 N.J.R. 4135(c).

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

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

Added (e).

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.

New Rule, R.2001 d.447, effective December 3, 2001.

See: 33 N.J.R. 2795(a), 33 N.J.R. 4135(c).

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.

New Rule, R.2001 d.447, effective December 3, 2001.

See: 33 N.J.R. 2795(a), 33 N.J.R. 4135(c).

13:2-19.16 Application of subchapter

(a) This subchapter, as amended effective December 3, 2001, shall apply to violations occurring on or after December 3, 2001.

(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.

New Rule, R.2001 d.447, effective December 3, 2001.
See: 33 N.J.R. 2795(a), 33 N.J.R. 4135(c).

SUBCHAPTER 20. TRANSPORTATION OF ALCOHOLIC BEVERAGES BY LICENSEES; INSIGNIA

13:2-20.1 Transit insignia; transportation of alcoholic beverages

No licensee shall transport alcoholic beverages into, out of, or within the State of New Jersey in any vehicle unless it is owned, leased or contracted for by the licensee. Such vehicle, while so used, shall first have issued therefor a transit insignia, special transit insignia, transportation license insignia issued pursuant to the provisions of this subchapter, or a limited transportation permit or emergency trip permit issued pursuant to the provisions of N.J.A.C. 13:2-21.

Amended by R.1985 d.333, effective July 1, 1985.
See: 17 N.J.R. 1054(a), 17 N.J.R. 1662(a).

Substantially amended.
Amended by R.1989 d.372, effective July 17, 1989.
See: 21 N.J.R. 1300(a), 21 N.J.R. 2045(a).

Deleted language about transportation permit sticker and added description of new transportation license insignia.

13:2-20.2 Transportation by retail licensee; delivery slip; emergency delivery

(a) No retail licensee shall deliver or transport any alcoholic beverages into, out of, or within the State of New Jersey in any vehicle unless the driver of the vehicle has in his or her possession a bona fide, authentic and accurate delivery slip, invoice, manifest, waybill, or similar document stating the date of delivery, the bona fide name and address of the purchaser or consignee, and the brand, size of container, quantity and price of each item of the alcoholic beverages being delivered or transported. The original or true copy of such delivery slip, invoice, manifest, waybill or similar document shall be retained by the licensee at his licensed premises for a period of one year from the date of delivery and shall be available for inspection by any person authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq., unless the Director shall have granted to the licensee written permission to keep such documents at another designated place.

(b) No such licensee shall peddle, barter, or otherwise sell any alcoholic beverages from any vehicle.

(c) It shall be an affirmative defense, to a charge of violating N.J.A.C. 13:2-20.1, where the licensee satisfactorily demonstrates that:

1. The licensee owned or leased a properly permitted vehicle;
2. An emergency situation arose which prevented the delivery from being made in the properly permitted vehicle; and
3. The delivery was, in all other respects, made in accordance with the provisions of N.J.A.C. 13:2-20.2(a).

Amended by R. 1985 d.333, effective July 1, 1985.

See: 17 N.J.R. 1054(a), 17 N.J.R. 1662(a).

Substantially amended.

Amended by R.1989 d.372, effective July 17, 1989.

See: 21 N.J.R. 1300(a), 21 N.J.R. 2045(a), 21 N.J.R. 2385(c).

In a: changed "Alcoholic Beverage Law" to "New Jersey Alcoholic Beverage Control Act" and revised with minor stylistic changes.

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

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

Added (c).

13:2-20.3 Transportation by State licensee with retail privileges; delivery slip or route card

(a) No State licensee privileged to sell alcoholic beverages at retail shall deliver or transport any alcoholic beverages in any vehicle, unless:

1. The driver of the vehicle has in his or her possession a bona fide, authentic and accurate delivery slip, invoice, manifest, waybill, or similar document stating the bona fide name and address of the purchaser or consignee, and the brand, size of container, quantity and price of each item of the alcoholic beverages being delivered or transported; or
2. The driver of the vehicle has in his or her possession a route card which shall contain the name, address and standing order of the customer, and the entry at the time of delivery of the date of delivery, the brand, size of container, quantity delivered and the price charged. In addition to such route cards, there must be carried in the vehicle a loading list setting forth the total quantity of alcoholic beverages loaded for delivery, indicating as to each brand loaded the total quantity of each size of container; and
3. The original or true copy of such delivery slip, invoice, manifest, waybill, route card or similar document shall be retained by the licensee at his licensed premises for a period of one year from the date of delivery, and shall be available for inspection by any person authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq., unless the Director shall have granted to the licensee written permission to keep such documents at another designated place.

(b) The holder of a New Jersey Plenary Winery license with retail privileges or a Farm Winery license with retail privileges may authorize the shipment of wine purchased in person at retail on the licensed premises or ordered by mail or telephone (but for mail or telephone orders only if the licensee has a signed authorization by the person placing the order) to a destination within this State by a parcel delivery service subject to the following terms and conditions:

1. The New Jersey Plenary or Farm Winery licensee with retail privileges must first file an application for authorization to utilize a parcel delivery service before it makes any such deliveries to consumers. The application is made on a form provided by the Division and must be accompanied by an annual fee of \$150.00. All parcel delivery service permits are for the one year and expire on June 30 and must be renewed annually; and

2. The parcel delivery service must first be registered and approved by the Director. Application for approval shall be made on a form to be provided by the Division. No fee is required. Once approved, a parcel delivery service shall not be required to obtain a Transportation License under N.J.S.A. 33:1-13 or any Transit Insignia under N.J.S.A. 33:1-28 or this subchapter; and

3. An invoice must be attached to every package stating the purchaser's name, address, destination, quantity of wine being shipped and place of purchase. A copy of the original invoice must be made available for inspection by any person authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq. for a period of one year at the office of the licensee; and

4. The wine shall be shipped as a restricted delivery and may be delivered only to the residence of the person who placed the order. It is the duty of personnel delivering the wine for a licensee in accordance with N.J.S.A. 33:1-28.1 et seq. and this subsection to seek to determine that, at the time of delivery of wine, the party signing a delivery receipt is of legal age to purchase and consume alcoholic beverages.

(c) No such licensee shall peddle, barter, or otherwise sell any alcoholic beverage from any vehicle to any consumer.

Amended by R.1985 d.333, effective July 1, 1985.

See: 17 N.J.R. 1054(a), 17 N.J.R. 1662(a).

(a)3 added; Old (b) deleted and new (b) and (c) added.

Amended by R.1989 d.372, effective July 17, 1989.

See: 21 N.J.R. 1300(a), 21 N.J.R. 2045(a).

Revised throughout with minor stylistic changes and substituted "New Jersey Alcoholic Beverage Control Act" for "Alcoholic Beverage Law."

In (b)1: changed "the calender year" to "one year" and changed "December 31" to "June 30" regarding parcel delivery service permits.

In (b)3: changed "three years" to "one year" regarding invoice requirements.

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

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

Allowed for mail or telephone wine order purchases.

13:2-20.4 Transportation by other State licensees, importers and manufacturers; delivery documents

(a) No manufacturer, importer or wholesaler shall deliver or transport, directly or indirectly, any alcoholic beverages into, out of, or within the State of New Jersey in any vehicle, nor shall any transportation licensee so deliver or transport alcoholic beverages for any licensee, unless the driver of the vehicle has in his possession a bona fide, authentic and accurate delivery slip, invoice, manifest, waybill or similar document stating the name, address and New Jersey State assigned license number (if applicable) of the purchaser or consignee, the brand, size of container, terms of sale, quantity and price of each kind of alcoholic beverages being delivered or transported. Such document shall further bear a printed or stamped legend reading substantially as follows:

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

(Date)

_____"
(Signature by or for licensee)

(b) Two copies of such delivery slip, invoice, manifest, waybill or similar document shall be truly dated and signed by the licensee or his agent at the time and on the date of actual delivery of any alcoholic beverage. One copy shall be retained for a period of one year from the date thereof by the manufacturer, importer or wholesaler and the other by the purchasing licensee for a like period at its respective licensed premises, and shall be available for inspection by any person authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq., unless the Director shall have granted written permission to the manufacturer, importer, wholesaler or retailer to keep its copies at another designated place.

(c) Except that with regard to the following:

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

2. Sales or deliveries of keg beer or ale only to retail licensees, when the nature of the documentation and transaction precludes the immediate availability of all documents required in (a) and (b) above, compliance shall be deemed to have occurred when all such records are available upon completion of the operative period of the terms of such sales which shall have been set forth and shall be consistent with the seller's Marketing Manual and Current Price List pursuant to N.J.A.C. 13:2-24.

Amended by R.1985 d.333, effective July 1, 1985.

See: 17 N.J.R. 1054(a), 17 N.J.R. 1662(a).

Substantially amended.

Amended by R.1989 d.372, effective July 17, 1989.

See: 21 N.J.R. 1300(a), 21 N.J.R. 2045(a).

In (a): added "nor . . . licensee" regarding transportation and delivery requirements.

In (b): changed "three years" to "one year" requirement for delivery slips. Substituted "New Jersey Alcoholic Beverage Control Act" for "Alcoholic Beverage Law."

13:2-20.5 Eligibility for transit insignia or transportation license insignia

(a) No transit insignia or transportation license insignia shall be issued:

1. To a bonded warehouse bottling licensee, public warehouse licensee, or warehouse receipts licensee, unless such licensee also holds a license of some type which authorizes the transportation of alcoholic beverages.

2. For any motor vehicle unless it is properly registered in New Jersey or authorized to utilize New Jersey roads in accordance with State law applicable to such vehicle.

3. For any leased vehicle or other vehicle not owned by the licensee unless said lease or other document by its terms transfers to the licensee exclusive possession, control and operation of such vehicle when utilized in connection with the licensed business. A copy of the lease or other document must be furnished with any application.

(b) No transit insignia shall be issued for any solicitor's vehicle unless an agreement exists authorizing utilization of the solicitor's vehicle for purposes in furtherance of the business of the solicitor's employer.

Amended by R.1985 d.333, effective July 1, 1985.

See: 17 N.J.R. 1054(a), 17 N.J.R. 1662(a).

Old text deleted and new substituted.

Amended by R.1989 d.372, effective July 17, 1989.

See: 21 N.J.R. 1300(a), 21 N.J.R. 2045(a).

Changed section title by deleting "transportation permit" and adding "transit insignia or transportation license insignia." Revised stylistically throughout.

Restructured section by re-codifying (b)-(d) to (a)1 and 2 and (b) to clarify new eligibility standards.

In new (b): added language regarding authorization for issuance of transit insignia.

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

See: 36 N.J.R. 2411(a), 37 N.J.R. 2544(a).

Deleted "special transit insignia" throughout.

13:2-20.6 Application; fees

(a) Application for transit insignia shall be filed with the Director upon a prescribed form accompanied by the full fee of \$75.00 for each insignia payable to the order of the Division of Alcoholic Beverage Control.

(b) Application for transportation license insignia shall be filed with the Director upon a prescribed form and shall be issued at a cost of \$30.00 for each insignia payable to the order of the Division of Alcoholic Beverage Control.

1. No transportation license insignia shall be required for any vehicle operated by a parcel delivery service holding a transportation license for delivery of alcoholic beverages purchased at retail to consumers unless the vehicle is primarily and substantially used at any time for transport or delivery of alcoholic beverages.

2. The parcel delivery service must first be licensed by the Director. Application for licensure shall be made on a form to be provided by the Division.

3. An invoice must be attached to every package stating the purchaser's name, address, destination, quantity of wine being shipped and place of purchase. A copy of the original invoice must be made available for inspection by any person authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq. for a period of one year at the office of the licensee.

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

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

Amended by R.1978 d.75, effective March 1, 1978.

See: 9 N.J.R. 482(a), 10 N.J.R. 170(a).

Amended by R.1985 d.333, effective July 1, 1985.

See: 17 N.J.R. 1054(a), 17 N.J.R. 1662(a).

Substantially amended.

Amended by R.1989 d.372, effective July 17, 1989.

See: 21 N.J.R. 1300(a), 21 N.J.R. 2045(a).

In (b): stylistic revisions to conform with name change from "transportation permit" to "transit insignia."

Added new (c).

Amended by R.1993 d.288, effective June 7, 1993.

See: 25 N.J.R. 1340(a), 25 N.J.R. 2485(a).

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

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

Added (c)2 and (c)3.

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

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

Deleted ", in cash, money order or check" preceding "payable" throughout.

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

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

In (a) and (b), substituted "\$75.00" for "\$50.00"; in (c), substituted "\$30.00" for "\$20.00" in the introductory paragraph.

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

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

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

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

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

Deleted (b) and recodified former (c) as new (b).

13:2-20.7 Term of transit insignia or transportation license insignia; renewal

(a) All transit insignia expire on August 31 following their issuance unless sooner terminated by order of the Director or by surrender or termination of the basic license under which the insignia was issued.

(b) All transportation license insignia expire on June 30 following their issuance or upon sooner termination of the underlying transportation license.

(c) Renewals must be applied for in the same manner as a new insignia.

Amended by R.1985 d.333, effective July 1, 1985.
See: 17 N.J.R. 1054(a), 17 N.J.R. 1662(a).

Old text deleted and new text recodified from section 14.
Amended by R.1989 d.372, effective July 17, 1989.

See: 21 N.J.R. 1300(a), 21 N.J.R. 2045(a).
Revised section title by deleting "transportation permit" and adding "transit insignia or transportation license insignia."

Restructured section into (a)-(c), adding new language for (b).

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

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

In (a), deleted "and special transit insignia" following "All transit insignia".

13:2-20.8 Location of transit insignia or transportation license insignia

(a) Transit insignia must be directly affixed to the exterior of the vehicle on the left side thereof, so as to be clearly visible at all times.

(b) Transportation license insignia shall be affixed to the vehicle body exterior on the left driver's side of the vehicle and shall be clearly visible at all times in the same manner as a transit insignia or otherwise visibly displayed as may be determined by the Director.

Amended by R.1985 d.333, effective July 1, 1985.
See: 17 N.J.R. 1054(a), 17 N.J.R. 1662(a).

Old text deleted and new text recodified from section 12.

Amended by R.1989 d.372, effective July 17, 1989.

See: 21 N.J.R. 1300(a), 21 N.J.R. 2045(a).

Revised section title, which was "Affixing transit insignia or special transportation permit sticker to vehicle." Revised text to conform with title change.

In (b): deleted "at the time of receipt" regarding affixing of insignia and changed "left corner" to "rear corner."

Added (c).

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

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

Deleted (b); recodified former (c) as (b) and rewrote new (b).

13:2-20.9 Restrictions applicable to vehicles bearing transit insignia, special transit insignia or transportation license insignia

(a) No licensee shall allow, permit or suffer any vehicle for which a transit insignia, special transit insignia or transportation license insignia is issued to be used to transport alcoholic beverages except solely for the licensee's own business.

(b) When any transit insignia, special transit insignia or transportation license insignia shall become marred, defaced or damaged, the licensee shall forthwith notify the Director in writing, so that there may be appropriate replacement, if necessary, of such insignia.

(c) Transit insignia or special transit insignia may be used only for the vehicle for which issued, provided, however, that nothing herein contained shall prohibit the transportation of alcoholic beverages by a transferee of a license in a vehicle for which a transit insignia or special transit insignia was issued to his transferor for a period not exceeding seven

days subsequent to the effective date of the transfer of license to such transferee.

(d) A transportation license insignia is issued to the holder of a transportation license and may be used for any eligible vehicle under N.J.A.C. 13:2-20.5, provided the identity of the transportation license holder is indicated on the vehicle.

(e) Except as provided in (c) above, no licensee shall sell or otherwise dispose of any vehicle to which a transit insignia or special transit insignia is affixed, without having first removed said insignia and having notified the Director of such removal.

Amended by R.1985 d.333, effective July 1, 1985.

See: 17 N.J.R. 1054(a), 17 N.J.R. 1662(a).

Old text deleted; section amended with text from 20.12 and 13.

Amended by R.1989 d.372, effective July 17, 1989.

See: 21 N.J.R. 1300(a), 21 N.J.R. 2045(a).

Revised section title, which was "Restrictions applicable to vehicles bearing transit insignia or special transportation permit." Revised text to conform with title change.

In (c): deleted language that transportation permits are not transferable. Recodified (d) to (c) and added new (d).

13:2-20.10 Search of licensed vehicle

By acceptance of a transit insignia, special transit insignia or transportation license insignia, the licensee consents to the inspection and search of the vehicle for which such insignia is issued, without search warrant, by any person authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq.

Amended by R.1985 d.333, effective July 1, 1985.

See: 17 N.J.R. 1054(a), 17 N.J.R. 1662(a).

Old text deleted and new text recodified from section 15.

Amended by R.1989 d.372, effective July 17, 1989.

See: 21 N.J.R. 1300(a), 21 N.J.R. 2045(a).

Deleted "transportation permit" and substituted "transit insignia or transportation license insignia."

Changed "Alcoholic Beverage Law" to "New Jersey Alcoholic Beverage Control Act."

13:2-20.11 Duty of personnel delivering alcoholic beverages to consumers

It is the duty of personnel delivering alcoholic beverages to consumers to seek to determine that, at the time of delivery of product, the party signing a delivery receipt is of legal age to purchase and consume alcoholic beverages. Failure to carry out this duty by the employee shall be considered a violation and is grounds for the suspension or revocation of the employer's license.

New Rule, R.1995 d.450, effective August 21, 1995.

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

Historical Note

A former N.J.A.C. 13:2-20.11 was repealed by R.1985 d.333, effective July 1, 1985.

13:2-20.12 through 13:2-20.15 (Reserved)

Amended by R.1980 d.304, effective July 3, 1980.
 See: 12 N.J.R. 343(b), 12 N.J.R. 494(b).
 Repealed by R.1985 d.333, effective July 1, 1985.
 See: 17 N.J.R. 1054(a), 17 N.J.R. 1662(a).

SUBCHAPTER 21. TRANSPORTATION OF
 ALCOHOLIC BEVERAGES INTO,
 THROUGH OR OUT OF THE STATE

13:2-21.1 Delivery into or out of the State

Delivery of alcoholic beverages into or shipment of alcoholic beverages out of New Jersey is prohibited unless the beverages are transported by a licensee pursuant to N.J.A.C. 13:2-20 or in a vehicle bearing or carrying a permit issued in accordance with this subchapter.

Repeal and New Rule, R.1989 d.371, effective July 17, 1989.

See: 21 N.J.R. 1304(a), 21 N.J.R. 2047(a).

Section was "Importation by licensed manufacturer or wholesaler."

13:2-21.2 Interstate transportation for personal use; amount limitation; permit

(a) Alcoholic beverages intended in good faith for personal use and not for sale may be transported into this State from a point outside New Jersey by any person in a vehicle under his control, without any transportation license or permit, to the extent permitted by N.J.S.A. 33:1-2 that is, not exceeding one-fourth barrel or one case containing not in excess of 12 quarts in all, of beer, ale or porter, and one gallon of wine, and two quarts of other alcoholic beverages within any consecutive period of 24 hours.

(b) Interstate transportation of alcoholic beverages intended in good faith for personal use in excess of the limits set forth in this section is prohibited; unless the consumer:

1. Has the alcoholic beverages transported by a New Jersey licensed alcoholic beverage transporter; or

2. Acquires from the Division a special permit to authorize the interstate transportation for a fee of \$25.00 as set forth in N.J.S.A. 33:1-2. No such permit shall be issued until the applicant establishes that there has been payment of all applicable New Jersey Alcoholic Beverage taxes.

Repealed by R.1989 d.371, effective July 17, 1989.

See: 21 N.J.R. 1304(a), 21 N.J.R. 2047(a).

Section was "Transportation through New Jersey."

Recodified 13:2-21.4, with amendments, to 13:2-21.2.

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

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

Made reference to interstate transportation throughout the section; deleted (b); renumbered (c) as (b); deleted former (c)1 and increased the transportation fee.

13:2-21.3 Transportation through New Jersey

(a) Alcoholic beverages may be transported through the State of New Jersey in any vehicle provided the following terms and conditions are met:

1. No delivery is made in New Jersey;
2. The alcoholic beverages may lawfully be sold and transported from the state of origin;
3. The driver of the vehicle possesses a bona fide, accurate waybill, bill of sale, invoice, receipt or similar document stating the name and address of the seller and buyer, the type and quantity of alcoholic beverages being transported and the places of origin and destination; and
4. The alcoholic beverages may lawfully be delivered to and received in the state of destination.

Repeal and New Rule, R.1989 d.371, effective July 17, 1989.

See: 21 N.J.R. 1304(a), 21 N.J.R. 2047(a).

Section was "Importation by a licensed transporter."

13:2-21.4 Limited transportation permit

(a) Alcoholic beverages not intended for delivery, sale or use in New Jersey may be transported from the licensed premises in this State of a manufacturer, wholesaler or public warehouse licensee, to points outside this State; or between points outside this State and piers of import or export located within the State by the holder of a New Jersey transportation license or a limited transportation permit.

(b) Application for a limited transportation permit shall be made to the Division on a form prescribed by the Director accompanied by a fee of \$500.00.

(c) A limited transportation permit has a term of one year terminating on September 30, unless sooner canceled by the Director.

(d) The holder of a limited transportation permit cannot transport alcoholic beverages unless the vehicles have affixed thereto a limited transportation permit insignia.

(e) Limited transportation permit insignia are obtainable from the Division in the same manner, with the same eligibility requirements, transfer restrictions and insignia location as a transit insignia as set forth in N.J.A.C. 13:2-20. The cost for this limited transportation permit insignia is \$75.00 per vehicle.

Amended by R.1989 d.371, effective July 17, 1989.

See: 21 N.J.R. 1304(a), 21 N.J.R. 2047(a).

Recodified to 21.2 from 21.4, with stylistic changes and new subsections added.

In (a): deleted language about labeling of alcoholic beverages and added "without any transportation in N.J.S.A. 33:1-2, that is."

Added (b) and (c).

Amended by R.1993 d.288, effective June 7, 1993.

See: 25 N.J.R. 1340(a), 25 N.J.R. 2485(a).

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

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

Deleted (c)1.

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

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

In (b), substituted "\$750.00" for "\$400.00"; in (e), substituted "\$75.00" for "\$40.00".

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

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

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

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

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

In (b), substituted "\$500.00" for "\$750.00".

13:2--21.5 Emergency trip permit

(a) The Director, Division of Alcoholic Beverage Control, or any designated agent of the Director may issue a special emergency trip permit for the temporary or emergency transportation of alcoholic beverages into or out of the State in any vehicle not otherwise authorized by license or permit issued pursuant to N.J.A.C. 13:2--20 or this subchapter.

(b) An emergency trip permit shall authorize the delivery into or out of the State for a particular singular shipment identified in the permit from a specified source of origin to a specified destination. The permit shall remain in effect for the duration of the trip, or for 24 hours from the time of issuance, whichever period is longer.

(c) Applications for an emergency trip permit shall be on a form prescribed by the Director and may be issued by the Director or his designated agent for such purpose.

(d) The fee for an emergency trip permit is \$25.00, which shall be deposited in the State Treasury. A surcharge in an amount allowed by the Director may be collected and retained by the agent when the permit is issued by that designated agent.

(e) A designated agent shall maintain true and accurate books of account, electronically transmit to the Division at time of issuance a copy of the issued permit, remit emergency trip permit fees to the Division within seven business days after issuance, and post an adequate performance bond if required.

(f) A designated agent serves at the will of the Director and may be dismissed without cause upon 30 days notice.

Repeal and New Rule, R.1989 d.371, effective July 17, 1989.

See: 21 N.J.R. 1304(a), 21 N.J.R. 2047(a).

Section was "Special permits."

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

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

Provided permit effectiveness period.

13:2--21.6 Prohibited transportation; seizure of unlawful property

No alcoholic beverages shall be transported into, through or out of the State except in accordance with this subchapter. Alcoholic beverages transported in violation of this

subchapter and the vehicle containing the same, are unlawful property and are subject to seizure and forfeiture by the Director in accordance with N.J.S.A. 33:1--66.

Repealed by R.1989 d.371, effective July 17, 1989.

See: 21 N.J.R. 1304(a), 21 N.J.R. 2047(a).

Section was "Transportation by retail transit licensees."

Recodified 13:2--21.8, with amendments, to 13:2--21.6.

13:2--21.7 Search of vehicle

By acceptance of a special permit issued pursuant to this subchapter for the transportation of alcoholic beverages in excess of the quantities authorized by law, or a limited transportation permit, or an emergency trip permit, the holder of the permit consents to the inspection and search of the vehicle for which such permit is issued, without search warrant, by any person authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1--1 et seq.

New Rule, R.1989 d.371, effective July 17, 1989.

See: 21 N.J.R. 1304(a), 21 N.J.R. 2047(a).

Recodified to 21.4 from 21.7, with stylistic changes and new subsections added.

Added (b)-(c) to explain the application process, permit and cost requirements.

Original section 21.7 "Limited transportation permit" was recodified to section 21.4.

13:2--21.8 (Reserved)

Repealed by R.1989 d.371, effective July 17, 1989.

See: 21 N.J.R. 1304(a), 21 N.J.R. 2047(a).

Recodified to 21.6 from 21.8.

Substituted "this subchapter" for reference to "rules."

Added "Director in accordance with N.J.S.A. 33:1--66" as seizure authority.

SUBCHAPTER 22. LICENSEE TRAINING AND CERTIFICATION

13:2--22.1 Licensee training program established

All holders of plenary or limited retail distribution licenses issued under the provisions of N.J.S.A. 33:1--12 shall successfully complete educational training courses at such times, under such conditions, and with identified consequences for noncompliance, as are hereinafter set forth in this subchapter.

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

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

13:2--22.2 Requirements for successful completion; time for completion

(a) All holders of plenary or limited retail distribution licenses at the time this subchapter becomes operative shall successfully complete an initial educational training program within nine months of March 9, 1994. Successful completion shall entail attendance during the entire training pro-

gram and satisfactory participation in program's group exercise and questioning activities.

(b) Whenever a plenary or limited retail distribution license is acquired as a newly issued license, or by an approved person-to-person transfer of license, or any currently existing plenary or limited retail distribution license held by a corporation is subject to a change of 33 $\frac{1}{3}$ percent or more of its corporate stockholders, individuals as specified in N.J.A.C. 13:2-22.3 shall be required to attend and successfully complete an initial educational training program within nine months of acquiring the new license or 33 $\frac{1}{3}$ percent or more interest in such license.

(c) All holders of plenary or limited retail distribution licenses that have successfully completed an initial educational training program shall be required to have appropriate individuals attend and successfully complete supplemental continuing educational training programs if determined necessary by the Director based upon modifications and changes in the law, regulations, policy or societal conditions. The schedule for supplemental training shall be set forth in the Alcoholic Beverage Control Bulletin and further communicated to all affected licensees.

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

13:2-22.3 Individuals required to attend

(a) One or more of the following individuals shall be required to attend the educational training programs on behalf of the plenary or limited retail distribution licensee:

1. For licenses held by an individual as a sole proprietorship, or for licenses held by a partnership, the required attendee shall be the individual owner of the license, or at least one of the partners, respectively, if such owner or partner is actively engaged in the operation or control of the business.

2. For licenses held by a corporation, the required attendee shall be at least one of the corporate officers or a stockholder owning at least 25 percent of the corporate stock, if such person is actively engaged in the operation or control of the business.

3. Where any licensee designates a manager on its license application, the required attendee shall also include that individual, in addition to the persons identified in (a)1 or (a)2 above.

13:2–23.11 Consumption of alcoholic beverages and possession of open containers prohibited upon retail distribution licensee’s premises; exception

(a) No retail distribution licensee shall allow, permit or suffer any alcoholic beverage to be consumed in or upon the licensed premises nor shall such licensee possess or allow, permit or suffer any open containers of alcoholic beverage in or upon the licensed premises.

(b) Nothing in this provision shall prohibit opened bottles of alcoholic beverages returned by a customer as allegedly defective from being possessed by such licensee pending return to the manufacturer or wholesaler; provided the container is immediately resealed and labeled with the name and address of the customer and the date of return by the customer.

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
Revised and designated existing text as (a) and (b).

13:2–23.12 Receiving alcoholic beverages from prohibited source

(a) No retail licensee shall purchase or obtain any alcoholic beverage except from the holder of a New Jersey manufacturer’s or wholesaler’s license or pursuant to a special permit first obtained from the Director.

(b) The purchase of alcoholic beverages by one retailer from another and sale of alcoholic beverages by one retailer to another are prohibited; provided, however, that the passage of title in any alcoholic beverages from transferor to transferee of a license may be authorized by special permit obtained from the Director.

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
Designated existing text as (a) and (b).
Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).
Stylistic changes.

Case Notes

Licensee’s failure to comply with purchase and hiring regulations and statutes supports suspension. *Division of Alcoholic Beverage Control v. Chestnut, Inc.*, 97 N.J.A.R.2d (ABC) 31.

13:2–23.13 Maintaining copies of current license certificate; application; list of employees on the licensed premises

(a) No licensee holding a Class C license shall conduct the licensed business unless:

1. The current license certificate is at all times conspicuously displayed on the retail licensed premises in such plain view as to be easily read by all persons visiting such premises, with Permit for Off-Premises Storage of Business Records sticker affixed, if applicable;

2. A photostatic or other true copy of the application for the current license as well as the last filed long-form application (if current application is the short form), is kept on the licensed premises; and

3. A list, on a form prescribed by the Director, containing the names and addresses of, and required information with respect to, all persons currently employed on retail licensed premises, is kept on the licensed premises. A licensee shall be deemed to have complied with this requirement if this information is contained in a computer system, accessible from the licensed premises, and the information can be immediately produced.

(b) Such application copy and such list shall be available for inspection by the Director, the Director’s deputies, inspectors and investigators, and by any officer defined by N.J.S.A. 33:1–1(p).

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

In (a)3, specified form “promulgated” by the Director.
Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

In (a), substituted “prescribed” for “promulgated” and added (c).
Amended by R.2005 d.212, effective July 5, 2005.
See: 36 N.J.R. 4211(a), 37 N.J.R. 2544(a).
Rewrote the section.

Case Notes

Violation finding upheld; failure to keep list of employees cannot be excused by attempting to classify “exotic dancers” as independent contractors, as they were working in furtherance of the licensed premises. *G. & J.K. Enterprises, Inc. v. Div. of Alcoholic Beverage Control*, 205 N.J.Super. 77, 500 A.2d 43 (App.Div.1985).

Sales and delivery of alcoholic beverages before legal hours of sale warranted 18–day license suspension. *Hardys Liquor Deli v. Alcoholic Beverage Control*, 95 N.J.A.R.2d (ABC) 94.

13:2–23.14 Prohibition against indecent matter upon licensed premises

No licensee shall allow, permit or suffer in or upon the licensed premises or have in his possession or distribute or cause to be distributed any obscene, indecent, filthy, lewd, lascivious or disgusting recording, printing, writing, picture or other matter.

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

13:2–23.15 Possession of container mislabeled as to fill prohibited; exception

No licensee shall knowingly display, sell or deliver any alcoholic beverage in an original container having a content of fill less than that stated on the container or label thereof, subject to such tolerance as permitted by Federal law and regulation; and no licensee shall possess such a container except for the sole purpose of return for credit or replacement consistent with N.J.A.C. 13:2–23.11 and 39.1.

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

See: 11 N.J.R. 143(a), 11 N.J.R. 257(c).
Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
Corrected reference.

13:2-23.16 Prohibited promotions

(a) Except for consumer alcoholic beverage tastings or tasting dinners conducted in accordance with N.J.A.C. 13:2-37, and promotions permitted in this section, no licensee, permittee or brand registrant shall, directly or indirectly, allow, permit or suffer any practice or promotion that:

1. Offers unlimited availability of any alcoholic beverage for consumption on a licensed premises, for a set price, except for:

i. Private parties, not sponsored by the licensee, such as wedding and birthday parties, and events held by social affair permittees; or

ii. New Year's Eve parties sponsored by a licensee where a set price for attendance includes an open bar;

2. Offers to a patron or customer a free drink, gift, prize or anything of value, conditioned upon the purchase of an alcoholic beverage or product, except for:

i. Branded or unique glassware or souvenirs in connection with a single purchase;

ii. Consumer mail-in rebates offered in accordance with N.J.A.C. 13:2-24.11;

iii. Manufacturer's sweepstakes and contests, not prohibited by law, where entry or opportunity to win is open to the public without a requirement that a purchase be made;

iv. Discounts offered by retailers to consumers on the purchase of alcoholic beverages for off premises consumption;

v. Offers of not more than one free drink per patron, as a gesture of good will, in a 24 hour period, by an on-premise consumption licensee;

vi. Offers of not more than one free drink coupon, ticket, or token redeemable by a patron, once in a 24 hour period;

vii. Offers of a set price for a meal that includes a single alcoholic beverage drink; or

viii. Offers of a single bottle of wine or champagne to guests staying at a licensed hotel or motel, as part of a specialty package, provided that the primary guests are of legal drinking age;

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

4. Offers any prize, gift or award which consists of alcoholic beverages or coupons or gift certificates which may be redeemed for alcoholic beverages, such as two for one, and the like, except for a prize consisting of alcoholic beverages in sealed containers offered in a raffle licensed pursuant to N.J.S.A. 5:8-50. A coupon or gift certificate, other than a certificate purchased by a consumer for an amount equal to the dollar value of the certificate, shall expressly state that the certificate shall not be applied toward the purchase or consumption of alcoholic beverages.

(b) No prize or promotion shall be given to, nor shall any contest for consumers be open to, any person under the legal age to purchase or consume alcoholic beverage, any supplier, wholesaler, distributor or retailer; or affiliates, employees or members of the immediate family or household of any such persons or entities.

New Rule, R.1980 d.304, effective July 3, 1980.

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

Amended by R.1983 d.527, effective November 21, 1983.

See: 15 N.J.R. 1558(a), 15 N.J.R. 1946(a).

In (a)2, added "or consumer mail-in rebates offered by alcoholic beverage producers or importers in accordance with N.J.A.C. 13:2-24.11".

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

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

Excepted "consumer alcoholic beverage tastings" and "tasting dinners" from operation of section; divided (a)2 into (a)2.i and (a)2.ii; and added (a)2.iii, (b) and (c).

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

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

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

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

Rewrote the section.

Case Notes

Under New Jersey law, liability determination was limited to the inquiry surrounding negligent service of alcohol. *Zygmuntowicz v. Hospitality Investments, Inc.*, E.D.Pa.1993, 828 F.Supp. 346.

Leave granted to amend complaint to add claim for punitive damages. *Zygmuntowicz v. Hospitality Investments, Inc.*, E.D.Pa.1993, 151 F.R.D. 53.

Negligence under statute is not definable by reference to administrative regulations. *Fisch v. Bellshot*, 135 N.J. 374, 640 A.2d 801 (1994).

Hotel's "manager's reception" violated State alcoholic beverage laws. In the Matter of the Petition of Embassy Suites Hotel, 94 N.J.A.R.2d (ABC) 4.

13:2-23.17 Restriction upon limited retail distribution licensee possessing chilled malt alcoholic beverages

No limited retail distribution licensee shall possess or allow, permit or suffer any chilled malt alcoholic beverages other than chilled draught malt alcoholic beverages in kegs, barrels or similar containers of at least 7.75 fluid gallons in capacity, in or upon the licensed premises.

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

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

Added "chilled draught" exception and changed "one gallon" to "7.75 fluid gallons".

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

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

13:2-23.30 Prohibition against hindering an investigation

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

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

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

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

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

Amended by R.1990 d.412, effective August 20, 1990.
 See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
 Revised heading; stylistic revisions.
 Amended by R.1995 d.450, effective August 21, 1995.
 See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).
 Stylistic changes.
 Amended by R.2000 d.342, effective August 21, 2000.
 See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).
 Rewrote the section.

Case Notes

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

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

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

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

1. Nothing herein shall prohibit a licensee from employing in a non-managerial capacity a special police officer; and

2. A licensee, upon prior written application to and written approval by the Director, may employ a regular police officer, peace officer or other person whose powers and duties include the enforcement of the Alcoholic Beverage Law (other than an officer employed by the Division of State Police) provided that such officer shall not be employed in a jurisdiction in which the officer is officially employed and further provided:

i. Written application pursuant to (b)2 above shall include prior written approval of such employment by the chief law enforcement officer of the jurisdiction which employs said officer or person and proof that written notice of the application has been provided to the chief law enforcement officer of the jurisdiction where the licensee is located.

ii. In the case of the chief law enforcement officer seeking such employment, the prior written approval must be from the chief executive officer of the governing body of the jurisdiction which employs said chief officer;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stylistic changes.

Case Notes

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

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

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

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

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

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

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

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

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

13:2-24.8 Sales below cost; prohibited

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

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

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

13:2-24.9 Combination and tied sales

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

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

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

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

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

Amended by R.1996 d.271, effective June 17, 1996.
 See: 27 N.J.R. 2051(a), 28 N.J.R. 3177(a).

13:2-24.10 Advertising and consumer protection

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

1. Is false or misleading;
2. Is obscene or lewd;
3. Contains the name of or depiction of any biblical character or religious character or symbol;
4. Portrays a minor or child or items or symbols which are generally associated with children or which tends to induce minors to purchase alcoholic beverages;
5. Tends to create or give the impression that the use of an alcoholic beverage has curative or therapeutic effects or enhances athletic prowess;
6. Offers an alcoholic beverage product for sale to consumers which is not immediately available in reasonable supply at the price, size and age specified, unless advertised at a stated limited quantity;
7. Is in violation of any other provisions of the Alcoholic Beverage Control Act; or
8. Offers alcoholic beverage pricing information in affiliation with other non-identically owned licensees in a communication which fails to truthfully disclose and prominently indicate;
 - i. The identity of the individual licensee who established the pricing information; and
 - ii. That the specific prices and products featured may not be available at all businesses represented or indicated as being affiliated.

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

In (a), added a new 7 and recodified former 7 as 8.

13:2-24.11 Manufacturers' rebates and coupons

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

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

2. Any such rebate offer shall require a form, with all the terms and conditions of the rebate offer clearly stated thereon, to be completed and mailed by a consumer who must be of legal age to purchase alcoholic beverages. A

proof-of-purchase may also be required to be submitted with the form. Such forms shall be distributed to consumers via advertisements in newspapers, magazines, circulars of general distribution, or internet site; by general address mailings; by point-of-sale tear-off pads on retail licensed premises; or by neck-hangers or other attachments on bottles or packaging or other similar means of distribution; provided that such pads, neck-hangers, or other attachments or other similar means of distribution shall be non-discriminatorily distributed to licensees within a targeted advertising area.

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

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

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

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

New Rule, R.1983 d.361, effective September 6, 1983.

See: 15 N.J.R. 1003, 15 N.J.R. 1478(a).

Amended by R.1983 d.644, effective January 17, 1984.

See: 15 N.J.R. 1830(a), 16 N.J.R. 146(a).

(a)5 and (a)6 added, (c) added.

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

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

Added other means of providing rebate forms.

Administrative Correction.

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

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

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

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

13:2-24.12 Display services

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

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

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

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

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

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

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

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

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

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

Stylistic revision.

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

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

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

SUBCHAPTER 25. DIVERSION, TRANSSHIPMENT AND REGISTERED DISTRIBUTION

13:2-25.1 Plenary and wine wholesalers: Delivery from warehouse inventory

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

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

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

Amended by R.1980 d.72, effective February 11, 1980.
See: 11 N.J.R. 285(b), 12 N.J.R. 156(a).

13:2-25.2 Registered distribution

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

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

Case Notes

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

13:2-25.3 State beverage distributor

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

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

New Rule, R.1980 d.72, effective February 11, 1980.
See: 11 N.J.R. 285(b), 12 N.J.R. 156(a).
Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
Revised (a) to specify "any retailer or consumer" and malt beverage inventory, and (b) to include "any brand of alcoholic beverage".

Case Notes

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

SUBCHAPTER 26. RETAIL COOPERATIVE PURCHASES

13:2-26.1 Restrictions on cooperative purchases

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

1. The cooperative may hire employee(s) to act in an administrative or management capacity for the cooperative's purchase, storage and transportation of alcoholic beverages, provided:
 - i. The employee meets with the qualification requirements of N.J.S.A. 33:1-25 and N.J.A.C. 13:2-14.5;
 - ii. The employee applies for and receives a permit from the Director of the Division of Alcoholic Beverage Control upon a format prescribed by the Director; and
 - iii. The employee has no ownership of, employment with or financial interest in a Class A, B or C license;
2. The number of Class C licensees joined in any agreement shall not exceed the largest number of plenary retail distribution licenses, as defined in N.J.S.A. 33:1-12(3)(a), issued to any one person or entity in this State at the time of the prior most recent annual renewal of such licenses;
3. No cooperative agreement may prohibit any licensee from joining any other cooperative agreement;
4. No cooperative agreement may prohibit any retailer from advertising or selling any product at any otherwise lawful price;
5. Any licensee may withdraw from any cooperative agreement upon 30 days written notice and no penalties may be charged for such withdrawal;
6. All purchases on credit through or by cooperative agreement shall be reduced to writing, signed by the wholesaler and each individual participating member of the cooperative, and be consistent with the credit provisions of N.J.A.C. 13:2-24. Such credit terms shall include adequate assurances of payment by each individual participating member by either the posting of a bond by the cooperative member or a provision that each member of the cooperative shall be jointly and severally liable for payment for the purchases made through the cooperative. A copy of such written agreements shall be maintained by the wholesaler in its marketing manual and by the registered buying cooperative;
7. All individual purchases through or by cooperative agreement shall be separately invoiced consistent with N.J.A.C. 13:2-20.4, and shall contain the cooperative's registration number;

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

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

10. Any purchase or transfer in violation of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq. or the regulations promulgated thereunder, shall be a violation by all members of the cooperative purchase agreement;

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

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

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

(b) No cooperative buying group may participate in any business transaction permitted by (a) above, unless the cooperative is registered with the Division in a form prescribed by the Director. Such registration shall include:

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

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

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

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

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

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

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

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

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

In (a), stylistic revisions; corrected references.

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

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

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

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

13:2-27.1 Adoption of Federal requirements

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

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

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

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

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

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

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

13:2-27.2 Deposit marked containers

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

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

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

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

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

SUBCHAPTER 28. (RESERVED)

SUBCHAPTER 29. RECORDS

13:2-29.1 Public records

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

1. All license or permit applications filed with the Director, subject to nondisclosure of information protected by Federal or State law;
2. All filed administrative disciplinary charges, transcripts of Division disciplinary hearings, Office of Administrative Law initial decisions and reports and recommendations, and Conclusions and Orders of the Director;
3. All filed administrative appeal pleadings, transcripts of Division appeal hearings, Office of Administrative Law initial decisions and reports and recommendations, and Conclusions and Orders of the Director;
4. All Ordinances or Resolutions of local issuing authorities that may be filed with the Division;
5. All product information and other filings required to be made by licensees and permittees by law or regulation; and
6. All records, pleadings, documents and orders, exclusive of investigative reports, pertaining to duly instituted seizure proceedings, pocket license applications and tax revocation proceedings.

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

13:2-29.2 Confidential records

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

1. All initial reports received concerning alleged violations;

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

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

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

5. All such other documents, records, reports and memoranda the Division shall possess, where the primary purpose is the investigation and enforcement of the Alcoholic Beverage Law and its regulations;

6. All solicitors' statements of compensation; and

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

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

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

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

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

1. First page to Twentieth page _____ \$1.00 per page;
2. Twenty-first to Fortieth page _____ \$0.75 per page;
3. All pages over Forty (40) _____ \$0.50 per page.

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

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

made available, in the discretion of the Director, upon payment of such special costs relating to the development and reproduction thereof, and upon such terms as shall insure their integrity and the privacy of information contained therein, when required by law.

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

Stylistic revisions.

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

Stylistic changes.

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

(a) Upon written application to the Director, the Director may, in the sound exercise of his or her discretion, issue a permit for the off-premises storage of the records listed in N.J.A.C. 13:2-23.32(a)5, (b) and (c) that are in excess of three months old, provided that such storage permits access to all required records so that they are "readily retrievable" and "accurate."

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

1. Not more than three months old and are produced for inspection immediately upon demand; or
2. In excess of three months old and produced for inspection within seven business days.

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

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

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

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

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

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

Added (d).

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

Rewrote the section.

13:2-29.5 Inspection by other governmental agencies

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

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

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

SUBCHAPTER 30. REGISTRATION OF STILLS

13:2-30.1 Stills to be registered

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

13:2-30.2 Registration form; contents

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

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

Specified "forms promulgated by the Director".

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

Substituted "prescribed" for "promulgated".

13:2-30.3 Possession of registry certificate on premises

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

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

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

13:2-30.4 Removal of registered still

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

13:2-30.5 Sale of registered still; notice

When any registered still, distilling apparatus and parts thereof are sold or become the subject of a contract of sale, the registrant shall forthwith notify the Director of the name and address of the purchaser and the place where said still, distilling apparatus and parts thereof are to be delivered.

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

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

SUBCHAPTER 31. SEIZURE HEARINGS

13:2-31.1 Hearings generally

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

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

Deleted language regarding hearings open to the public.

13:2-31.2 Procedures; return of property seized

(a) Prior to final determination by the Director, claims for the return of property seized under N.J.S.A. 33:1-66 or N.J.S.A. 33:2-3 may be made to the Director by payment in cash, under protest, of the retail value of the seized property, or by the posting of a proper bond with sureties satisfactory to the Director in a sum double the retail value of the property. In lieu of such cash bond or surety bond, a claimant may institute an action for replevin against the Director in any court of competent jurisdiction according to the forms and procedure, including the delivery of a bond, of such court; such action to be commenced within 30 days from the seizure of such property and not thereafter. The Director may, in the exercise of sound discretion, refuse to entertain any such claim for the posting of a bond to obtain return of the property seized made more than 30 days from the date of the final order of forfeiture.

(b) The Director's appraisal of the retail value of seized property, upon claim for its return, shall be controlling.

(c) A person making payment in cash, or the posting of a proper bond, under protest, may either institute suit to recover such payment in a court of competent jurisdiction under the provisions of N.J.S.A. 33:1-66 or elect, by written stipulation satisfactory to the Director, to have the matter heard as a contested case and to have the Director decide whether the claim shall be recognized or denied, and whether such cash or bond should be forfeited or returned.

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

Stylistic revisions.

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

Stylistic changes.

13:2-31.3 Forfeiture and sale of seized property

(a) The order of forfeiture of seized property after hearing terminates all property interests therein and in any proceeds therefrom, including the interests of the owner, any conditional vendor, chattel mortgagee or lienor. The standards and procedure on claims addressed to the Director for the return of unlawful property or recognition of outstanding interests therein shall be as provided in (b), (c) and (d) below.

(b) Claims may be made by the person whose property has been seized or forfeited for the return of seized property on the ground that the claimant has acted in good faith and has unknowingly violated the law, by presenting evidence to that effect at the hearing. The Director may require a claimant to file a verified petition setting forth in detail all of the facts relied upon. Where the Director is satisfied that the claimant has acted in good faith and has unknowingly violated the law, he or she may order the return of the

property upon payment by claimant of reasonable costs of seizure and storage.

(c) Claims may be made by any person having a bona fide and valid lien upon or interest in the seized or forfeited property for the recognition of the validity and priority of such lien or interest, by presenting evidence at the hearing that such claimant has acted in good faith, and had no knowledge of the unlawful use to which the property was put, or of such facts as would have led a person of ordinary prudence to discover such use. The Director may require such claimant to file a verified petition setting forth in detail the facts relied upon. If the claim is established to the satisfaction of the Director, the return of the property to the claimant may be ordered where it appears that the amount or value of such lien or interest exceeds the value of the property, subject to payment of reasonable costs of seizure and storage; or order the retention of the property for the use of the State, subject to the payment of the lien or interest less costs of seizure and storage; or order the sale of the property, subject to the payment of the lien or interest out of the proceeds of sale, after first deducting the reasonable costs of seizure and storage.

(d) Claims may be made by a common carrier whose vehicle has been seized for return of the vehicle by filing a verified petition with the Director substantiating such interest, together with a statement that claimant has acted in good faith and had no knowledge at the time of the seizure that the vehicle contained illicit alcoholic beverages. The Director may, if satisfied that these facts are established, order the return of the seized vehicle to the common carrier.

(e) Sale of forfeited property shall be conducted pursuant to the provisions of N.J.S.A. 52:27B-68.

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

Revised (c), regarding establishment of claim.

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

Added (e).

Case Notes

Seizure of property and cash from cafe owner who sold alcohol without license was upheld. *Micco v. Division of Alcoholic Beverage Control*, 96 N.J.A.R.2d (ABC) 140.

Property on unlicensed premises subject to forfeiture when used in unlawful alcoholic beverage activity. *Alcoholic Beverage Control v. Fernandes*, 95 N.J.A.R.2d (ABC) 103.

13:2-31.4 Hearing procedure

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.

Amended by R.1979 d.393, effective October 1, 1979.
See: 11 N.J.R. 580(f).

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

Stylistic revisions.

SUBCHAPTER 32. (RESERVED)

SUBCHAPTER 33. PRODUCT INFORMATION
FILING: BRAND REGISTRATION

13:2-33.1 Brand registration schedule

(a) No licensee shall knowingly sell, offer for sale, deliver, receive or purchase, for resale in New Jersey, any alcoholic beverage (including private label brands owned by a retailer or exclusive brands owned by a manufacturer or wholesaler and sold by such manufacturer or wholesaler exclusively to one New Jersey retailer or group of affiliated retailers) unless there is first filed with the Director of the Division of Alcoholic Beverage Control a schedule, for each separate alcoholic beverage product, listing the following:

1. The full and correct brand or trade name;
2. Its nature and type;
3. Its age or vintage and proof or percentage of alcoholic content when stated on the label;
4. The sizes of standard packaging and the standard number of unit containers per standard case;
5. The date of label approval granted by the Federal Bureau of Alcohol, Tobacco and Firearms (B.A.T.F.), together with a copy of the B.A.T.F. Form 1649;
6. The names and license numbers of each New Jersey Class B licensee designated by the filer to be an authorized distributor of the product at wholesale;
7. The full name, address, telephone number, taxpayer identification number and New Jersey license number (if any) of the filer; and
8. An indication whether the schedule is an original filing or an amendment to any existing one.

(b) The brand registration schedule shall be filed by:

1. The manufacturer, importer or wholesaler who owns the brand or trade name and label; or
2. An importer or a wholesaler selling such brand who is appointed as authorized agent by the brand owner for the purpose of filing the brand registration schedule; or
3. In the case of private label brands, by the manufacturer or wholesaler supplying such private label brand to the retailer or by any wholesaler having authority, in writing, from the retailer or affiliated retailers owning such private label brand, except where the alcoholic beverages are imported by the retailer under a special permit issued by the director, in which case the retailer shall file the schedule and the labels.

(c) Whenever any change occurs, including but not limited to the addition or deletion of an authorized wholesaler, the filer of the brand registration schedule shall file an amended brand registration schedule within 10 days after the occurrence of such change.

Amended by R.1974 d.349, effective December 19, 1974.

See: 6 N.J.R. 437(c), 7 N.J.R. 13(b).

Amended by R.1985 d.279, effective June 3, 1985.

See: 17 N.J.R. 794(a), 17 N.J.R. 1423(a).

Substantially amended.

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

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

In (a), clarified text.

Case Notes

Rule not promulgated to allow circumvention of importer-wholesaler antidiscrimination statute, but to identify the distribution network of alcoholic beverages to insure tax integrity: statute violation found. Joseph H. Reinfeld, Inc. v. Schieffelin & Co., 94 N.J. 400, 466 A.2d 563 (1983).

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

13:2-33.2 Filing fees and forms

(a) Each filing of an original brand registration schedule shall be accompanied by a nonrefundable fee of \$23.00, and each filing of an amendment to a previously filed brand registration schedule shall be accompanied by a nonrefundable fee of \$10.00. Such fees shall be payable to the Division of Alcoholic Beverage Control.

(b) All filings shall be made on a form which the director shall provide for the filing of brand registration schedules. Filers, however, may utilize a photocopy of the form.

Amended by R.1985 d.279, effective June 3, 1985.

See: 17 N.J.R. 794(a), 17 N.J.R. 1423(a).

Old text deleted and new text substituted.

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

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

Increased filing fees.

Administrative change.

See: 31 N.J.R. 1360(a).

SUBCHAPTER 34. RESTRICTED BREWERY

13:2-34.1 Application for restricted brewery license

(a) All applicants for a restricted brewery license shall comply with the application, advertising and hearing provisions of this chapter. The application shall be accompanied by a description of the intended activities to be conducted under the authority of this license. The statement shall include the following information:

1. The amount of malt alcoholic beverage intended for brewing per year;
2. The site of restricted brewery license activities (must be immediately adjacent to retail license restaurant premises);
3. The name and license number of restaurant and seating capacity;
4. The license number of any other restricted brewery license which is issued to the plenary retail consumption licensee;
5. The manner in which the malt alcoholic beverage product will be sold by the open container, for immediate consumption on the restaurant premises, or as package goods for off premises consumption; and
6. A sketch of the proposed area of the licensed premises specifically setting forth the area in which the malt alcoholic beverage product will be sold.

(b) All applicants for a restricted brewery license shall provide this Division with the following documents:

1. Proof of posting of a tax bond with the New Jersey Division of Taxation;
2. Proof of registration as a brewer with the United States Bureau of Alcohol, Tobacco and Firearms (must be registered prior to issuance of license);
3. Compliance with all State, county and/or local requirements associated with manufacturing and waste water discharge;
4. Proof of notice to local issuing authority regarding intention to operate restricted brewery; and
5. Certification from local issuing authority that applicant has present ownership of an active plenary retail consumption license operated in conjunction with a restaurant.

13:2-34.2 License fees

There is a base license fee of \$1,250 which must be paid at the time of the initial application. This fee shall entitle the licensee to brew up to one thousand 31 fluid gallon barrels per year. There is an additional \$625.00 fee for every additional 1,000 barrels up to a 3,000 annual barrel limit. All fees shall be payable to the Division of Alcoholic Beverage Control.

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

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

Substituted "\$1,250" for "\$1,000" and "\$625.00" for "\$500.00".

13:2-34.3 Restaurant premises

(a) For the purposes of this license, a restaurant is defined as a premises which is regularly and principally used for the purpose of providing meals to its customers and having adequate kitchen and dining room facilities. The

applicant shall submit a sketch of the restaurant premises which must be immediately adjacent to the restricted brewery. The sketch shall reflect the seating capacity of the restaurant, the menu provided to customers and the layout of the restaurant showing where the malt alcoholic beverage will be sold for off premises consumption, if any.

(b) The Director shall issue a restricted brewery license only to persons or entities who have identical ownership of an active plenary retail consumption license operated in conjunction with an immediately adjacent restaurant as defined herein. A site visit by the Division will be conducted to ensure compliance with these regulations.

(c) For purposes of this subchapter, the term "adjacent" shall include but not be limited to those premises which are entirely surrounded and enclosed within the restaurant licensed premises.

13:2-34.4 Tasting and sale for off-premises consumption

(a) A restricted brewery licensee may offer, without charge, no more than five ounces of the brewed malt alcoholic beverage for consumption on the licensed premises as a sampling of the brewed product. This sampling shall not be offered to the same customer more than once, for each malt beverage brewed on the premises, during the hours of sale on any day.

(b) In addition to the sale of brewed malt alcoholic beverage for on premises consumption, sales for off premises consumption may be conducted on the retail licensed premises.

(c) The containers in which the malt alcoholic beverage are sold for off-premises consumption shall be sealed refillable containers having labeling approved by the Division. The containers may be returned to the restricted brewery and at the time of refill shall be sealed by the licensee.

(d) Display and sale of the malt alcoholic beverages for off-premises consumption on the restaurant licensed premises shall comply with all pertinent provisions of N.J.A.C. 13:2-35.

13:2-34.5 Hearings

The Director shall hold a hearing if the governing body of the municipality in which the license will be located files a written objection with the Director. The Director shall thereafter issue the license only if such issuance will not be contrary to the public interest.

13:2-34.6 Disciplinary proceedings

Any disciplinary proceedings against a restricted brewery license shall be in accordance with N.J.A.C. 13:2-19. The institution of disciplinary proceedings against a restricted brewery license shall be considered separate and distinct from and shall not adversely affect the status of the plenary retail consumption license owned by the person or entity

holding the restricted brewery license. However, the Director may institute disciplinary proceedings against the plenary retail consumption license when the factual basis of the violation charged involves the operation of both the plenary retail consumption license and the restricted brewery license.

Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).
Added (a)4 and (a)5.

Case Notes

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

SUBCHAPTER 35. SALE AND DISPLAY OF ALCOHOLIC BEVERAGES IN ORIGINAL CONTAINERS BY CONSUMPTION LICENSEES NOT HOLDING THE BROAD PACKAGE PRIVILEGES

13:2-35.2 Prohibition on sales of package goods from other than the principal barroom except by holders of the broad package privilege

13:2-35.1 Definitions

(a) For the purpose of this regulation:

(a) No holder of a plenary retail consumption license or seasonal retail consumption license, except as provided by N.J.S.A. 33:1-12.24 and 12.25, shall sell or display for sale any alcoholic beverage in the original container for off-premises consumption except from and in the bona fide public barroom of the licensed premises (the privilege to engage in such sale and display in other than such barroom being known as the "Broad Package Privilege") unless:

1. A public barroom shall be a room containing a public bar, counter or similar piece of equipment, which must occupy not less than 15 percent of the total square footage of said room and which is designed for and used to sell and dispense alcoholic beverages by the glass or other open receptacle for consumption on the licensed premises.

1. On or before June 30, 1948, the Director of the Division of Alcoholic Beverage Control received from such a licensee's municipal license issuing authority certification that such licensee, on May 27, 1948, sold alcoholic beverages in original containers for consumption off the licensed premises, either to the exclusion of sale for consumption on the licensed premises or upon a portion of the licensed premises other than the public barroom; or

2. The public bar, counter or similar piece of equipment must be equipped with hot and cold running water, sink, drainboard, a sufficient number of bar stools (minimum of one for each three feet of bar perimeter), utensils and glassware for the making and serving of mixed drinks, and a sufficient number of opened bottles of alcoholic beverages for the service of drinks to be consumed upon the licensed premises. A substantial portion of the bar must be visible from all public entrances to the barroom.

2. The Director of the Division of Alcoholic Beverage Control has approved a verified petition, received on or before June 18, 1948, by such a licensee alleging that on May 27, 1948, such licensee was not actually engaged in the sale of alcoholic beverages in original containers for off-premises consumption from a portion of the licensed premises other than the public barroom by reason of:

3. The principal public barroom shall be the room in which the main public bar is located. In determining which public barroom shall constitute the principal public barroom, consideration shall be given to the nature of the operation and volume of alcoholic beverage business for consumption on the licensed premises, the accessibility to the barroom, the size of the barroom, and the hours of operation.

i. Building alteration or construction in progress;

4. A "perimeter wall" of a barroom is defined as an external, generally weight bearing wall of the barroom.

ii. Prior destruction or loss of possession of the licensed premises; or

5. The "outside edge" of the cashier (package goods) sales counter is defined as the edge away from the licensee's employee who is conducting sales (that is, the edge of the counter immediately facing the customer). The counter, the walking space behind the counter, and any shelving attached to the perimeter wall (behind the counter) must fall within the five foot limitation as set out in N.J.A.C. 13:2-35.4(a)2.

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

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

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

(b) However, in any city of the first class which prohibits the Sunday sale of alcoholic beverages for consumption on the premises, no licensee shall allow, permit or suffer the sale, service or delivery of any alcoholic beverage at retail in its original container for consumption off the licensed premises or the removal of any alcoholic beverage in its original container from retail licensed premises, at any hour on any Sunday.

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

Revised to include wine; deleted "bottle or can" from "original containers".

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

Added references to Sunday sale hours in existing text and added (b) regarding prohibition of Sunday sales in first class cities.

13:2-38.3 (Reserved)

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

Added "whether for on-premise or off-premise consumption".

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

Section was "Municipal ordinances and regulations".

SUBCHAPTER 39. RETURN OF ALCOHOLIC BEVERAGES; SOLICITOR'S DELIVERY

13:2-39.1 Reasons authorizing return of alcoholic beverages; inclusion in marketing manual; other required records

(a) No manufacturer, brewer, winery, distiller, rectifier and blender, wholesaler or distributor privileged to sell to retailers shall accept a return of any alcoholic beverages from a retail licensee for cash, credit or exchange, nor shall any retail licensee accept any cash, credit or exchange, except for one of the following reasons:

1. Defective product and breakage which occurred prior to or simultaneously with delivery of such products to the retailer;
2. Bona fide error in product delivered;
3. Product which may no longer be lawfully sold;
4. Product on hand when retail licensee terminates business (subject to applicable rights of other persons protected by State or Federal laws);
5. Change in product or labeling of product;
6. Discontinued product;
7. Product likely to spoil from retailers who are only open for a portion of the year;
8. Rotation of malt alcoholic beverage product consistent with the policy established by the brewer; or

9. Such other good cause as may be approved by the Director.

(b) A manufacturer, brewer, winery, distiller, blender and rectifier, wholesaler or distributor privileged to sell to retailers is not required to accept returns from a retail licensee for any of the reasons enumerated in (a) above; but should such licensee do so, the return policy shall be clearly identified in its "Marketing Manual" and shall be nondiscriminatorily applied to all similarly situated retail licenses.

(c) Every return of an alcoholic beverage by a retail licensee shall be accompanied by a return document truly dated and signed by a duly authorized representative of both the wholesale and retail licensee, and contain a detailed description of all product returned, the specific reason for the return, the original date of delivery and invoice number of the original purchase, the date of pick-up or return, the name of the person requesting the return, and the terms of return, that is, cash, credit or exchange. A copy of the return document shall be left with the retail licensee.

(d) The return document shall be retained for a period of one year on the licensed premises, unless the Director shall have granted to the licensee written permission to keep such documents at another designated place. Licensees shall make the return documents available for inspection by any person authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq.

Repeal and New Rule, R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Section was "Credit terms; disclosure on documents". The following annotations pertained to that section:

Amended by R.1975 d.238, effective September 2, 1975.

See: 7 N.J.R. 336(a), 7 N.J.R. 436(c).

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

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

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

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

Stylistic changes.

13:2-39.2 Salesman or retailer pick-up notice

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

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

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

Recodified from 13:2-39.5 by R.1990 d.412, effective August 20, 1990. See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Prior text at 13:2-39.2, "Delivery and transportation documents", repealed. The following annotation pertained to that section:

Recodified by R.1979 d.138, effective May 1, 1979. See: 11 N.J.R. 143(a), 11 N.J.R. 257(c).

13:2-39.3 (Reserved)

New Rule, R.1979 d.138, effective May 1, 1979. See: 11 N.J.R. 143(a), 11 N.J.R. 257(c). Repealed by R.1981 d.71, effective November 1, 1981. See: 13 N.J.R. 37(b), 13 N.J.R. 238(b).

13:2-39.4 (Reserved)

New Rule, R.1979 d.138, effective May 1, 1979. See: 11 N.J.R. 143(a), 11 N.J.R. 257(c). Repealed by R.1990 d.412, effective August 20, 1990. See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c). Section was "Return of alcoholic beverages".

SUBCHAPTER 40. ISSUANCE OF IDENTIFICATION CARDS BY COUNTY CLERKS

13:2-40.1 Form of application; contents

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

State of New Jersey, County of _____

IDENTIFICATION CARD APPLICATION

TO: County Clerk of County, New Jersey. The undersigned hereby applies for an identification card as proof of age, and submits the required fee in the amount established by law.

- 1. Full name of applicant (First) (Middle) (Last)
2. Residence address
3. Height (Ft.) (In.) Weight Color of Eyes Color of Hair
4. Date of Birth
5. Place of Birth (Municipality) (County) (State)
6. Father's name (First) (Middle) (Last)
7. Mother's Maiden Name (First) (Middle) (Last)
8. The applicant presents one or more of the following certificates to establish his or her age (check appropriate line):
- Birth Certificate
- Naturalization Certificate
- Voter Registration Certificate
- Other (_____)

Note: Duplicate driver's licenses from any state will not be accepted as proof of age or identity.

- 9. The applicant submits two (2) recent color photographs, approximately 1 1/2 inches by 1 1/2 inches in size, of himself or herself, full face, without hat.
10. Has the applicant ever previously applied for an identification card.

If so, state the details thereof _____

WARNING: Any person not entitled thereto who shall have unlawfully procured or have issued or transferred to him or her an identification card shall be guilty of a disorderly persons offense and shall be sentenced to pay a fine of not more than \$300.00 or imprisonment for not more than 60 days. N.J.S.A. 33:1-81.7.

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

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

DO NOT WRITE BELOW THIS LINE

Photo 1 1/2" x 1 1/2" Identification Card Number Date of Issuance Issued by

Amended by R.1980 d.304, effective July 3, 1980. See: 12 N.J.R. 343(b), 12 N.J.R. 494(b). Amended by R.1985 d.395, effective August 5, 1985. See: 17 N.J.R. 1380(a), 17 N.J.R. 1900(a). Application card fee changed from "\$2.00" to "\$4.00". Amended by R.1987 d.399, effective October 5, 1987. See: 19 N.J.R. 1410(a), 19 N.J.R. 1823(a). Deleted "of \$4.00" from form and substituted "in the amount established by law." Amended by R.1995 d.450, effective August 21, 1995. See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a). Added "Note" regarding duplicate driver's licenses in the application form.

13:2-40.2 Establishment of age

The applicant shall to the satisfaction of the county clerk establish his or her age by presentation of a birth certificate, naturalization certificate or any other proof required by the county clerk, which after examination shall be returned to the applicant. However, duplicate driver's licenses from any state shall not be used as proof of age or identity in applying for or receiving a County Identification Card.

Amended by R.1985 d.395, effective August 5, 1985. See: 17 N.J.R. 1380(a), 17 N.J.R. 1900(a). Added text "or her". Amended by R.1995 d.450, effective August 21, 1995. See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a). Added reference to duplicate driver's licenses.

13:2-40.3 Applicant's photographs

The applicant shall submit two recent photographs, approximately 1 1/2 inches by 1 1/2 inches in size, of himself or herself, full face, without hat.

13:2-40.4 Execution of application

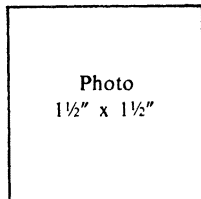
The applicant shall sign the application in the presence of the county clerk or his duly authorized deputy, who shall also sign and date such application.

13:2-40.5 Identification card; form

The identification card shall be 3½ inches wide by 2½ inches high in size, with black print on goldenrod basket

weave safety paper containing a hidden Seal of New Jersey and the words State of New Jersey on its front side which is only visible under ultraviolet light, in the following form:

FRONT SIDE



) STATE OF NEW JERSEY
) COUNTY OF
) IDENTIFICATION
) CARD NO.
) —THIS IS TO CERTIFY THAT—
)
) —WHO RESIDES AT—
)
)
) HAS FURNISHED TO THE UNDER-
) SIGNED SATISFACTORY EVIDENCE
) OF HAVING ATTAINED THE AGE OF
) 21 YEARS.

HGT. WGT.

HAIR EYES

DATE OF
 BIRTH

ATTEST: _____
 County Clerk or duly authorized deputy

 Date of Issuance

Holder's
 Signature _____

REVERSE SIDE

WARNING:

It shall be unlawful for the owner of an identification card to transfer said card to any other person for the purpose of aiding such person to secure alcoholic beverages. Any person who shall transfer an identification card for the purposes of aiding the transferee to obtain alcoholic beverages and any person not entitled thereto who shall have unlawfully procured or have issued or transferred to him or her an identification card shall be guilty of a disorderly persons offense and, upon conviction thereof, shall be sentenced to pay a fine of not more than \$300.00, or imprisonment for not more than 60 days. N.J.S.A. 33:1-81.7.

ALCOHOLIC BEVERAGE LICENSEES NOTE:

The presentation of this identification card by any person in connection with the purchase or attempted purchase of any alcoholic beverage shall constitute a defense to a charge under N.J.S.A. 33:1-77, if the retail licensee makes the sale in good faith reliance on this card and the appearance of the purchaser was such that an ordinary prudent person would believe the card holder to be of legal age.

State No. (preprinted sequential control number)

Amended by R.1985 d.395, effective August 5, 1985.

See: 17 N.J.R. 1380(a), 17 N.J.R. 1900(a).

Substantially amended.

Amended by R.1987 d.399, effective October 19, 1987.

See: 19 N.J.R. 1410(a), 19 N.J.R. 1823(a).

Deleted text "of white index . . . with black print" and substituted "with black print . . . under ultraviolet light."

Correction: Changed front of Identification Card.

See: 20 N.J.R. 425(a).

13:2-40.6 Issuance of card; procedure

One of the submitted photographs of the applicant shall be mounted on an identification card in the upper left portion of the front side thereof. The card shall be signed by the applicant in the presence of the county clerk or his duly authorized deputy, who shall also sign the card. The official County seal shall be affixed so that it overlaps the photograph and a portion of the printed card. The card shall be inserted into a 10 gauge plastic sleeve that has on its back flap a red ink embossed Great Seal of the State of New Jersey. The plastic will be heat sealed and the laminated card delivered to the applicant. The other photograph of the applicant shall be attached to the application, which shall indicate the date of issuance of the card, the number thereof and the name of the person who issued it. A permanent record thereof shall be retained in the county clerk's office.

Amended by R.1985 d.395, effective August 5, 1985.

See: 17 N.J.R. 1380(a), 17 N.J.R. 1900(a).

Substantially amended.

Amended by R.1987 d.399, effective October 19, 1987.

See: 19 N.J.R. 1410(a), 19 N.J.R. 1823(a).

Substantially amended.

13:2-40.7 Fees

A fee in the amount established by law shall be paid to the county clerk for the issuance of an original identification card. In the event the card is lost, stolen or destroyed, the holder thereof may apply for a replacement card with new numbers by filing a new application in the same manner as

for an original, with payment of fee along with an affidavit as to the loss, theft or destruction of the original card. Every replacement card shall prominently have stamped, typed or otherwise imprinted on the card the word "Duplicate".

Amended by R.1985 d.395, effective August 5, 1985.

See: 17 N.J.R. 1380(a), 17 N.J.R. 1900(a).

Fees changed from "\$2.00" to "\$4.00".

Amended by R.1987 d.399, effective October 19, 1987.

See: 19 N.J.R. 1410(a), 19 N.J.R. 1823(a).

Deleted "upon payment of an additional \$4.00 fee and upon making"; substituted "with payment of fee" and "in the amount established by law".

SUBCHAPTER 41. ISSUANCE OR TRANSFER OF PLENARY RETAIL CONSUMPTION LICENSES TO NON-PROFIT MUSICAL OR THEATRICAL CORPORATIONS; QUALIFICATIONS OF RESTAURANT OPERATORS

13:2-41.1 Plenary retail consumption licenses for non-profit musical or theatrical corporations; restaurant operator; definitions

(a) For the purpose of this subchapter:

1. A "non-profit corporation" suitable for licensure is a bona fide non-profit entity which conducts musical or theatrical performances or concerts on a regular basis on premises with a total seating capacity of 1,000 persons or more.

2. "Licensed premises" shall include the premises where the musical or theatrical performance or concert is held, as well as any adjacent premises owned and operated by the non-profit licensee, and which premises have been licensed under an approved issuance or place-to-place transfer application.

3. A "restaurant operator" is a retail licensee or permittee or any person who has been qualified and approved for a retail license under the applicable provisions of the law and authorized by the Director to sell alcoholic beverages under the license issued to the non-profit corporation.

13:2-41.2 Issuance of special license

(a) All applicants for a special license issued pursuant to N.J.S.A. 33:1-19.7 shall comply with the application, advertising and hearing provisions of N.J.A.C. 13:2-2.

(b) A local issuing authority shall take no action upon an application for a license by a non-profit corporation until receiving the approval of the Director. Approval of an application will be conditioned upon a certification by the issuing authority and a finding by the Director that the following conditions have been satisfied:

1. The municipality intends to issue this special plenary retail consumption license;

2. The applicant is a bona fide non-profit corporation;

3. The applicant has exclusive possession and control of the premises to be licensed and the premises meet the requirements of N.J.S.A. 33:1-19.7; and

4. The applicant and premises are qualified for licensure and are in compliance with all applicable provisions of law.

13:2-41.3 Qualification of restaurant operator

(a) An application submitted by a restaurant operator to exercise the privileges of a special plenary retail consumption license issued to a non-profit corporation holding a special license issued pursuant to N.J.S.A. 33:1-19.7, may be approved by a local issuing authority upon receipt of the prior authorization of the Director.

(b) The Director's authorization is conditioned upon a finding that one of the following conditions has been satisfied:

1. The restaurant operator currently is a qualified retail licensee or permittee; or

2. If the restaurant operator is not currently a qualified retail licensee or permittee, the local issuing authority has caused an investigation into the background of the applicant and has certified to the Director that the restaurant operator has complied with the provisions of N.J.A.C. 13:2-2.

(c) All restaurant operator applicants shall disclose:

i. The source of all funds used in the purchase of the license and the licensed business and have submitted all documents concerning their business arrangements with the non-profit corporation holding the license; and

ii. Any other information that the Director may deem appropriate.

13:2-41.4 Privileges and limitations of special license

(a) A license issued pursuant to the provisions of N.J.S.A. 33:1-19.7 authorizes the sale of alcoholic beverages for consumption on the licensed premises only during performances and two hours immediately preceding and immediately following performances.

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

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

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

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

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

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

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

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

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

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

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

Authority

N.J.S.A. 33:1-39, 33:1-12.18 and 33:1-12.39.

Source and Effective Date

R.2003 d.436 effective November 3, 2003.
See: 35 N.J.R. 2810(a), 35 N.J.R. 5122(a).

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

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

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

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

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

1. Complete identification of the licensee and the license number;
2. Proof that the application for a new license and the appropriate fees were submitted to the municipal issuing authority on or before September 28 of the year beginning the license term or proof that the licensee attempted to submit such an application and fees;
3. A recitation of any efforts that were made to renew the license by July 30 of the year beginning the license term for which renewal is sought, including, but not limited to, the specific dates and details of any such efforts;
4. Whether the licensee has previously sought relief from the Director pursuant to N.J.S.A. 33:1-12.18; and
5. The signature of a notary or other person authorized to administer oaths in the State of New Jersey.

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

13:2-42.3 Role of the municipal issuing authority

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

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

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

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

13:2-42.5 No right to a hearing

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

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

Authority

N.J.S.A. 33:1-39, 33:1-12.18 and 33:1-12.39.

Source and Effective Date

R.2003 d.436, effective November 3, 2003.
See: 35 N.J.R. 2810(a), 35 N.J.R. 5122(a).

13:2-43.1 Required filings

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

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

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

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

1. Complete identification of the licensee and the license number;
2. The date on which the license became inactive and why;
3. Facts which demonstrate a willingness on the part of the licensee to activate the license;
4. All efforts made by the licensee to activate the license;
5. Monetary expenditures incurred towards activation;
6. The prognosis for activation;
7. Any factors outside of the licensee's control that may have thwarted efforts to activate the license;

8. The need for any further active licenses in the community;

9. Whether the licensee has previously sought relief from the Director pursuant to N.J.S.A. 33:1-12.39; and

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

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

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

13:2-43.3 Role of the municipal issuing authority

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

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

13:2-43.4 Eminent domain and casualty exception

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

13:2-43.5 Standard of review

(a) The statutory standard to be applied in granting or denying a Special Ruling is good cause. In situations where there is a multi-term inactive license, there is a direct relationship between the length of inactivity and the prognosis for activation, as it relates to the quantum of proof necessary to establish good cause. Thus, the Director will consider evidence and/or testimony presented in all prior petitions and rulings in determining whether good cause has been established. If a licensee receives a Special Ruling that provides a date certain for activation or there will be no further renewals of the license, the licensee shall only be eligible for additional relief upon a showing of extreme justification.

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

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

13:2-43.6 Right to a hearing

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

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

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

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

SUBCHAPTER 44. DEFINITIONS

Authority

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

Source and Effective Date

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

13:2-44.1 Definitions

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

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

1. "Alcoholic Beverage Control Act" means N.J.S.A. 33:1-1 et seq., and the rules promulgated thereunder, at N.J.A.C. 13:2.

2. "Employee" means a person who performs services in connection with the operation of the licensed business. The term "employee" includes people who are included on the payroll of the licensee whether on duty or not, persons who perform services on or about the licensed premises pursuant to a contract (independent contractor) and who are not included on the licensee's payroll, and even people who are not paid for their work or services, including, but not limited to, family members who may be temporarily operating the business while the owner is away from the premises.

3. "License" or "permit" are used interchangeably for disciplinary purposes. Thus, the use of either of these terms shall encompass the other.

4. "Proceeding" is any inspection or investigation conducted by the Division or any order to show cause, contested case or any other litigation in which the Division is a party related to matters involving the Alcoholic Beverage Control Act.