

CHAPTER 2

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Authority

N.J.S.A. 33:1-1 et seq. and 47:1A-1 et seq.; and Executive Order No. 9 (1963).

Source and Effective Date

R.2011 d.234, effective August 8, 2011.
See: 43 N.J.R. 557(a), 43 N.J.R. 2354(a).

Chapter Expiration Date

Chapter 2, Division of Alcoholic Beverage Control, expires on August 8, 2018.

Chapter Historical Note

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

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Carriers, Subchapter 34, Alcohol Permits, and Subchapter 37, Contracts of Employment and Conduct of Solicitors, were repealed by R.1990 d.412, effective August 20, 1990.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

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

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Retail Privileges, Subchapter 28, Decanting of Wine, Subchapter 32, Sales of Forfeited Property, and the Appendix were repealed and Subchapter 34, Restricted Brewery, Subchapter 37, Consumer Alcoholic Beverage Tastings and Tasting Dinners, and Subchapter 41, Issuance or Transfer of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

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24, 2000, and Subchapter 13, Execution of Questionnaire by State Licensees, and their Principals and Employees, was repealed by R.2000 d.342, effective August 21, 2000.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

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

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

Chapter 2, Division of Alcoholic Beverage Control, was readopted as R.2006 d.67, effective January 19, 2006. Subchapter 10, Plenary and Farm Winery Licenses; Wine Blending Licenses; Retail Privileges; Parcel Delivery Service, was renamed Plenary and Farm Winery Licenses; Wine Blending Licenses; Retail Privileges; and Subchapter 40, Issuance of Identification Cards by County Clerks, was repealed by R.2006 d.67, effective February 21, 2006. See: 37 N.J.R. 3221(a), 38 N.J.R. 1193(a).

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

Chapter 2, Division of Alcoholic Beverage Control, was readopted as R.2011 d.234, effective August 8, 2011. 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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SUBCHAPTER 4. ISSUANCE, RENEWAL OR
TRANSFER OF MUNICIPAL RETAIL LICENSES
(OTHER THAN CLUB LICENSES) BY THE
DIRECTOR

**13:2-4.1 Interest in issuance, renewal or transfer of
license; application made to the division**

(a) No municipal issuing authority may issue, renew or transfer a license to or from any of its members, or issue, renew or transfer a license to or from any corporation, organization, or association in which any of its members is interested directly or indirectly.

(b) No municipal issuing authority may transfer to other premises a license of any of its members, or transfer to other premises a license of any corporation, organization or association in which any of its members is interested, directly or indirectly.

(c) Whenever the municipal issuing authority is prohibited from acting by this section, or is unable to reach a quorum due to individual conflicts of interest, application must be made to the Director of the Division of Alcoholic Beverage Control and shall be governed by this subchapter.

(d) The provisions of (a) and (b) above shall not apply to club licenses.

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

In (c), clarified when application to Division must be made.
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 and made (a) and (b) inapplicable to club licenses.

Case Notes

Place-to-place transfer application expanding a license to an alleyway between two buildings was granted subject to the special condition that no drinking of alcohol would be permitted in the alleyway; the condition was directed toward maintaining the integrity of the neighborhood and addressed residents' reasonable concerns regarding increased noise, overcrowding and litter (adopting 2008 N.J. AGEN LEXIS 474). In re Marlin Restaurant & Bar, Inc., OAL Dkt. No. ABC 6215-07, 2008 N.J. AGEN LEXIS 1432, Final Decision (February 5, 2009).

Good cause for license non-use justifies renewal. In the Matter of David Blassinder, Agnes Ricci and Thomas Ricci, 97 N.J.A.R.2d (ABC) 71.

Denial of plenary retail license renewal because of ordinance conflict unreasonable if ordinance not triggered by renewal. Posadas v. Board of Directors of the City of Union City, 97 N.J.A.R.2d (ABC) 69.

Place-to-place transfer approved if new next door licensed location prevents alcohol consumption at old location. Cunningham v. Borough Council of the Borough of Sea Girt and the Bottle Shop of Sea Girt, Inc., 97 N.J.A.R.2d (ABC) 63.

Plenary retail license may be renewed subject to special conditions for underage drinking if recurring problem. Paradise Enterprises, Inc. v. City Council of the City of Long Branch, 97 N.J.A.R.2d (ABC) 57.

Municipality abuses discretion by approving person to person license transfer without obtaining written consent. Royal Oak Ventures, Inc. v. Township of Warren and King Caterers, Inc., 97 N.J.A.R.2d (ABC) 21.

City's denial of liquor license renewal deemed reasonable. Hilcar, Inc. v. Mayor and Council of the City of New Brunswick, 97 N.J.A.R.2d (ABC) 15.

Application for license renewal unreviewable if filed beyond statutory deadline without evidence nonrenewal due to circumstances beyond control. In the Matter of Granada Restaurant Corporation, 97 N.J.A.R.2d (ABC) 13.

Inactive liquor license was renewed where evidence indicated that license would soon be activated. In re Application of Alcestis Land Corporation, 96 N.J.A.R.2d (ABC) 112.

Holder of inactive liquor license would be allowed to renew that license where good cause existed inactive status. Medina v. Board of Commissioners of the City of Union City, 96 N.J.A.R.2d (ABC) 85.

License holder's failure to apply for renewal of alcoholic beverage license for 1994-1995 and 1995-1996 license years precluded renewal for 1993-1994. In the Application of Georgia's Liquors and Deli, 96 N.J.A.R.2d (ABC) 69.

Local authority must deny the person-to-person application for transfer of liquor license where disqualifying person is involved in sale of business receiving transfer. Doc Cross v. Township of Hamilton, 96 N.J.A.R.2d (ABC) 60.

Good cause was not shown for renewal of inactive liquor license where license was inactive for ten years and there were no prospects for activation. In the Matter of 126 Center Corporation, 96 N.J.A.R.2d (ABC) 57.

Strong public interest supported denial of place-to-place liquor license transfer to site where prior license generated numerous violations and public complaints. Jaya v. City of Union City, 96 N.J.A.R.2d (ABC) 53.

Division of Alcoholic Beverage Control lacks jurisdiction to grant renewal where licensee allowed license to lapse. R. & G. 795 Sanford Avenue Corp. v. Newark, 96 N.J.A.R.2d (ABC) 51.

Poor business judgement by absentee owner was insufficient excuse for untimely filing of alcohol license renewal request. Barba v. Division of Alcoholic Beverage Control, 96 N.J.A.R.2d (ABC) 39.

Failure to demonstrate good grounds for liquor licensee's failure to file timely renewal application precludes special ruling to file for new license. In the Matter of the Application of City Garden Associates, Inc., 96 N.J.A.R.2d (ABC) 34.

Restricting plenary retail consumption license to retail distribution license was contrary to law. P.I.J.'s v. Montville Township Township Committee, 96 N.J.A.R.2d (ABC) 19.

City may not deny place-to-place liquor license transfer based on unsupported claim that new location is trouble spot or on licensee's prior history of minor violations or on belief that city had issued too many liquor licenses. El Porto Alegre v. Union City Board of Commissioners, 96 N.J.A.R.2d (ABC) 8.

Plenary retail consumption license should not have been denied renewal as inactive. Appeal from Denial of Renewal of Plenary Retail License, 95 N.J.A.R.2d (ABC) 133.

Inactive license was not subject to renewal when prognosis for activation was speculative and not definitive. Matter of Jamesburg Inn, 95 N.J.A.R.2d (ABC) 121.

Liquor license for bar/restaurant, given relatively minor incidents, should have been renewed instead of denied. Starbo Corp. v. City of Asbury, 95 N.J.A.R.2d (ABC) 107.

Issue with respect to first license term was moot after expiration of second license term. Stork Club v. Alcoholic Beverage Control, 95 N.J.A.R.2d (ABC) 100.

Factors beyond licensee's control demonstrated good cause for ninth year renewal of inactive Class C liquor license. Sarkissian v. Alcoholic Beverage Control, 95 N.J.A.R.2d (ABC) 52.

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.

Revised floor plan for conversion of plenary retail consumption license required resubmission for noncompliance with regulations. SSAR v. City of Long Branch, 95 N.J.A.R.2d (ABC) 35.

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 \$200.00 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; redesignated (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".
Amended by R.2006 d.67, effective February 21, 2006.
See: 37 N.J.R. 3221(a), 38 N.J.R. 1193(a).

In (a), increased fee from \$50.00 to \$200.00.

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 \$200.00 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".

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

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

In (a)1, increased fee from \$50.00 to \$200.00.

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 \$200.00 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".

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

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

In (a), increased fee from \$50.00 to \$200.00.

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 \$200.00 State fee required to accompany the application shall be retained as a processing fee by the Director. If an application for 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 \$200.00 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.

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

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

In (a) and (b), increased fee from \$50.00 to \$200.00.

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.

**SUBCHAPTER 5. ISSUANCE OF SPECIAL PERMITS
BY DIRECTOR**

13:2-5.1 Social affair permit

(a) Application for social affair permit may be made to the director by organizations operating solely for civic, religious, educational, charitable, fraternal, social, or recreational purposes, and not for private gain. In order to establish its eligibility an applicant shall submit in support of its application sufficient documents such as:

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

(b) A fee, in the sum of \$100.00, per day, made payable to the Division of Alcoholic Beverage Control must accompany each application for social affair permit filed by religious, civic, educational or veterans organizations; and \$150.00 for such other organizations, and must be received at least 14 days in advance of date for which permit is requested.

(c) Applications for a social affair permit shall be made on forms prescribed by the Director and endorsed by the chief of police (or authorized designee) and the clerk of the municipality wherein the affair is to be held.

(d) No more than 12 social affair permits shall be issued to any one applicant per 12 months, nor shall any such permit be granted for premises at which 25 prior social affair permits have been issued within the same calendar year.

(e) A social affair permittee shall be entitled to purchase alcoholic beverages to be dispensed at social affairs from a New Jersey licensed wholesaler distributor or retailer only, and to resell said alcoholic beverages, for on-premises consumption only.

(f) The Director may require the permittee to file within 10 days after the social affair a signed inventory report on forms prescribed by the Director showing all purchases of alcoholic beverages and the source and disposition thereof. Failure to file the inventory report shall be cause for denial of future applications for a social affair permit.

(g) A social affair permittee must abide by all the provisions of the New Jersey Alcoholic Beverage law, Division rules and regulations, and municipal ordinances. Failure to

do so may result in said permittee being denied future applications for social affair permits.

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

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

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.1990 d.412, effective August 20, 1990.

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

In (c), stipulated application on "forms promulgated by the Director"; in (d), changed one permit per month to 12 permits per 12 months; redesignated (e)1. as (f), and existing (f) through (h) as (g) through (i). In (h), "social affair permit" was "special permit".

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).

In (b), deleted "in cash, check or money order" following "day,".

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 "\$100.00" for "\$50.00" and "\$150.00" for "75.00" throughout.

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

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

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

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

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

Deleted former (a)5; recodified former (a)6 as (a)5 and added "with list of all members"; recodified former (a)7-9 as (a)6-8; in (b), increased days from seven to 14.

13:2-5.2 Special concessionaire permit

(a) Application for a special concessionaire permit may be made to the Director by any individual, partnership, corporation, limited liability company, or other type of legal entity who has entered into a contract with the State of New Jersey, or any political subdivision thereof, whereby said person or organization is authorized to sell alcoholic beverages for immediate consumption in any public building or on any property owned by or under the control of the State of New Jersey or any political subdivision thereof. Such permit may also authorize the sale of alcoholic beverages in original containers for off-premises consumption, provided the applicant, with the consent of the governmental agency, establishes to the satisfaction of the Director that there is good cause for such sales.

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

<u>TYPE OF PERMIT</u>	<u>PERMIT FEE</u>
Gratuitous Gift	\$75.00
Gratuitous Samples	\$50.00
Merchandising Show: In-state licensee	\$75.00
Out of state licensees	\$100.00
Merchandising Show—Out-of-State Importers	\$100.00
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	\$150.00
Temporary Storage	\$25.00 plus \$2.00 per day
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.

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

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

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

Amended by R.2011 d.234, effective September 6, 2011.

See: 43 N.J.R. 557(a), 43 N.J.R. 2354(a).

In table in (e), deleted entry “Wine Parcel Delivery”.

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.

13:2-5.6 Special permit for marketing agent

(a) Application for a special permit for marketing agent may be made to the Director by an alcoholic beverage supplier, manufacturer or importer who holds a New Jersey wholesale license, whereby such supplier, manufacturer or importer shall be authorized to engage the services of outside marketing agencies to participate in alcoholic beverage tasting events at licensed plenary retail licensed premises pursuant to N.J.A.C. 13:2-37.1(b).

(b) The term for a special permit for marketing agent shall be from July 1 to June 30, unless otherwise specified. The fee for the permit shall be \$1,000 payable with the application to the Division of Alcoholic Beverage Control. Each supplier, manufacturer or importer shall obtain a separate special permit for marketing agent for each individual marketing agency to be engaged. This permit shall allow the employees of the marketing agency covered by the permit to attend an unlimited number of tasting events on behalf of the specific supplier, manufacturer or importer that obtains the permit, but

each employee shall be required to obtain a Marketing Agent Identification Card pursuant to (c) below.

(c) Each individual employee of a marketing agency that is designated in a special permit for marketing agent shall be required to obtain a Marketing Agent Identification Card. Application for the Marketing Agent Identification Card shall be made to the Director, and shall include a \$15.00 processing fee. Each Marketing Agent Identification card must be renewed at the beginning of each licensing term, July 1 of each year. Each employee of a marketing agency shall wear his or her current Marketing Agent Identification Card at every event attended.

(d) Any supplier, manufacturer or importer who obtains a special marketing agent permit shall be responsible for all actions taken and/or violations of New Jersey law by any employee of a designated marketing agency.

New Rule, R.2011 d.234, effective September 6, 2011.
See: 43 N.J.R. 557(a), 43 N.J.R. 2354(a).

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 con-

tinue operations temporarily until the license is formally extended. The issuance of any special permit shall not indicate any opinion as to the merits of the formal petition to extend the license.

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

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

13:2-6.3 Proof of appointment; assignments

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

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

13:2-6.4 Endorsement of licenses

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

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

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

Deleted references to "local issuing authority" and "proper municipal official"; deleted (b), regarding endorsement in license book.

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

SUBCHAPTER 7. TRANSFERS OF STATE AND MUNICIPAL LICENSES

13:2-7.1 Transferability of license

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

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

Case Notes

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

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

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

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

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

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

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

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

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

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

(d) Voluntary reduction or voluntary delicensure of a portion of the premises shall require a place-to-place transfer

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

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

Stylistic revisions.

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

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

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

Rewrote (d).

Case Notes

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

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

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

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

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

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 _____.
(Date)

(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).

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.

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.

13:2-8.4 Previous period of possession and use of club quarters

Except as provided herein or in N.J.A.C. 13:2-8.5, no license shall be issued to any club unless it shall have been in exclusive possession and use of a clubhouse or club quarters for at least three years continuously immediately prior to the submission of its application for a license. A bona fide club which has been in active operation in this State for the period of time required as aforesaid, but which has been deprived of continuous possession and use of its clubhouse or club quarters by reasons of foreclosure, loss of lease, eminent domain, fire, casualty or other removal for a cause other than the violation of the laws of the State or of municipal ordinance, shall not be prevented thereby from obtaining a club license upon presenting to the satisfaction of the issuing authority proof of said facts and proof that possession of suitable premises has been obtained.

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

Added "loss of lease, eminent domain, fire, casualty" to reasons for deprivation of club premises use; deleted "dispossess".

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.

13:2-8.5 Exceptions to eligibility requirements

(a) Any constituent unit, chartered or otherwise duly enfranchised chapter or member club of a national or state order, organization or association, which is in possession of suitable premises, shall not be prevented from obtaining a club license by reason of the fact that the unit, chapter or member club has not been in active operation in this State for at least three years continuously or has not been in exclusive continuous possession and use of a clubhouse or club quarters for the same period of time, provided said unit, chapter or member club obtains from the Director, and presents to the issuing authority at or before the issuance of the license, a certificate stating that satisfactory proof has been submitted to the Director that said unit, chapter or member club has been duly credentialed by a national or state order, organization or association which has been in active operation in this State for at least three years continuously immediately prior to submission of the application for a license.

(b) Nothing in N.J.A.C. 13:2-8.3 or 8.4 shall prevent the issuance of a club license to a bona fide club provided that special cause for such issuance is shown in writing to the Director and provided that the Director's written approval of such issuance is first obtained.

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.2000 d.342, effective August 21, 2000.

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

In (b), substituted "cause" for "course" following "special".

13:2-8.6 Qualifications of officers and members

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

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

1. The submitted application form is complete in all respects, including the requirements of N.J.A.C. 13:2-8.7;
2. The officers and directors of applicant club are qualified to be licensed according to all standards established by Title 33 of the New Jersey statutes, regulations promulgated thereunder as well as pertinent local ordinances or conditions consistent with Title 33;
3. The club maintains all records required pursuant to N.J.A.C. 13:2-8.7 and 8.8; and
4. The officers and directors of the applicant club have certified, on a form prescribed by the Director, that they have read and understand all their legal responsibilities pertaining to the operation of a club license.

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.

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

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

Made provision for license renewals in (b) and added (b)4.

13:2-8.7 Submission of club member list and club charter

(a) A printed or typewritten list containing the names and addresses of all members of the club as of date of filing a club license application shall be submitted with the initial application as well as with each subsequent renewal application. No club license shall be renewed unless the club consists of at least 60 members at the time of renewal. The charter or articles of association of the club shall also be presented for inspection or certified copy of the same submitted with the initial application.

(b) Nothing in this section shall prevent the renewal of a license to a club not qualified by reason of a lack of requisite number of members, provided that special cause of such renewal is shown in writing to the Director and further

provided that the Director's written approval for such renewal is first obtained.

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.

13:2-8.8 Sales restricted to club members

(a) No club licensee shall sell, serve or deliver, or allow, permit or suffer the sale, service or delivery of any alcoholic beverage to any person not a bona fide member of the club or a bona fide guest of such member.

(b) All club licensees shall have and keep on the licensed premises a true record, on the form prescribed by the Director (set forth below), of all scheduled dinners, luncheons, receptions, dances, parties, catered events and similar affairs held at the club licensed premises and attended by non-club members.

Date of affair _____

Type of affair _____

Sponsored by _____

Was affair conducted under authority of a special permit?

If so, give number of permit _____

Were alcoholic beverages supplied by the club licensee? —

(Signature of authorized officer)

(c) No club licensee shall allow, permit or suffer any such affair to be held at the club licensed premises at which any charge is made to a non-club member or non-bona fide guest in connection with the affair, whether the charge be a direct one for drinks, imposed through the sales of tickets or charging of admission, requiring donation or special assessments, or where the charge is made ostensibly for food, entertainment or anything else unless a special permit is first 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).

In (b), specified that a true record be kept in the form "promulgated" by the Director; deleted three-year inspection provision; moved "form" from (c) to (b). In (c), revised prohibition against "any charge ... to a non-club member".

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".

13:2-8.9 Sales for on-premises consumption only

No club licensee shall sell, serve or deliver, or allow, permit or suffer the sale, service or delivery of any alcoholic beverages in original containers for off-premises consumption.

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

Prohibited sales "in original containers for off-premises consumption".

13:2-8.10 Hours of permissible sale and consumption

No club licensee shall sell, serve or deliver, or allow, permit or suffer the sale, service, delivery or consumption of any alcoholic beverage on the licensed premises during hours or on days when plenary or seasonal retail consumption licensees in the same municipality are prohibited from such activity by municipal regulation or referendum.

13:2-8.11 Social affairs permittees

No club licensee shall sell, serve or deliver any alcoholic beverages to the holder of any special permit authorizing sale of alcoholic beverages at a social affair to be conducted by a permittee other than the club licensee itself, or to any person attending such social affair on the club licensed premises unless such person is, in fact, a bona fide member of the licensee-club or a bona fide guest of such member.

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

Prohibited sales to "a permittee other than the club licensee itself".

13:2-8.12 (Reserved)

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

Specified all moneys received "in the ordinary course of business" and a record of the source "and amount" of all moneys otherwise received; added reference to N.J.A.C. 13:2-8.8.

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 "Books of account".

13:2-8.13 Advertising prohibition

No club licensee shall advertise, directly or indirectly, or allow, permit or suffer any advertising to non-club members the availability of alcoholic beverages at its licensed premises; provided, however, that the prohibition here in shall not apply to the holder of any special permit issued by the director and authorizing the sale of alcoholic beverages at a social affair to be conducted at the club's licensed premises, with respect to such particular affair providing the social affair permit number is indicated in the advertisement.

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

Deleted text regarding allowance of "signs on the interior" of club premises.

13:2-8.14 Violations

A club license is restricted type of retail license and therefore its holder must comply with not only the rules set forth in this subchapter, but with all the relevant provisions applicable to retail licenses. In disciplinary proceedings brought pursuant to the alcoholic beverage law, it shall be sufficient, in order to establish the guilt of the club licensee, to show the violation was committed by an agent, servant or employee of the club licensee or a member of the club. The fact that the licensee did not participate in the violation or that its agent, servant, employee or member acted contrary to instructions given to him by the club licensee or that the violation did not occur in the presence of the licensee's agent, servant, employee or member shall constitute no defense to the charges preferred in such disciplinary proceedings.

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. The final determination shall be in the sole discretion of the Director.

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).

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

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

In (c), added "The final determination shall be in the sole discretion of the Director."

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 \$125.00 per year, 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.

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

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

In (c), decreased fee from \$150.00 to \$125.00 and substituted "year" for "annually."

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 a 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).

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

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

Substituted "a" for "an" preceding "Rehabilitation" to correct a grammatical error.

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 four color passport-type photographs, 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.

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

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

In (c), increased number of photographs from one to four.

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 \$125.00. The petitioner shall be required to submit to fingerprinting and provide four recent color passport photographs (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.

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

Increased fee from \$100.00 to \$125.00; substituted "to fingerprinting" for "a set of fingerprints"; added "provide"; increased number of photographs from one to four.

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

(a) Solicitor's permits may be issued only to bona fide solicitors 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.

(b) No solicitor's permit shall be issued to any person whose immediate family member has any direct or indirect interest or participates in the operation of a retail license. This prohibition shall apply to all persons hired as solicitors by any wholesaler, except as provided in (c) below.

(c) A solicitor who has held a solicitor's permit and has been employed by a wholesaler prior to October 1, 2010 and whose immediate family member has any direct or indirect interest or participates in the operation of a retail license shall be permitted to remain a solicitor and submit annual renewal applications for his or her solicitor's permit as long as the solicitor is in compliance with all the provisions of N.J.A.C. 13:2-16.1.

(d) "Immediate family member" as used in this section means husband, wife, son, daughter, grandfather, grandmother, grandson, granddaughter, brother, sister, father, mother, aunt, uncle, niece, nephew, brother-in-law, sister-in-law, father-in-law, mother-in-law, son-in-law and daughter-in-law.

(e) For purposes of this section, "bona fide solicitor" means a solicitor who performs substantial duties and responsibilities for each retail account assigned to the solicitor. These duties and responsibilities include, but are not limited to, physically calling on accounts and covering routes, taking orders for the purchase of alcoholic beverages, preparing and presenting professional sales presentations to retailers, attending company and supplier sponsored meetings, utilizing information provided by the company to keep up-to-date on company brands and competitive brand pricing, assisting retailers with on-premise promotions and attending such events, maintaining and using tasting notes, and installing supplied point of sale material.

(f) The filing of an initial application for a solicitor's permit shall constitute a representation by both the solicitor and the employing wholesaler that the applicant is expected to substantially perform the duties referenced in (e) above, during the term of the permit.

(g) The filing of a renewal application for a solicitor's permit shall constitute a representation by both the solicitor and the employing wholesaler that the applicant substantially performed the duties referenced in (e) above, during the

preceding permit term, and is expected to continue to do so during the term for which renewal is sought.

(h) All applications for solicitors' permits must be notarized by a person before whom oaths may be taken, as set out in N.J.S.A. 41:2-1, which includes a Notary Public. The applicant and the person signing on behalf of the employing wholesaler must personally appear before the Notary Public or other official before whom oaths may be taken at the time of notarization.

(i) Wholesalers shall maintain a data base or list of all solicitors whose immediate family members have an interest in a plenary retail license and shall certify this information on annual renewal applications.

(j) The filing of an application for a solicitor's permit for a person who did not substantially perform the duties referenced in (e) above, during the preceding permit term, or who is not expected to continue to do so during the term for which renewal is sought, or which does not satisfy the requirements of (g) above, shall constitute a violation by the applicant and/or the employing wholesaler.

(k) In any disciplinary proceeding related to whether a solicitor performs the duties referenced in (e) above, it shall be the burden of the wholesaler and/or solicitor, as the case may be, to demonstrate that the solicitor is bona fide.

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).

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

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

Inserted designation (a); in (a), substituted "solicitors" for "employees"; and added (b) through (k).

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.

(d) Applications for the issuance of a solicitor's permit shall be accompanied by the applicant's affidavit, on a form prescribed by the Director, attesting to compliance with the Alcoholic Beverage Control Act. Such affidavit shall specifically state that the applicant has read, understands and promises not to violate the Alcoholic Beverage Control laws and regulations, including those which relate to:

1. Tied House Restrictions (pursuant to N.J.S.A. 33:1-43 and N.J.A.C. 13:2-23.25);
2. The Retail Cooperative Purchase Regulation (pursuant to N.J.A.C. 13:2-26); and
3. The Trade Member Discrimination, Marketing, and Advertising Regulation (pursuant to N.J.A.C. 13:2-24.)

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 "Solicitation without permit".

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).

13:2-16.7 Term of permit

All solicitors' permits shall expire on May 31st following their issuance, unless otherwise specified therein, as provided in N.J.S.A. 33:1-67.

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 "Interest of permittee in retail business".

13:2-16.8 Nontransferability of permit

Each solicitor's permit covers only the employment designated therein and is not transferable as to employer or employee or employment.

Recodified from 13:2-16.9 by 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 13:2-16.8, "Permits to enforcement officers", to 13:2-16.4.

13:2-16.9 Amendment of application

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

Recodified from 13:2-16.10 by 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 13:2-16.9, "Transferability of permit", to 13:2-16.8.

13:2-16.10 Surrender of permit upon termination of employment

Upon the termination of any employment for which a solicitor's permit has been granted, the employer named therein shall file with the Director a notice in writing of such termination and the permittee shall surrender for cancellation to the Director the permit covering such employment within 10 days after its occurrence.

Recodified from 13:2-16.11 by 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 13:2-16.10, "Amendment of application", to 13:2-16.9.

13:2-16.11 Restrictions on permittee

(a) No holder of a solicitor's permit shall, in the State of New Jersey, offer for sale or solicit any order for the purchase or sale of any alcoholic beverage other than to the extent duly allowed and permitted by law and by the New Jersey license of his or her employer.

(b) No holder of a solicitor's permit shall directly or indirectly engage in any conduct prohibited its employer by the provision of Title 33 or any regulations promulgated thereunder, nor shall such person sell, solicit, or deliver alcoholic beverages at a price or upon terms or conditions or under promotions or contests not contained in his or her employer's "Marketing Manual" and "Current Price List" kept pursuant to N.J.A.C. 13:2-24 for the operative period.

(c) No holder of a solicitor's permit shall offer for sale or solicit any order for the purchase or sale of any alcoholic beverage, or receive any commission or compensation, directly or indirectly, based on sales to any retail license in which an immediate family member of the solicitor has any direct or indirect financial interest or participates in the operation thereof.

(d) No holder of a solicitor's permit whose immediate family member has any direct or indirect interest or participates in the operation of a retail license shall offer for sale or solicit any order for the purchase or sale of any alcoholic beverage, or receive any commission or compensation, directly or indirectly, based on sales to any retail license in which an immediate family member of another solicitor employed by the same wholesaler has any direct or indirect financial interest or participates in the operation thereof.

(e) For purposes of this section, the term "immediate family member" shall be the same as the definition set forth in N.J.A.C. 13:2-16.3(d).

(f) All persons applying for a solicitor's permit or the annual renewal of a solicitor's permit shall certify on the solicitor's permit application that either:

1. The solicitor does not have any immediate family members, as defined by (e) above, that have a direct or indirect interest in, or participate in the operation of, a retail license; or

2. The solicitor's immediate family member or members, as defined by (e) above, have a direct or indirect interest in, or participate in the operation of, a retail license. The solicitor shall fully identify all such family members, the retail license number and the relationship to the solicitor. The solicitor shall certify that he or she is in compliance with (c) and (d) above.

(g) All persons holding a solicitor's permit or applying for a solicitor's permit shall notify his or her employing wholesaler and the Division of Alcoholic Beverage Control within 10 days of receiving notification that an immediate family member, as defined in (e) above, has obtained a direct or indirect interest in, or participates in the operation of a retail license.

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 13:2-16.11, "Surrender of permit upon termination of employment", to 13:2-16.10.

Amended by R.1999 d.57, effective February 16, 1999.

See: 30 N.J.R. 4316(a), 31 N.J.R. 545(a).

Added (c) through (e).

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 "his or her employer's" for "its employers".

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

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

Rewrote (c) through (e); and added (f) and (g).

13:2-16.12 Interest of permittee in retail business

No holder of a solicitor's permit shall be interested, directly or indirectly, in any retail license or any business conducted thereunder, nor shall the holder of a solicitor's permit be employed by or connected in any business capacity with any retail licensee.

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 "Permittee's activity".

13:2-16.13 Search of permittee's vehicle

By the acceptance of a solicitor's permit, the permittee consents to inspection and search of any vehicle owned or being driven by him, without search warrant, by the Director, his or her deputies, inspectors and investigators and by any officer as 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).
Stylistic revisions.

13:2-16.14 Responsibilities of employer

(a) No holder of a Class A (N.J.S.A. 33:1-10) or Class B (N.J.S.A. 33:1-11) license shall allow, permit or suffer, in his behalf, any individual to offer for sale or solicit any order in the State of New Jersey for the purchase or sale of any alcoholic beverage, whether such sale is to be made within or without the State, unless such person has a solicitor's permit.

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

(c) No wholesaler shall hire a person whose immediate family member has a direct or indirect financial interest or participates in the operation of a retail license.

(d) No wholesaler shall assign a solicitor to any retail account or pay commission or compensation to a solicitor for sales to any retail account in which an immediate family member of the solicitor has any direct or indirect financial interest or participates in the operation thereof.

(e) No wholesaler shall assign a solicitor to any retail account in violation of N.J.A.C. 13:2-16.11(c) or (d).

(f) For every solicitor whose immediate family member has any direct or indirect interest in, or participates in the operation of a retail license, the employing wholesaler shall submit, upon each annual renewal application, a statement disclosing all retail accounts assigned to the solicitor and a certification that the solicitor has not been assigned to any accounts in which an immediate family member of that solicitor, or an immediate family member of any solicitor employed by that wholesaler, has any direct or indirect financial interest or participates in the operation thereof.

(g) For purposes of this section, the term "immediate family member" shall be the same as the definition set forth in N.J.A.C. 13:2-16.3(d).

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.2010 d.160, effective August 2, 2010 (operative October 1, 2010).
See: 41 N.J.R. 2436(a), 42 N.J.R. 1733(a).
Inserted designation (a); and added (b) through (g).

13:2-16.15 Solicitor's contracts

All contracts of employment between Class A (N.J.S.A. 33:1-10) or Class B (N.J.S.A. 33:1-11) licenses and their solicitors shall be in writing and shall set forth the salary, commission or other compensation of any kind agreed to be paid to such solicitor. Contracts shall be maintained by the employer for a period of three years from the date of execution and shall be available for inspection by the Director, his or her deputies, inspectors, investigators and agents and other officers as defined by N.J.S.A. 33:1-1(p).

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

13:2-16.16 Filing of statement of compensation with Director

On or before May 31 of each year, each holder of a Class A (N.J.S.A. 33:1-10) or Class B (N.J.S.A. 33:1-11) license employing any solicitor during the preceding calendar year shall file with the Director a true statement listing all compensation, itemized as to salary, commission, reimbursed expenses, prizes, awards, bonuses, or otherwise, paid to each such solicitor by such manufacturer or wholesaler during that 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).

13:2-16.17 Suspension or revocation of solicitor's permit

If a solicitor holds more than one solicitor's permit and one of the solicitor's permits is suspended or revoked, all of the solicitor's permits shall be suspended or revoked unless the solicitor demonstrates good cause why the solicitor's other permits should not be suspended or revoked.

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

SUBCHAPTER 17. APPEALS

13:2-17.1 Notice and petition of appeal; contents; fee

All appeals from the actions taken by a municipal issuing authority concerning the issuance, denial, renewal, transfer, suspension or revocation of a retail license shall be commenced by the filing, in duplicate, of a notice and petition of appeal to the Director of the Division of Alcoholic Beverage Control. The petition shall set forth the identity of the parties involved in the appeal, the subject matter of the appeal, the date and the action of the issuing authority from which the appeal is taken, the relief sought, the grounds therefor and a

fee of \$100.00 payable to the Director, Division of Alcoholic Beverage Control.

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

Added "from the actions taken by a municipal issuing authority concerning . . . a retail license."

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

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

Increased fee.

13:2-17.2 Service of notice and petition of appeal

The appellant shall first serve, personally or by ordinary mail, a copy of the notice and petition of appeal upon the respondent issuing authority and, where the action appealed from is the grant, transfer or extension of a license, or the refusal to revoke or suspend a license, a copy shall be so served upon the licensee, who shall also be joined as a respondent. The notice and petition of appeal, together with an acknowledgement or affidavit of service, must be filed with the Director within the time set forth in N.J.A.C. 13:2-17.3.

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.

13:2-17.3 Time for appeal

Appeals by any taxpayer or other aggrieved person from the issuance of a license or from the grant of an application for the extension or transfer of a license must be taken within 30 days from the date of issuance, extension or transfer of the license. All other appeals by a licensee or applicant for a license must be taken within 30 days after the personal service or mailing by registered mail of a written notice by the municipal issuing authority of the action taken against the licensee or the applicant.

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

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

Specified service or mailing of a "written" notice by issuing authority.

Case Notes

Appeal of liquor license renewal dismissed as untimely. *Cottrell v. Zagami, LLC*, OAL DKT. NO. ABCAM 08017-06, 2007 N.J. AGEN LEXIS 549, Final Decision (May 22, 2007).

13:2-17.4 Answer

Within 10 days after service of the notice and petition of appeal, each respondent shall file, in duplicate, an answer with the Director and serve a copy thereof on each of the parties to the appeal. The answer filed by the respondent issuing authority shall include a statement of the grounds for its action, together with a copy of the subject resolution.

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.

13:2-17.5 Jurisdiction

Upon filing of the notice and petition of appeal and answer, the Director shall determine whether the case is contested. If the case is determined to be contested, the Director shall file it with the Office of Administrative Law pursuant to N.J.A.C. 1:1-8 or retain it under the provisions of N.J.S.A. 52:14F-8.

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.

Case Notes

Appeal from issuance of plenary retail license to replace seasonal consumption license was moot. *Belleaire v. Spring Lake*, 95 N.J.A.R.2d (ABC) 114.

13:2-17.6 De novo hearing; burden of proof

All appeals shall be heard de novo and the burden of establishing that the action of the respondent issuing authority was erroneous, and should be reversed, shall rest with appellant.

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

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

Deleted N.J.A.C. 13:2-17.8 exception.

Case Notes

Borough of Sayreville's denial of application for a "place to place" transfer of a liquor license was not arbitrary. In relying on the expertise of its local law enforcement, it was reasonable that the Borough could determine that the uniqueness of the applicant's proposal to have a licensed area coexisting with a non-licensed all-nude dancing area could lead to an increase in safety and regulatory problems. Deference should be given to the discretion of the Chief of Police and the Borough in making this decision. In *Re Stock Enterprises, Inc.*, OAL Dkt. No. ABC 07636-12, 2013 N.J. AGEN LEXIS 72, Initial Decision (April 3, 2013).

While the appellant in a licensing dispute carried the burden of proof throughout the hearing, the ALJ properly ordered that the issuing authority provide the initial burden of production to explain the basis for its denial on the record. Notwithstanding appellant's burden of proof that respondent's action was arbitrary, capricious, or unreasonable, respondent was properly asked to assume the burden of going forward with clear and competent evidence to support its decision to deny the place-to-place transfer of the license. *Rooster Bar v. Governing Body of Cliffside Park*, OAL Dkt. No. ABC 11895-08, 2009 N.J. AGEN LEXIS 1203, Final Decision (October 28, 2009).

Issuing authority's decision to deny a place-to-place transfer of a liquor license was arbitrary, capricious, and unreasonable where there was no ordinance, regulation, or written policy requiring uncovered windows in any establishment to allow police an unobstructed view of the interior; therefore, the police officers' inability to peek through a window in order to observe activity on the second floor of the bar did not constitute a reasonable basis for denial of the transfer application. Additionally, the police chief's concern about arresting and removing someone from the second floor of the proposed licensed premises was purely speculative (adopting 2009 N.J. AGEN LEXIS 761). *Rooster Bar v. Governing Body of Cliffside Park*, OAL Dkt. No. ABC 11895-08, 2009 N.J. AGEN LEXIS 1203, Final Decision (October 28, 2009).

Denial of place-to-place transfer was arbitrary, unreasonable, and an abuse of discretion because the decision was based on general objections associated with maintaining the character of the downtown area by attempting to preserve the historic nature of the hotel building, and such

objections were insufficient to compel a licensee to remain at its hotel despite its own economic concerns; there was no indication in the record that operating the license at a different location would have been problematic or had a negative impact on health, welfare, and safety of residents (adopting 2009 N.J. AGEN LEXIS 229). *Union Hotel Restaurant v. Governing Body of Flemington*, OAL Dkt. No. ABC 6929-08, 2009 N.J. AGEN LEXIS 881, Final Decision (August 27, 2009).

There was no merit in licensees' argument that they were denied due process by the township's failure to provide a hearing at the local level because the law governing appeals to the Division of Alcoholic Beverage Control dictated that all appeals be heard de novo and, therefore, the right to a de novo hearing in the Division on testimony taken there cured any infirmity allegedly arising by reason of a denial of a hearing before the local board (adopting 2008 N.J. AGEN LEXIS 1024). *Martell's Waters Edge, L.L.C. v. Governing Body of Berkeley*, OAL Dkt. No. ABC 6795-07, 2009 N.J. AGEN LEXIS 953, Final Decision (June 17, 2009).

Construction of a "sound wall" intended to reduce the decibel level of sound emanating from a licensee's outside deck was of no consequence where the special condition limiting the time that music could be played on the deck did not speak of prohibiting excessively loud music, but rather prohibited any music outside after 10:00 p.m. on week nights, and after 12:00 midnight on Fridays, Saturdays, and holidays. Therefore, the licensee's appeal of the special condition, and request for expansion of hours in which music may be played, was properly dismissed (adopting 2008 N.J. AGEN LEXIS 1024). *Martell's Waters Edge, L.L.C. v. Governing Body of Berkeley*, OAL Dkt. No. ABC 6795-07, 2009 N.J. AGEN LEXIS 953, Final Decision (June 17, 2009).

Place-to-place transfer application expanding a license to an alleyway between two buildings was granted subject to the special condition that no drinking of alcohol would be permitted in the alleyway; the condition was directed toward maintaining the integrity of the neighborhood and addressed residents' reasonable concerns regarding increased noise, overcrowding and litter (adopting 2008 N.J. AGEN LEXIS 474). *In re Marlin Restaurant & Bar, Inc.*, OAL Dkt. No. ABC 6215-07, 2008 N.J. AGEN LEXIS 1432, Final Decision (February 5, 2009).

Where the sale of alcoholic beverages was not merely "incidental" to the provision of food, a business should not have been considered a "restaurant" for State Alcoholic Beverage Control purposes; while the township had the authority to enact an ordinance defining "restaurant" for distance between premises purposes, it was incongruous for the township to attempt to apply a broad definition that was entirely unrelated to alcoholic beverage concerns (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 757). *Rumson Wine and Spirit Shop, Inc. v. Kenneth Friedman/Middletown Bottle King*, OAL Dkt. No. ABC 4795-05, 2008 N.J. AGEN LEXIS 1431, Final Decision (August 13, 2008).

In granting a place-to-place transfer of a plenary retail distribution license, the reviewing authority could consider an amended ordinance that was in effect after the township granted the transfer (but prior to conclusion of the appeal) because the amended ordinance, which permitted locating different classifications of licenses within 2,000 of one another, was consistent with the township's historical treatment of such cases and was not a mere "sham" amendment; there was an absence of proof that the ordinance amendment lacked public interest underpinnings (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 757). *Rumson Wine and Spirit Shop, Inc. v. Kenneth Friedman/Middletown Bottle King*, OAL Dkt. No. ABC 4795-05, 2008 N.J. AGEN LEXIS 1431, Final Decision (August 13, 2008).

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

10954-04, 2005 N.J. AGEN LEXIS 1484, Final Decision (June 21, 2006).

Appeal was properly dismissed where reasonable support existed for municipal board's granting of application for place-to-place transfer of plenary retail consumption license. *Caracitas v. Municipal Board of Alcoholic Beverage Control*, 96 N.J.A.R.2d (ABC) 98.

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.

Liquor license for bar/restaurant, given relatively minor incidents, should have been renewed instead of denied. *Starbo Corp. v. City of Asbury*, 95 N.J.A.R.2d (ABC) 107.

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.

Violation found for unlawful sale of cocaine upon the premises; respondents offered transcribed record in lieu of producing witnesses at the hearing de novo (Division's final decision). *T.L.S. Inc. v. City of Bayonne*, 9 N.J.A.R. 403 (1985).

Denial of person-to-person transfer of a plenary retail consumption license based upon licensee's conviction on three disorderly persons offenses upheld. *Sturchio v. Town of Harrison*, 9 N.J.A.R. 78 (1986).

Burden of showing erroneous action of licensing authority so as to reverse license suspension not met by licensee. *Canal Street Pub. Inc. v. Municipal Bd. of Alcoholic Beverage Control, City of Paterson*, 6 N.J.A.R. 221 (1982).

An appeal from a local license issuing authority is heard de novo; the de novo hearing is designed to cure any procedural defects which occur in connection with the issuing authority's action. *Valdivia's Bar, Inc. v. Elizabeth City Council*, 6 N.J.A.R. 161 (1981).

13:2-17.7 Subpoenas

Subpoenas and subpoenas duces tecum, signed by the Director or Administrative Law Judge, for the attendance of witnesses and the production of books, records and other documents at the hearing on the appeal, may be obtained by the parties upon request.

Recodified from 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).

Prior text at 13:2-17.7, "Public hearing", repealed.

13:2-17.8 Stays

(a) The filing of an appeal from a suspension or revocation of a license by a municipal issuing authority shall act as an automatic stay of such suspension or revocation, unless the Director shall otherwise order. All other appeals shall not stay the effect of the action appealed from unless otherwise ordered by the Director or Administrative Law Judge.

(b) In cases in which a suspension or revocation has been stayed 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 suspension has not been stayed or in which a revocation has been stayed and an indefinite

suspension imposed 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.

(d) In cases in which a revocation has not been stayed 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 revocation is not sustained on appeal, then the licensee shall be required to file renewal applications and pay the appropriate fees for each license 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.

(e) In all other cases, except those addressed in N.J.A.C. 13:2-17.9, 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.

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 13:2-17.11. Filing of appeal by municipal authority is an "automatic" stay. Prior text at 13:2-17.8, "Stipulations, offer of transcript", repealed.

Amended by R.2003 d.436, effective November 3, 2003.

See: 35 N.J.R. 2810(a), 35 N.J.R. 5122(a).

Designated existing text as (a); added (b) through (e).

Case Notes

Offer of transcription of proceedings before local issuing authority in lieu of producing witnesses on appeal de novo noted. *Marlboro Manor, Inc. v. Alcoholic Beverage Control Bd.*, Tp. of Montclair, 7 N.J.A.R. 29 (1981), reversed 187 N.J.Super. 359, 454 A.2d 905 (App.Div.1982).

13:2-17.9 Extension of license term

(a) Upon the filing of an appeal from the denial of an application for renewal of a license, or the failure to act upon such renewal application within the time set forth in N.J.A.C. 13:2-2.10(b), the Director may, at the time of the filing of the appeal, in the exercise of sound discretion, issue an order upon respondent issuing authority to show cause why the term of the license should not be extended pending the determination of the appeal, together with ad interim relief extending the license pending the return of the order to show cause. If it appears that a substantial question of fact or law has been raised, and that irreparable injury to the appellant would result if the license is not extended, the Director may extend the license pending the outcome of the appeal, subject to such special conditions as the Director may deem appropriate.

(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.

SUBCHAPTER 18. PETITION PROCEEDINGS; DISCRIMINATION AGAINST WHOLESALERS

13:2-18.1 Grounds for relief

(a) There shall be no discrimination in the sale of any nationally advertised brand of alcoholic beverage, other than malt alcoholic beverage, by importers, blenders, distillers, rectifiers and wineries, to duly licensed wholesalers of alcoholic beverages who are authorized by such importers, blenders, distillers, rectifiers and wineries to sell such

nationally advertised brand in New Jersey. All actions by duly licensed New Jersey wholesalers seeking relief from such discrimination shall be in the form of a petition to the Director setting forth the facts of alleged discrimination, the relief sought and the grounds therefor.

(b) For purposes of (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, credit, or scope of authorization 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.

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

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

In (b)10, substituted ";" for "or" following "sale" and added "; or scope of authorization" following "credit."

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).

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

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

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

(f) The term "successive violations" means violations that occur outside of the same 24-hour period. The penalties for successive violations shall generally be calculated based upon the number of violations occurring within a two-year period from the date of disposition of any prior violation(s), subject to the provisions of (g) below. Notwithstanding the

foregoing, the Director may, in the Director's sole discretion, consider aggravating or mitigating circumstances in determining the level of violation.

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

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

(i) Penalty Schedule¹

<u>Statute, Regulation or Bulletin Item</u>	<u>Code</u>	<u>Description</u>	<u>First Violation</u> ²	<u>Second Violation</u> ²	<u>Third Violation</u> ²	<u>Fourth Violation</u> ²
N.J.S.A. 33:1-25, 26, 31a and 52	A & A	Aiding and abetting	10	20	30	
N.J.A.C. 13:2-23.5(c)	ACTIV	Illegal activity on the licensed premises	30	60	90	Revocation
N.J.A.C. 13:2-24.10(a)1-7	ADV1	Improper advertising	5	10	20	
N.J.A.C. 13:2-24.10(a)8	ADV2	Improper cooperative advertising	5	10	20	
N.J.A.C. 13:2-23.13(a)2	APP1	Failure to provide a copy of the most recent full application and/or current renewal application	1	3	5	
N.J.A.C. 13:2-23.32(a), (b) and (c), 24.1(c) and (e)	BOOKS1	Failure to have true record or records of account available on the licensed premises, but produced within 7 business days of demand	2	10	20	
N.J.S.A. 33:1-25 and N.J.A.C. 13:2-2.14(a)	APP2	Failure to timely notify of change in fact on the license application	1	3	5	
N.J.S.A. 33:1-25 and N.J.A.C. 13:2-2.14(b)	APP3	Failure to notify of corporate structure change	1	3	5	
N.J.S.A. 33:1-25	APP4	Failure to disclose or false, misleading or inaccurate answer to a question on an application, which would not by itself result in a disqualification for licensure	10	20	30	
N.J.S.A. 33:1-25	APP5	Failure to disclose or false, misleading or inaccurate answer to a question of material fact on an application	45	90		Revocation
N.J.S.A. 33:1-26	APP6	Lease out of the license	45	90		Revocation
N.J.A.C. 13:2-23.32(a), (b) and (c), 24.1(c) and (e)	BOOKS1	Failure to have true record or records of account available on the licensed premises, but produced within 7 business days of demand	2	10	20	
N.J.A.C. 13:2-23.32(a), (b), (c) and (d), 24.1(c) and (e)	BOOKS2	Failure to maintain true record or records of account or failure to produce true record or records of account within seven business days of demand	30	60		Revocation
N.J.A.C. 13:2-23.15 or 23.23	BOT1A	Contaminated or low proof bottles (one to five bottles)	1	5	10	
N.J.A.C. 13:2-23.15 or 23.23	BOT1B	Contaminated or low proof bottles (six or more bottles)	5	10	20	
N.J.A.C. 13:2-23.19	BOT2	Substitution of beverages	5	10	20	
N.J.A.C. 13:2-23.9(a)	BOT3	Tampering/adulterated alcohol	5	10	20	
N.J.A.C. 13:2-35.1 and 35.5 or 35.2 and 35.4	BPP1	Broad package privilege violation (improper sale or display)	10	30	60	

N.J.A.C. 13:2-35.1 and 35.2	BPP2	Broad package privilege violation (insufficient equipment and/or bar)	10	30	60	
N.J.A.C. 13:2-23.12	BULK	Transfer of inventory without a bulk permit	1	5	10	
N.J.A.C. 13:2-23.13(a)1	CERT	License certificate not conspicuously displayed	1	3	5	
N.J.A.C. 13:2-23.33	CHECK	Return of an unpaid check to Division or issuing authority (penalties will include original check amount and administrative costs)	5	10	20	
N.J.A.C. 13:2-8.13	CLUB1	Advertising availability of alcoholic beverages to the public	5	10	20	
N.J.A.C. 13:2-8.8, 9 and 11	CLUB2	Sale beyond the scope of the club license, including, but not limited to, sale to non-member or social affair permittee	10	20	30	
N.J.A.C. 13:2-26.1	COOP1	Purchase of alcoholic beverages by a non-member	10	20	30	
N.J.A.C. 13:2-26.1	COOP2	Allowed a person not qualified and/or minor permittee to order for member or employee of cooperative	10	20	30	
N.J.A.C. 13:2-26.1	COOP3	Allowed a purchase by a non-member retailer under cooperative	10	20	30	
N.J.A.C. 13:2-24.8	COST	Sale of alcoholic beverages below cost	15	30	45	
N.J.A.C. 13:2-24.6(a)6	CPL1	Sale of alcoholic beverages not listed on a "Current Price List"	15	30	45	
N.J.A.C. 13:2-24.6(a)6	CPL2	Sale or acceptance of alcoholic beverages upon terms other than set forth on a "Current Price List"	15	30	45	
N.J.A.C. 13:2-24.6(a)1 and 2	CPL3	Failure to maintain an "Historical Price List" and "Marketing Manual"	15	30	45	
N.J.A.C. 13:2-24.4	CRED1	Wholesaler extended credit to retailer on COD status	15	30	45	
N.J.A.C. 13:2-24.4	CRED2	Retailer received credit from wholesaler while on COD status	15	30	45	
N.J.A.C. 13:2-24.1	DISC1	Terms of sale of alcoholic beverages offered in discriminatory manner	15	30	45	Revocation
N.J.A.C. 13:2-24.2	DISC2	Offers service to a licensee in a discriminatory manner	15	30	45	Revocation
N.J.S.A. 33:1-26 and N.J.A.C. 13:2-14.5	DISQ1	Employed a criminally disqualified person	30	60	90	Revocation
N.J.S.A. 33:1-25, 26	DISQ2	Criminally disqualified licensee				Revocation
N.J.A.C. 13:2-23.13(a)3	E-141-A1	Employees list not complete or available on the licensed premises	1	5	10	
N.J.A.C. 13:2-23.13(a)3	E-141-A2	Employees list not complete or available on the licensed premises and criminally disqualified employee	15	30	45	
N.J.A.C. 13:2-14.1 and/or 14.2	EMIN	Employing a minor without a permit	1	5	10	
N.J.A.C. 13:2-23.31(b)2i	EPOL1	Employed a law enforcement officer without approval	10	20	30	
N.J.S.A. 33:1-26.1	EPOL2	Employed a law enforcement officer in jurisdiction where law enforcement officer serves	15	30	45	Revocation
N.J.A.C. 13:2-23:25	ESOL	Employment of a solicitor by a retailer	15	30	45	Revocation
N.J.S.A. 33:1-12a	FETAL	Failure to display Fetal Alcoholic Syndrome warning poster	1	3	5	
N.J.S.A. 2A:40-1; N.J.A.C. 13:2-23.7(c)	GAMB1	Failure to notify of placement of approved video game within 48 hours of placement	5	10	20	
N.J.A.C. 13:2-23.7(a)7	GAMB2	Raffling of sealed containers of alcoholic beverages without a permit	5	10	20	
N.J.A.C. 13:2-23.7(a)5	GAMB3	Gambling paraphernalia on the licensed premises	5	10	20	
N.J.A.C. 13:2-23.7(a)	GAMB4A	Non-criminal gambling activity on the licensed premises	5	10	20	
N.J.A.C. 13:2-23.7(a)	GAMB4B	Criminal gambling activity on the licensed premises	30	60	90	Revocation
N.J.A.C. 13:2-23.7(a)6	GAMB5	Unapproved video device on the licensed premises	5	10	20	

N.J.A.C. 13:2-23.7(a)4	GAMB6	Video or slot machine or other gambling device playing for money or other valuable thing	30	60	90	Revocation
N.J.A.C. 13:2-23.7	GAMB7A	Criminal gambling activity on the licensed premises involving an employee	90	Revocation		
N.J.A.C. 13:2-23.7	GAMB7B	Criminal gambling activity on the licensed premises involving a licensee	Revocation			
N.J.A.C. 13:2-23.7	GAMB7C	Non-criminal gambling activity on the licensed premises involving an employee	10	20	30	Revocation
N.J.A.C. 13:2-23.7	GAMB7D	Non-criminal gambling activity on the licensed premises involving a licensee	10	20	30	Revocation
N.J.S.A. 33:1-35/ N.J.A.C. 13:2-23.30	HIND1	Employee hindering an investigation	30	60	90	Revocation
N.J.S.A. 33:1-35/ N.J.A.C. 13:2-23.30	HIND2	Licensee hindering an investigation	45	90	Revocation	
N.J.A.C. 13:2-38.1 or 38.2	HRS1	Sale of alcoholic beverages before or after the legal hour or in violation of a municipal ordinance	10	20	30	
N.J.S.A. 33:1-31h and N.J.A.C. 13:2-38.1 or 38.2	HRS2	Presence of non-employee(s) after the legal hour set by a municipal ordinance	10	20	30	
N.J.A.C. 13:2-20	INSIG	Alcoholic beverages transported without a transit insignia	1	5	10	
N.J.A.C. 13:2-20.4(b) or 23.32	INV1	Failure to have invoices available at the licensed premises, but produced within seven business days of demand	1	5	10	
N.J.A.C. 13:2-20.4(b) or 23.32	INV2	Failure to maintain invoices or failure to produce invoices within seven business days of demand	30	60	Revocation	
N.J.A.C. 13:2-23.6(a)1	LEWD1	Lewd activity on the licensed premises	30	60	90	Revocation
N.J.A.C. 13:2-23.6(a)1	LEWD2	Lewd activity with audience participation on the licensed premises	45	90	Revocation	
N.J.A.C. 13:2-23.14	LEWD3	Lewd material on the licensed premises	10	20	30	
N.J.S.A. 33:1-12	MERC	Conducted other mercantile business on the licensed premises	5	10	20	
N.J.S.A. 33:2-23.5(b)	NARC1	Narcotic activity on the licensed premises	45	90	Revocation	
N.J.A.C. 13:2-23.5(b)	NARC2	Narcotic paraphernalia on the licensed premises	45	90	Revocation	
N.J.A.C. 13:2-23.5(b)	NARC3	Narcotic activity on the licensed premises involving an employee	90	Revocation		
N.J.A.C. 13:2-23.5(b)	NARC4	Narcotic activity on the licensed premises involving a licensee	Revocation			
N.J.A.C. 13:2-23.6(b)	NUIS1	Licensed business conducted in such a manner to become a nuisance (quality of life—noise, litter, urination, etc.)	10	20	30	
N.J.A.C. 13:2-23.6(b)	NUIS2	Licensed business conducted in such a manner to become a nuisance (police intervention—public safety or rights being violated)	30	60	90	Revocation
N.J.S.A. 33:1-31(h)	ORDIN	Violation of any ordinance, resolution or regulation of an issuing authority or governing body	10	20	30	
N.J.S.A. 33:1-31	ORDER	Violation of an order of the Director or of an issuing authority	10	20	30	
N.J.A.C. 13:2-9.3	POSS	Failure to maintain continuing possession and exclusive control of licensed premises	Indefinite suspension + 10 days	Indefinite suspension + 20 days	Indefinite suspension + 30 days	Revocation
N.J.A.C. 13:2-23.16	PP	Prohibited promotion	10	20	30	
N.J.A.C. 13:2-23.10	PROHD	Accepted delivery from a non-licensed carrier	5	10	20	
N.J.A.C. 13:2-23.12(a) or (b)	PROHP	Purchased alcoholic beverages from a prohibited source	10	20	30	
N.J.A.C. 13:2-23.12(b)	PROHS	Sale of alcoholic beverages to a prohibited receiver (retailer-retailer)	10	20	30	
N.J.A.C. 13:2-23.1(a)	PULA	Sale to a person under the legal age, but over the age of 18	15	30	45	Revocation
N.J.A.C. 13:2-23.1(a)	PULA/M	Sale to a person under the age of 18 years	30	60	90	Revocation
N.J.A.C. 13:2-24.11	REBATE	Prohibited consumer rebate	5	10	20	
N.J.A.C. 13:2-23.24	RET	Retailer received—parallel to SOL3	30	60	90	Revocation
N.J.S.A. 33:1-11, 2c	SBD1	Sale of less than one hundred forty-four fluid ounces of malt alcoholic beverages in original containers	5	10	20	

N.J.S.A. 33:1-11, 2c	SBD2	Sale of "chilled" malt alcoholic beverages	5	10	20	
N.J.S.A. 33:1-12	SCOPE	Sale or consumption beyond the scope of the license	10	20	30	
N.J.S.A. 33:1-52/ N.J.A.C. 13:2-16.11; N.J.A.C. 13:2-16.3; N.J.A.C. 13:2-16.1	SOL1	Solicitor offered an order of alcoholic beverages for purchase or sale, other than allowed by law and the license of employer and/or offered to sell or sold to, or received compensation based on purchases made by or sales made to, a retail license in which the solicitor's or another solicitor's immediate family has a direct or indirect interest.	15	30	45	Revocation
N.J.A.C. 13:2-16.12	SOL2	Solicitor employed by or connected in business capacity to a retail licensee	15	30	45	Revocation
N.J.A.C. 13:2-16.11(b)	SOL3	Solicitor offered a cash rebate, free goods or other incentive not contained on Current Price List	30	60	90	Revocation
N.J.A.C. 13:2-16.3	SOL4	Solicitor held a solicitor's permit and/or received compensation based upon sales to or purchases made by retail licenses but did not substantially perform the duties required of a solicitor as defined in N.J.A.C. 13:2-16.3(e).	15	30	45	Revocation
N.J.S.A. 33:1-31(e)	STAMP	Federal Tax Stamp not available	1	3	5	
N.J.A.C. 13:2-23.21	STOR1	Storage of alcoholic beverages off the licensed premises without a permit or not in a licensed warehouse	5	10	20	
N.J.A.C. 13:2-23.21	STOR2	Storage of alcoholic beverages for a time period exceeding 72 hours following receipt of a delivery for a fellow co-op member	5	10	20	
N.J.A.C. 13:2-23.27	SUSPV	Prohibited activity during license suspension	10	20	30	
N.J.A.C. 13:2-23.22(a)	TAP	Tap connected to a container of malt alcoholic beverages not truly indicating name or brand	5	10	20	
N.J.S.A. 33:1-31(d)	TAX	Knowing failure to pay taxes described in N.J.S.A. 33:1-31	15	30	60	
N.J.A.C. 13:2-23.1(b)	TOX1	Sale of alcoholic beverages to an intoxicated patron	15	30	45	Revocation
N.J.A.C. 13:2-23.20	TOX2	Licensee or employee working at licensed premises while intoxicated	15	30	45	Revocation
N.J.A.C. 13:2-20.4(a) and N.J.A.C. 13:2-20.3	TRANS	Transporting alcoholic beverages without proper documents	10	20	30	
N.J.S.A. 33:1-25	UI1	Undisclosed person, not otherwise disqualified, with a beneficial interest in a liquor license or licensed business	30	60	90	Revocation
N.J.S.A. 33:1-26	UI2	Person under the age of 18 or criminally disqualified person with an undisclosed beneficial interest in a liquor license or licensed business				Revocation
N.J.S.A. 33:1-12.31	UI3	Acquiring a beneficial interest in more than two retail liquor licenses				Revocation
N.J.S.A. 33:1-43/ N.J.A.C. 13:2-16.12	UI4	Solicitor with an undisclosed business relationship to or a beneficial interest in a retail license				Revocation
N.J.A.C. 13:2-23.31	UI5	Police officer, peace officer, or any other person whose power or duties include the enforcement of the alcoholic beverage law or regulations with an undisclosed beneficial interest in a liquor license				Revocation
N.J.S.A. 33:1-43	UI6	A brewery, winery, distillery, rectifying and blending plant or wholesale licensee with an undisclosed interest in a retail liquor license				Revocation
N.J.A.C. 13:2-16.11 and 23.28	WHOL1	Wholesaler responsible for solicitor violating N.J.A.C. 13:2-16.3 and/or 16.11	30	60	90	Revocation

N.J.A.C. 13:2-16.14	WHOL2	Wholesaler hired, as a solicitor, a person whose immediate family member has a direct or indirect financial interest in a retail license, in violation of N.J.A.C. 13:2-16.14 and/or wholesaler assigned a solicitor, whose immediate family member has a direct or indirect interest in a retail license to an account in which that solicitor's or any solicitor's family member has a direct or indirect interest in the retail license.	30	60	90	Revocation
N.J.A.C. 13:2-16.14	WHOL3	Wholesaler paid commission to a solicitor, whose immediate family member has a direct or indirect interest in a retail license, based upon sales made to or purchases made by a retail licensee in which the solicitor's or another solicitor's immediate family member has a direct or indirect interest.	30	60	90	Revocation

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

2 Number refers to days of license suspension.

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

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

In the table in (i), substituted entry "N.J.S.A. 33:1-52/N.J.A.C. 13:2-16.11; N.J.A.C. 13:2-16.3; N.J.A.C. 13:2-16.1" for entry "N.J.S.A. 33:1-52/N.J.A.C. 13:2-16.11(a) and/or 16.11(c)", in the Description column of entry "N.J.S.A. 33:1-52/N.J.A.C. 13:2-16.11; N.J.A.C. 13:2-16.3; N.J.A.C. 13:2-16.1", substituted "offered to sell or sold to, or received compensation based on purchases made by or sales made to, a retail license in which the solicitor's or another solicitor's immediate family has a direct or indirect interest" for "to a retail licensee with family member involved", added the entry for "N.J.A.C. 13:2-16.3" and the two entries for "N.J.A.C. 13:2-16.14", and in the code column of entry "N.J.A.C. 13:2-16.11 and 23.28", substituted "WHOL1" for "WHOL".

Case Notes

Initial Decision (2009 N.J. AGEN LEXIS 428) adopted, which found that a licensee's liquor license was properly suspended for 63 days for: (1) failure to produce liquor purchase invoices, (2) failure to produce true books of account, (3) failure to keep and produce an Employee List, (4) failure to produce the short form license application, and (5) failure to produce the last filed long form license application. Respondent offered no excuse except a belated and improbable claim that his business records were destroyed when his basement flooded. N.J. Div. of Alcoholic Beverage Control v. Sambuco, OAL Dkt. No. ABC 11733-08, 2009 N.J. AGEN LEXIS 1202, Final Decision (June 25, 2009).

Licensee's plenary retail consumption license was properly revoked where a preponderance of the evidence demonstrated that the licensee had engaged in sale to underage patrons on four separate incidents; the ages of the underage patrons ranged from a 16-year-old male to a 19-year-old female (adopting 2008 N.J. AGEN LEXIS 908). Best Liquors of Red Bank, Inc. v. Governing Body of Red Bank, OAL Dkt. No. ABC 4908-07, ABC 4909-07 AND ABC 8144-08 (Consolidated), 2009 N.J. AGEN LEXIS 952, Final Decision (January 27, 2009).

Numerous lewd and immoral acts committed by female dancers on the licensed premises with different patrons on three separate days constituted separate and successive violations of N.J.A.C. 13:2-23.6.

N.J. Div. of Alcoholic Beverage Control v. S.B. Lazarus, Inc., OAL Dkt. No. ABC 2309-07, 2008 N.J. AGEN LEXIS 342, Initial Decision (June 2, 2008).

License revocation was the appropriate penalty for numerous lewd and immoral acts committed by female dancers on the licensed premises on three separate dates; the violations were egregious and committed with the licensee's knowledge, and the sheer number of violations demonstrated an intentional disregard of the standard of conduct imposed on licensees. N.J. Div. of Alcoholic Beverage Control v. S.B. Lazarus, Inc., OAL Dkt. No. ABC 2309-07, 2008 N.J. AGEN LEXIS 342, Initial Decision (June 2, 2008).

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).

Case Notes

Following appeal of the ABC Director's earlier Final Order (2005 N.J. AGEN LEXIS 912) to the New Jersey Supreme Court (Division of Alcoholic Beverage Control v. Maynard's, Inc., 192 N.J. 158, 927 A.2d 525, 2007 N.J. LEXIS 913 (2007)), the Director, ordered by the Supreme Court to consider mitigating factors upon remand, allowed the appellant licensee to serve only 20 days of the 60-day suspension on drug charges (N.J.A.C. 13:2-23.5) and make a monetary compromise offer, thereby requiring the licensee to pay \$15,000 in lieu of 40 days of suspension. However, as the liability and penalty imposed for the underage violations (N.J.A.C. 13:2-23.1(a)) were not before the Supreme Court, the licensee was required to serve 10 days of suspension, with 20 days held in abeyance for two years, for those violations. Division of Alcoholic Beverage Control v. Maynard's Inc., OAL DKT. NOS. ABCDS 0442-03 and ABCDS 0443-03, 2008 N.J. AGEN LEXIS 37, Final Decision (January 4, 2008).

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).

Case Notes

Following appeal of the ABC Director's earlier Final Order (2005 N.J. AGEN LEXIS 912) to the New Jersey Supreme Court (Division of Alcoholic Beverage Control v. Maynard's, Inc., 192 N.J. 158, 927 A.2d 525, 2007 N.J. LEXIS 913 (2007)), the Director, ordered by the Supreme Court to consider mitigating factors upon remand, allowed the appellant licensee to serve only 20 days of the 60-day suspension on drug charges (N.J.A.C. 13:2-23.5) and make a monetary compromise offer, thereby requiring the licensee to pay \$15,000 in lieu of 40 days of suspension. However, as the liability and penalty imposed for the underage violations (N.J.A.C. 13:2-23.1(a)) were not before the Supreme Court, the licensee was required to serve 10 days of suspension, with 20 days held in abeyance for two years, for those violations. Division of Alcoholic Beverage Control v. Maynard's Inc., OAL DKT. NOS. ABCDS 0442-03 and ABCDS 0443-03, 2008 N.J. AGEN LEXIS 37, Final Decision (January 4, 2008).

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, or 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.

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

Deleted "special transit 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) 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.

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

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

Deleted former (b); recodified former (c) as (b).

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 driver side front bumper, 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).

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

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

In (a), substituted " , on the driver side front bumper," for "on the left side thereof."

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

(a) No licensee shall allow, permit or suffer any vehicle for which a transit insignia, or transportation license insignia

mitigating factors; thus, the ALJ was forced to conclude that no mitigating factors existed and upheld a 150-day liquor license suspension. *S.B. Lazarus, Inc. v. Borough of Bound Brook*, OAL DKT. NO. ABC 6468-06, 2007 N.J. AGEN LEXIS 579, Initial Decision (August 15, 2007).

ABC Director affirmed the Initial Decision (2006 N.J. AGEN LEXIS 1065) that the record demonstrated the liquor license documentation or bar card were not immediately produced when requested by a police officer in finding the licensee guilty of violating N.J.A.C. 13:2-23.13. While the Director noted that there were other paper violations (no true books of account and no delivery slips or invoices) which were also appealed, the record before the Director was devoid of any discussion concerning these other "paper" violations, and thus the Director could not make a determination as to whether or not those books or invoices were made available for inspection upon demand. *Corona de Espana Restaurant Corp. v. City of Union City*, OAL DKT. NOS. ABC 11506-04, ABC 07702-06 & ABC 07703-06 (Consolidated), 2006 N.J. AGEN LEXIS 1079, Final Decision (April 4, 2007).

Employee list that contained only municipalities of residence and not full street addresses constituted a violation of N.J.A.C. 13:2-23.13(a)3. *Division of Alcohol Beverage Control v. PCK Enterprises, Inc.*, OAL DKT. NOS. ABC 656-03 and 2986-03 (consolidated), 2005 N.J. AGEN LEXIS 395, Initial Decision (August 4, 2005).

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 tasting events 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 consumer 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;

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; or

5. Contains an instant win coupon, ticket, cap, game card or the like.

(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.

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

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

In introductory paragraph (a), substituted "tasting events" for "tastings or tasting dinners"; added (a)5.

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".

13:2-23.18 Solicitation prohibited

No plenary or seasonal retail consumption licensee shall allow, permit or suffer any person employed on the licensed

premises to solicit any beverage, alcoholic or otherwise, at the expense of or as a gift from any customer or patron.

13:2-23.19 Prohibition against offering substitute beverages; exception

No licensee privileged to sell alcoholic beverages for consumption on the licensed premises shall serve or allow, permit or suffer the service of any alcoholic beverage other than ordered or substitute a nonalcoholic beverage when an alcoholic beverage has been ordered, unless agreed to 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).

Added "unless agreed to by the customer".

13:2-23.20 Intoxicated workers prohibited

No licensee shall work in any capacity in or upon the licensed premises while actually or apparently intoxicated, or allow, permit or suffer any actually or apparently intoxicated person to work in any 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).

Revised heading.

Law Review and Journal Commentaries

Dram Shop Act—Administrative Regulations—Alcohol—Comparative Negligence—Instructions. Steven P. Bann, 137 N.J.L.J. No. 3, 49 (1994).

13:2-23.21 Restrictions upon storage of alcoholic beverages

No licensee shall store any alcoholic beverage except at his licensed premises, or at a public warehouse licensed under the alcoholic beverage law, or at other premises pursuant to special permit first obtained from the Director. Nothing herein shall prohibit the storage of alcoholic beverages by a licensee upon the formerly licensed premises for a period not exceeding five days after the effective date of the transfer of the license to other premises or for a period not to exceed 72 hours following delivery at the licensed premises of alcoholic beverages purchased, as part of a cooperative order by a fellow member of a cooperative purchasing agreement made pursuant to N.J.A.C. 13:2-26.

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).

Revised heading.

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 storage of alcoholic beverages purchased under a cooperative order.

13:2-23.22 Requirement for labeled tap markers; provision for electronic systems

(a) No licensee privileged to sell alcoholic beverages for consumption on the licensed premises shall allow, permit or suffer any tap on the licensed premises to be connected with any barrel or other container of a malt alcoholic beverage unless such tap bears a marker which truly indicates the name or brand of the manufacturer of such malt alcoholic beverage, and unless such name or brand is in full view of the purchaser when the tap is located at a bar at which consumers are served.

(b) On premises where either an electronic or automatic system is being used, which provides for the dispensing of distilled alcoholic beverages in a barroom, and the label on the container from which the beverage is drawn is not visible to a consumer at the bar, then some alternate device must be used to indicate to the consumer the brand being dispensed.

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.

13:2-23.23 Requirements concerning labels; tax payment indicia

(a) No retail licensee shall possess, have custody of, or allow, permit or suffer in or upon the licensed premises any alcoholic beverage manufactured, distributed, bought, sold, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, possessed or transported in violation of the alcoholic beverage law, or any alcoholic beverage in any keg, barrel, can, bottle, flask or similar container which:

1. Does not bear any label describing its contents; or
2. Bears a label which does not truly describe its contents; or
3. Does not bear any indicia of tax payment as required by the laws of the United States.

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.

Case Notes

Liquor licensee was fined and license was suspended for conducting business without Special Federal Tax Stamp. Division of Alcoholic Beverage Control v. William Diggs Family, Inc., 96 N.J.A.R.2d (ABC) 81.

13:2-23.24 Restrictions upon placing of orders

No licensee shall place any order within this State for the purchase of any alcoholic beverage or allow, permit or suffer any of his employees to place any order for the purchase of any alcoholic beverage, with any individual soliciting in violation of N.J.A.C. 13:2-16.

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.

13:2-23.25 Restrictions upon retail/manufacturer or wholesaler relationships

No retail licensee shall employ or have connected with him in any business capacity whatsoever any person interested, directly or indirectly, in the manufacturing or wholesaling of any alcoholic beverage within or without this State, nor shall any retail licensee be employed by or connected in any business capacity whatsoever with any person interested, directly or indirectly, in the manufacturing or wholesaling of any alcoholic beverage within or without this State.

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.

13:2-23.26 Fingerprinting requirements

No licensee shall employ or have connected with him in any business capacity whatsoever any person who refuses to submit himself for fingerprinting when required to do so by the Director or the municipal license issuing authority concerned.

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

13:2-23.27 Prohibited activities during license suspension

(a) No licensee, during the suspension of license, shall:

1. Allow, permit, or suffer the sale, service, delivery or consumption of any alcoholic beverage, or any other alcoholic beverage activity in or upon the licensed premises, except the storage of alcoholic beverages on hand or (with the permission of the Director) the return of alcoholic beverages to wholesalers or manufacturers; or
2. Deliver any alcoholic beverage to any consumer; or
3. Receive delivery of any alcoholic beverage at the licensed premises; or
4. Advertise that the licensed premises is closed or the licensed business stopped because of repairs or alterations or for any reason other than the suspension.

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.

13:2-23.28 Standard of liability

(a) Unless otherwise specified by statute or rule, a licensee is guilty of a violation of the Alcoholic Beverage Control Act if it allows, permits or suffers the violative act on or about its licensed premises.

(b) When knowledge is required to establish a violation of the Alcoholic Beverage Control Act, knowledge is established if:

1. The licensee itself committed the violative act;
2. The licensee had actual knowledge or was on notice that the violative activity was taking place, or about to take place, on or about the licensed premises; or
3. The licensee could have discovered violative activity was taking place, or about to take place, on or about the licensed premises through reasonable inquiry and had notice of circumstances which gave rise to a duty to inquire regarding same.

(c) In disciplinary proceedings brought pursuant to the alcoholic beverage law, it shall be sufficient, in order to establish the guilt of the licensee, to show that the violation was committed by an agent, servant, employee or patron or the licensee. The fact that the licensee did not participate in the violation or that his agent, servant or employee acted contrary to instructions given by him by the licensee or that the violation did not occur in the licensee's presence shall constitute no defense to the charges preferred in such disciplinary proceedings.

(d) No licensee shall commit any act which gives rise to a violation which is chargeable against any other licensee. The licensee committing such violation may be administratively charged for same even if the other licensee is not charged.

(e) The provisions of this section apply to all classes of alcoholic beverage licenses.

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.

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

For purposes of alcoholic beverage regulation, female dancers providing entertainment on the licensed premises were employees of the licensee, whether they were hired by the licensee directly or contracted through an outside service. N.J. Div. of Alcoholic Beverage Control v. S.B. Lazarus, Inc., OAL Dkt. No. ABC 2309-07, 2008 N.J. AGEN LEXIS 342, Initial Decision (June 2, 2008).

Municipal ABC Board proved the licensee failed to have a complete employee list and suffered an act of violence on the licensed premises that involved the shooting of five patrons during a street gang party hosted by the licensee; this violation in and of itself was sufficiently egregious to warrant revocation of the license, and moreover this finding was buttressed by the record established by the municipal ABC Board showing a continuing disregard by this licensee for the safety and welfare of patrons and citizens. If aggravating circumstances were necessary to substantiate the penalty, they clearly existed here, where the licensee exhibited a conscious disregard for his obligation on the most fundamental and dangerous levels; consequently, the facts supported the penalty of revocation imposed by the municipal ABC Board. Big Business Entertainment, LLC v. Municipal Bd. of Alcohol Beverage Control, City of Passaic, OAL Dkt. No. ABC 05897-06, 2007 N.J. AGEN LEXIS 948, Final Decision (December 13, 2007).

License suspended due to employee's sale of marijuana on premises; licensee must bear responsibility for employee's action; penalty mitigated by licensee's serious efforts to stop drug trafficking on premises; 30 day suspension ordered (Division's Final Decision). Div. of Alcoholic Beverage Control v. Red Klotz Enterprises, Inc., 6 N.J.A.R. 13 (1982).

13:2-23.29 Detention of evidence; search of licensed premises

By the acceptance of the license, the licensee consents to the detention, as and for evidence, of any physical matter, including alcoholic beverages, found on the licensed premises or during the course of any investigation, inspection or search of the licensed premises being conducted by the Director, the Director's deputies, inspectors or investigators or by any officer as 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).

Revised heading; stylistic revision.

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

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

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

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

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

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

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

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

Provided recordkeeping periods.

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

Rewrote the section.

Amended by R.2011 d.234, effective September 6, 2011.
See: 43 N.J.R. 557(a), 43 N.J.R. 2354(a).
Rewrote (a)6.

Case Notes

Initial Decision (2009 N.J. AGEN LEXIS 428) adopted, which found that a licensee's liquor license was properly suspended for 63 days for: (1) failure to produce liquor purchase invoices, (2) failure to produce true books of account, (3) failure to keep and produce an Employee List, (4) failure to produce the short form license application, and (5) failure to produce the last filed long form license application. Respondent offered no excuse except a belated and improbable claim that his business records were destroyed when his basement flooded. N.J. Div. of Alcoholic Beverage Control v. Sambuco, OAL Dkt. No. ABC 11733-08, 2009 N.J. AGEN LEXIS 1202, Final Decision (June 25, 2009).

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

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

13:2-23.33 Dishonored checks; unpaid fees

If a check submitted by a licensee, permittee or applicant is returned unpaid to the Division or other issuing authority or if all or any portion of any fee required is unpaid, the licensee, permittee or applicant shall be subject to disciplinary action or denial of current and future applications.

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

**SUBCHAPTER 24. TRADE MEMBER
DISCRIMINATION, MARKETING AND
ADVERTISING**

13:2-24.1 Discrimination in terms of sale

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

(b) For purposes of this subchapter:

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

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

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

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

1. Which discriminates against purchasers, in that:

i. There is a different price or are different credit terms for different purchasers of alcoholic beverages of the same brand or trade name of like age, quality and quantity (including, but not limited, to proof and size); or

ii. It is a discount, rebate, allowance or advertising service granted to a purchaser over and above any discount, rebate, allowance, or advertising service available at the time of such transaction to competitors with respect to a sale of alcoholic beverages of the same brand or trade name of like age, quality and quantity. However, a wholesaler may exclude retail cooperatives from a RIP program without the prior approval of the Director so long as the RIP program complies with (e) below. A wholesaler wishing to exclude retail cooperatives from a RIP program that does not comply with (e) below shall first petition the Director and seek approval of its program. This petition may include one or more such proposed programs and shall be submitted to the Director at least 75 days in advance of the date on which the program(s) is proposed to appear on the Current Price List. Such program(s) shall not appear on the Current Price List without the Director's prior approval. The petition shall include the following information upon which the Director shall make his or her decision:

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

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

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

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

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

3. Alcoholic beverages at unreasonably low prices for the purposes of destroying competition, or eliminating a competitor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b)2 deleted.

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

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

Rewrote the section.

Case Notes

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

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

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

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

2. As, or for services, facilities or equipment, unless the same is available on proportionally equal terms to all other customers or accounts competing in the distribution of the connected alcoholic beverage product(s), except that no service, facility or equipment may be offered to a retail licensee which, directly or indirectly, requires the future purchase or an agreement to make a future purchase of any alcoholic beverages.

(b) Manufacturers, suppliers, wholesalers, importers or third parties at their direction may build or provide product displays on retail licensed premises as mutually agreed upon with the retailer, provided:

1. Provision of product displays shall be conditioned upon purchase of alcoholic beverage product adequate to initially complete the display; however, no other condition can be imposed on the retailer to receive the product display;

2. Any promotional item in a product display having a value not exceeding \$300.00, must be awarded to a consumer. The retailer shall be supplied with a sweepstakes tear pad for this purpose, unless the display item(s) are novelty items of nominal value intended to be given away to consumers; and

3. Any promotional item in a product display with a value exceeding \$300.00 shall remain the property of the industry member supplying the promotional item and shall be returned to them upon removal of the display.

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

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

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

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

In (a)2, corrected error.

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

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

Added (b) and (c).

Amended by R.2011 d.234, effective September 6, 2011.

See: 43 N.J.R. 557(a), 43 N.J.R. 2354(a).

Added new (b); and recodified former (b) and (c) as (c) and (d).

13:2-24.3 Restraint of trade

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

13:2-24.4 Regulation of wholesaler credit

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

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

(b) In the event that a wholesaler has not received payment in accordance with the terms of sale as set forth upon an individual delivery invoice pursuant to N.J.A.C. 13:2-39.1, such wholesaler shall, personally or by first class mail, serve a "Notice of Obligation" upon any such defaulting retailer or its employee within three business days after the obligation is due. Service shall be deemed complete on the second business day following the date of mailing or when personal service is made.

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

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

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

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

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

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

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

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

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

(f) Upon receipt of a written claim by a retailer that it disputes the existence of a debt as set forth in a "Notice of Obligation," the Director or his designee will, upon a showing that either the merchandise was not delivered or that payment has been made, direct that the matter be set down for informal conference with notice to the parties and subject to appropriate interim orders to preserve the rights of the retailer. In the event that the dispute has not been resolved by the date of the hearing, the Director or his designee shall take proofs as to whether or not the merchandise which is the subject of the "Notice of Obligation" was delivered, and/or whether or not payment was made, and if so, upon what date. Should the Director or his designee determine that the "Notice of Obligation" was accurate, a special ruling shall be entered directing that a "Notice of Delinquency" be issued with respect to the licensee for such period of time as that which would have transpired between the original "Notice of Obligation" and "satisfaction." Should it be determined that the original "Notice of Obligation" was inaccurate, a special ruling shall be entered prohibiting the issuance of a "Notice of Delinquency." The party for whom the determination was adverse shall promptly remit to the Division such costs as may be determined, which shall in no event be less than \$25.00. In such proceedings, the Director shall not entertain claims predicated upon set-offs or other defenses more appropriately resolved by the parties in a court of competent jurisdiction.

(g) The provisions of this section may be relaxed in the discretion of the Director, upon written petition by a retail licensee with notice to all creditor-wholesalers, in such instances where:

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

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

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

i. Federal or State insolvency proceedings;

ii. State receivership action;

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

iv. Internal Revenue Service seizure of the license.

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

Repealed by R.1981 d.71, effective November 1, 1981.
See: 13 N.J.R. 37(b), 13 N.J.R. 238(b).
New Rule, R.1981 d.432, effective November 2, 1981.
See: 13 N.J.R. 604(b), 13 N.J.R. 777(e).
Amended by R.1981 d.432, effective October 20, 1981.
See: 13 N.J.R. 604(b), 13 N.J.R. 846(e).
Amended by R.1983 d.545, effective November 21, 1983.
See: 15 N.J.R. 1557(a), 15 N.J.R. 1945(b).

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

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

Rewrote (e) through (g).

Case Notes

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

13:2-24.5 Supplier pricing and marketing information

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

1. For a period of three years maintain on its licensed premises or other principal place of business made known to the Division in a readily retrievable fashion pursuant to N.J.A.C. 13:2-29:

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

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

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

Amended by R.1980 d.72, effective February 11, 1980.
See: 11 N.J.R. 285(b), 12 N.J.R. 156(a).
Amended by R.1980 d.304, effective July 3, 1980.
See: 12 N.J.R. 343(h), 12 N.J.R. 494(b).
Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

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

13:2-24.6 Required records

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

1. A "Historical Price List," which shall contain the prices at which all products by brand, type, proof, age and size were offered for sale, inclusive of all discounts, allowances or differentials and which may be maintained in any "readily retrievable" fashion pursuant to N.J.A.C. 13:2-29;

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

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

i. Prices, inclusive of per unit costs, all discounts, allowances and differentials and other terms of sale, at which all products are offered for sale to retailers during the calendar month following filing. A "unit" is defined as a can, bottle or individualized container;

ii. The correct brand or trade name of the product, its nature and type, the brand registration number according to N.J.A.C. 13:2-33.1, size and age and proof of alcoholic content when stated on the label, the standard number of unit containers per standard case and the capacity of each unit container; and

iii. Displays whose fair market retail value is over \$100.00 and any retailer incentive programs, including for displays built by any manufacturer, supplier, importer or wholesaler or by third parties at their direction the following information:

(1) The name, address and license number of the retailer receiving the display and item(s);

(2) The date furnished and anticipated removal date of the display;

(3) A description of the alcoholic beverage in the display, by brand and quantity; and

(4) A description and actual cost of any promotional item(s) in the display provided to the retailer;

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

5. The prices contained therein and any retail incentive program offered shall be filed independently by each individual filer, and no amendments or changes (except

upon approval of the Director to correct bona fide clerical errors) shall be made therein prior to filing of the next monthly price list. Requests for additional amendments may be considered pursuant to N.J.A.C. 13:2-19;

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

7. The Current Price List shall be a public record and nothing in this section shall preclude any licensee selling alcoholic beverages to retailers from providing it directly to retailers by any means. Any re-publication of the filed Current Price List must be published in its entirety unless conspicuously noted otherwise.

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

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

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

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

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

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

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

Amended by R.2011 d.234, effective September 6, 2011.

See: 43 N.J.R. 557(a), 43 N.J.R. 2354(a).

In (a)1 and (a)2, inserted a comma preceding and deleted a comma following the closing quotation mark, and deleted "and" from the end; rewrote (a)3iii; in (a)4 and (a)5, substituted a semicolon for a period at the end; in (a)6, substituted "; and" for a period at the end; and in (a)7, substituted "in this section" for "herein".

13:2-24.7 Marketing initiatives

(a) Subject to the foregoing provisions of this subchapter, a licensed manufacturer, supplier, importer, wholesaler or distributor may furnish or provide advertising or promotional materials to any retail licensee. Such licensees may provide product samples to retailers and make donations of alcoholic beverages to qualified industry trade organizations and bona fide charitable organizations, only within the terms and conditions of a special permit first obtained from the Director, issued upon a petition establishing and defining its need and use and verifying that all taxes have been paid.

(b) Manufacturers, suppliers, wholesalers or third parties at their direction, may supply retailers with point of sale and consumer novelty items, for advertising purposes, with the following limitations:

1. Supplied items shall be nominal in value, including, but not limited to, napkins, coasters, T-shirts, golf balls and similar items;

2. Provision of such items to retailers may not be conditional upon any purchase by the retailer; and

3. The items shall be brand identified for advertising purposes and intended for use by the retailer and/or distribution to consumers to advertise products or promote brand recognition.

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.2011 d.234, effective September 6, 2011.

See: 43 N.J.R. 557(a), 43 N.J.R. 2354(a).

Inserted designation (a); and added (b).

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 licensee'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).

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Submitting an application for a new license and the appropriate fees to the municipal issuing authority by June 30 of the year ending 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 June 30 of the year ending the license term. This filing deadline shall not be extended under any circumstances.

Amended by R.2011 d.234, effective September 6, 2011. See: 43 N.J.R. 557(a), 43 N.J.R. 2354(a).

In (a)1 and (a)2, substituted "June 30 of the year ending" for "September 28 of the year beginning".

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 or other extraordinary circumstances 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 June 30 of the year ending 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.

Amended by R.2011 d.234, effective September 6, 2011. See: 43 N.J.R. 557(a), 43 N.J.R. 2354(a).

In the introductory paragraph of (a), inserted "or other extraordinary circumstances"; and in (a)2, substituted "June 30 of the year ending" for "September 28 of the year beginning".

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 June 30, 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.

Amended by R.2011 d.234, effective September 6, 2011.
See: 43 N.J.R. 557(a), 43 N.J.R. 2354(a).

In (a), substituted "June 30" for "September 28".

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.

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

13:2-43.1 Required filings

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

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

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

(a) The Verified Petition is a signed affidavit by the licensee and any other persons with personal knowledge of the

facts involving the inactive license. It shall contain the following information:

1. Complete identification of the licensee and the license number;
2. The date on which the license became inactive and why;
3. Facts which demonstrate a willingness on the part of the licensee to activate the license;
4. All efforts made by the licensee to activate the license;
5. Monetary expenditures incurred towards activation;
6. The prognosis for activation;
7. Any factors outside of the licensee's control that may have thwarted efforts to activate the license;
8. The need for any further active licenses in the community;
9. Whether the licensee has previously sought relief from the Director pursuant to N.J.S.A. 33:1-12.39; and
10. The signature of a notary or other person authorized to administer oaths in the State of New Jersey.

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

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

13:2-43.3 Role of the municipal issuing authority

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

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

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

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

Added (c).