

Division of
**ALCOHOLIC
BEVERAGE
CONTROL**

Bulletin

40 E. Front Street, CN 087, Trenton, New Jersey 08625-0087

BULLETIN 2466

March 22, 1996

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1. NOTICE TO THE INDUSTRY - LIMITED WAIVER OF BRAND REGISTRATION REQUIREMENT FOR CURRENT PRICE LISTING (CPL) FILINGS FOR SALES IN APRIL 1996 - APPLIES TO CERTAIN PRODUCTS WHOSE CAN OR BOTTLE LABELS ARE MARKED FOR DEPOSIT OF ANOTHER STATE.

Under current regulation (N.J.A.C. 13:2-27.2), the Division prohibits the sale of alcoholic beverage products packed in cans or bottles whose labels are marked for deposit of another state. (A temporary exception exists for certain wine cooler products pursuant to a special ruling.)

As many of you may be aware, the Division has proposed an amendment to that regulation which will remove that prohibition from all cans and bottles which contain wine and spirits as well as "malt coolers" made from malt alcoholic beverages. Additionally, a limited exception has also been made for other malt alcoholic beverages where the brewery has certified that its shipments into New Jersey for the past full calendar year of all malt alcoholic products did not exceed 3,000 barrels of 31 fluid gallons or their container equivalent. The notice of adoption of the amendment will be published by the Office of Administrative Law on Monday, March 18, 1996 at which time that proposed amendment will take effect.

In order to sell alcoholic beverage products in New Jersey in April, licensees must list them on their CPLs which must be filed in this Division no later than Friday, March 15, 1996. Under existing regulations, however, products whose can or bottle labels contained deposit information are prohibited from appearing on a CPL.

As noted, that prohibition is being substantially relaxed by the noted regulatory amendments which will take effect on March 18, 1996. As a result, the industry is hereby informed that the Division will accept for filing on the March 15, 1996, CPLs containing products whose cans or bottles are marked for deposit, but whose contents are either wine, spirits or "malt coolers" made from malt alcoholic



beverages. We will also accept for filing malt alcoholic beverage products whose can or bottle labels contain deposit information if an appropriate officer of the brewery files a certification that its shipments of all malt alcoholic beverages into New Jersey for the 1995 calendar year did not exceed 3,000 barrels.

If you have any questions in this matter, please direct them to Mrs. Susan Fiore at 609-984-1980 or Mr. Chris Margounakis at 609-984-2754.

2. NOTICE TO LICENSEES AND ISSUING AUTHORITIES VOLUNTARY DELICENSURE OF ALL OR A PORTION OF THE LICENSED PREMISES REQUIRES FILING OF A PLACE-TO-PLACE TRANSFER (REDUCTION OF PREMISES) APPLICATION

Under Case Law and statutory interpretation, it has long been held that an expansion of a licensed premises requires the filing of a place-to-place transfer (expansion of premises) application, since same is "...a different place of business...." N.J.S.A. 33:1-26. Under recent regulatory amendments, this requirement is now codified under N.J.A.C. 13:2-7.2(c). R. 1995 (d)450, effective August 21, 1995.

The same requirement of notice to the issuing authority for a voluntary reduction of all or a portion of the licensed premises has also been long recognized. However, the Division's experience has been that local issuing authorities are often not properly noticed of proposed reductions, or delicensing of a portion or all of the licensed premises. Cases have arisen where a licensee has simply checked off the amendment box of a renewal application and the local issuing authority was unaware of the need to review the proposed delicensure of a portion of the premises. Without proper notice, disclosure of facts and review by the local issuing authority, there is no assurance that continued operation of the changed premises will be in the public interest. New Regulation N.J.A.C. 13:2-7.2(d) clarifies the licensee's obligation to provide notice through filing of a place-to-place transfer application:

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

In the past, some confusion arose as a result of statements in a prior ABC Handbook concerning the requirement of filing a place-to-place transfer application when a portion or all of the licensed premises are being delicensed. This issue was fully explored in Division of Alcoholic Beverage Control v. J & M Restaurant, 95 N.J.A.R. 2d (ABC) 11 (1994), reprinted in ABC Bulletin 2465, Item 6. In this case, the licensee sought to delicense a room on its premises to permit an otherwise illegal activity under the license, without a formal hearing before the municipal issuing authority. The Director concurred with the opinion of the Administrative Law Judge that the licensee's actions were an attempt to circumvent local issuing authority approval and evade regulation but reduced the penalty imposed in light of the fact that alternative interpretations of the transfer and formal hearing requirement could be obtained from the former ABC Handbook.

The new regulation clarifies the requirement that a full place-to-place transfer application be submitted for reduction or delicensure of the premises. The local issuing authority as well as the citizens are thus on notice of the need to specifically consider the effect of the proposed reduction and after such review, the issuing authority may grant the transfer if the reduced premises remains suitable for licensure, or deny it if the operation and effect of the reduction of the premises renders it unsuitable for continued licensure.

It is noted that voluntary delicensure or reduction of the licensed premises is distinguished from situations involving involuntary delicensure of the premises. Involuntary delicensure arising from events such as eviction of the licensee or condemnation of the premises resulting in loss of all possessory interest in the premises by the licensee, the premises become delicensed immediately by operation of law. Under case law and past Division policy, it is clear that loss of a possessory interest in the premises results in delicensure of the premises whether or not an application is filed with the local issuing authority. Inkeeper t/a Mason Jar v. Remington and Twp. of Mahwah N.J. Super. _____ (App. Div. _____), affirming 94 N.J.A.R. 2d (ABC) 13, reprinted in ABC Bulletin 2462, Item 5. Unlike voluntary reduction or delicensure of the premises, an involuntary delicensure of the licensed premises does not require the filing of a full transfer application with the issuing authority since the delicensure of premises occurs through operation of law. In such cases, the licensee is required to notify the issuing authority within ten days of the loss of premises pursuant to N.J.A.C. 13:2-1.7, N.J.A.C. 13:2-2.14, and N.J.A.C. 13:2-4.10.

3. NOTICE TO ALL PLENARY RETAIL LICENSEES AND REPRESENTATIVES OF WINERIES, BREWERIES, WHOLESALERS AND DISTRIBUTORS WHO INTEND TO PARTICIPATE IN CONSUMER TASTINGS.

The purpose of this Notice is to address some of the commonly raised issues involving consumer tastings that have arisen since the adoption of N.J.A.C. 13:2-37.1. Prior to adoption of that regulation, Division rules had prevented on-premise consumption licensees from hosting consumer tastings. For a trial period shortly before the adoption of the new rule, we allowed consumption licensees and social affair permittees to host consumer alcoholic beverage tastings only with a permit issued on a case-by case-basis and under strict guidelines.

On August 21, 1995, N.J.A.C. 13:2-37.1 was adopted allowing on-premise consumption licensees and permittees to host consumer alcoholic beverage tastings and tasting dinners without the need to obtain a special permit. However, the tasting must be held according to the conditions set forth in the regulation - otherwise the tasting would be considered a prohibited promotion in violation of N.J.A.C. 13:2-23.16.

The following is a guideline to consumption licensees and permittees on how to host consumer tastings in accordance with N.J.A.C. 13:2-37:

I. Hosts of Consumer Tasting may be Either:

- (A) Plenary or Seasonal Retail Consumption Licensees,
- (B) Club Licensees,
- (C) Annual State Concessionaire Permittees,
- (D) Retail Transit Licensees or
- (E) Social Affair Permittees.

A Social Affair Permit is issued only to bona fide non-profit entities. A club licensee, also an on-premise consumption licensee, can host consumer tastings for its members and bona fide guests. Club licensees may have consumer tastings that are opened to the public with the receipt of a Social Affair permit.

II. The Conditions Under Which Tastings can be Held are as Follows:

- (A) No tasting can be conducted on a plenary or limited retail distribution licensed premises. (See discussion at III, infra).
- (B) The tasting must be conducted and promoted in connection with an instructional or educational program for alcoholic beverage products.
- (C) All alcoholic beverages sampled at the tasting must be obtained from the inventory of the host licensee or Annual State Concessionaire Permittee, or if a Social Affair permittee, purchased in accordance with Division laws and regulations.
- (D) The tasting is not open to the general public and not free or complimentary to patrons.
- (E) The tasting must be limited to a number of the consumers who purchase tickets at least 24-hours in advance of the tasting.
- (F) At consumer tasting dinners, the servings of alcoholic beverages per person are limited to no more than:
 - (1) five ounces of a particular malt alcoholic beverage,
 - (2) five ounces of a particular naturally fermented or sparkling wine or
 - (3) one-half ounce of a particular fortified wine or distilled spirits.
- (G) At consumer tastings, the servings of alcoholic beverages per person are limited to no more than:
 - (1) four ounces of a particular malt alcoholic beverage,

(2) one and one-half ounces of a particular naturally fermented or sparkling wine, or

(3) one-half ounce of a particular fortified wine or distilled spirit.

A Social Affair Permittee under the terms of its permit must return any unopened alcohol beverage product to the place of purchase. Any other retailer who wishes to return any unopened alcohol beverage product must comply with the terms of N.J.A.C. 13:2-39.1. (The retailer must petition the Director and if good cause is shown the return will be approved. The distributor should note its return policy in its marketing manual. For every return, the retailer or permittee must obtain a signed document indicating a detailed description of the returned product, the reason for the return, the original date of delivery, the original invoice number, the date of return pick-up or delivery, the person requesting the return and if the reimbursement is in the form of cash or credit.)

In the event the host of a consumer tasting wants a non-retail member of the industry present to offer educational commentary on alcoholic beverage products, such industry member may attend provided that the industry member is employed by a holder of a Class A license, such as a manufacturer, or by a holder of a Class B License, such as a distributor or wholesaler, and that Class A or B Licensee has obtained a Special Permit. Industry members who are not employed by a holder of a Class A or B license may not attend unless that industry member holds at least a one percent ownership interest in a winery, brewery or distillery and receives a Special Permit. (See discussion at IV, infra).

III. Involvement of Distribution Licensees:

Plenary retail distribution licensees are statutorily prohibited from hosting consumer tastings on their licensed premises. N.J.S.A. 33:1-12 provides that distribution licensees only have the privilege to sell "any alcoholic beverages for consumption off the licensed premises, but only in original containers." (emphasis added) Distribution licensees are prohibited from having open containers of alcoholic beverages on their licensed premises. Thus, distribution licensees cannot host consumer tastings on their licensed premises.

Distribution licensees, however, may participate in consumer tastings in conjunction with plenary or seasonal retail consumption licensees, club licensees, Annual State Concessionaire permittees, retail transit licensees or Social Affair permittees. A distribution licensee can participate by acting as a co-host of a tasting or by offering educational commentary on the alcoholic beverages served at a tasting. The distribution licensee can assist the permittee or consumption licensee in organizing the event. However, as the tasting occurs on a permitted or consumption licensed premises, the permittee or consumption licensee is responsible for any activity on the premises. Thus, the distribution licensee can only act in a supportive role.

When participating as a co-host, a distribution licensee can:

- (A) use its mailing list in accordance with N.J.A.C. 13:2-23.4 to notify its customers of the tasting,
- (B) sell tickets to the tasting on behalf of the consumption licensee/permittee,
- (C) offer educational commentary on the alcoholic beverages sampled,
- (D) offer its price list for the alcoholic beverages sampled - separate from the menu or sampling list provided to consumers,
- (E) advertise or print tickets for the tasting and
- (F) sell its alcoholic beverage product to a Social Affair permittee only for use at a tasting.

A distribution licensee cannot:

- (A) sell its alcoholic beverage products at the tasting,
- (B) bring its alcoholic beverage products for consumption at the tasting, unless purchased by a Social Affair permittee,

- (C) take orders at the tasting for the sale of alcoholic beverage products,
- (D) donate alcoholic beverage products to the permittee,
- (E) pour samples of alcoholic beverages at a tasting or
- (F) be the primary organizer of the event.

Any of the above listed activities by a distribution licensee would go beyond the scope of the distribution licensee's privilege and violate Division regulations. N.J.A.C. 13:2-23.12.

The Division is considering through the Fall of 1996 whether or not to issue a permit to authorize distribution licensees to sell alcoholic beverages for off-premise consumption at a Social Affair permitted event. Until a determination is made, this practice is illegal.

IV. Involvement of Manufacturers, Distributors or Their Representatives:

New Jersey's tied-house statute prohibits manufacturers, distributors or their representatives from being "directly or indirectly interested in the retailing of any alcoholic beverages." N.J.S.A. 33:1-43. In addition, the representative cannot, directly or indirectly, offer the licensee or permittee any "payments or delivery of money or property by way of loan or otherwise accompanied by an agreement to sell property of . . . brewery, winery, distillery, rectifying and blending plant or wholesaler." Id.

The Division has determined that the issuance of specific permits under N.J.S.A. 33:1-43(c)(1) to allow "[t]he exercise of limited retail privileges" by a manufacturer or distributor who wants to promote an alcoholic beverage product directly to the public is necessary to alleviate tied-house concerns. The act of allowing these representatives to participate in tastings is approved of "in the spirit of educating the public regarding the various qualities" of different alcoholic beverages. Therefore, any manufacturer or distributor who wishes to participate in consumer tastings must apply for and receive an annual Consumer Tasting Permit. N.J.S.A. 33:1-43(1); N.J.A.C. 13:2-37.1.

A. Application Process:

The following is a guideline to manufacturers and distributors on how to apply to this Division for approval of and receipt of a Special Permit:

1. A representative of a manufacturer or a distributor may participate in a consumer tasting if that representative:

- (a) possesses at least a one percent ownership interest in an out-of-state winery, brewery or distillery or
- (b) is employed by either a New Jersey Class A licensee (plenary brewery, limited brewery, plenary winery, farm winery, wine blending, plenary distillery, limited distillery, supplementary limited distillery, rectifier and blender, bonded warehouse bottling) or New Jersey Class B Licensee (plenary wholesale, limited wholesale, wine wholesale, state beverage distributor) and holds a Solicitor's Permit.

2. Application for Annual Permit:

Solicitors of New Jersey Class A or Class B licensees or owners of out-of-state wineries, breweries or distilleries who wish to participate in consumer tastings should complete an application for a consumer tasting permit. Holders of New Jersey Class A or B Licenses can apply for a consumer tasting permit (CTW) and owners of out-of-state wineries, breweries or distilleries can apply for a consumer tasting permit (CTS). The New Jersey Class A or Class B Licensee must list any solicitor who wants to participate in consumer tastings in the permit application. The Class A or Class B licensee can later add additional solicitors to the CTW permit.

The permit is annual for the term of July 1st to June 30th. The CTW permit will list on its face the solicitors who are authorized to attend consumer tastings. For the CTS permit, the fee is \$100 per owner of an out-of-state winery, brewery or distillery. For the CTW permit, the New Jersey Class A or Class B

1. Restricted brewery, although a Class A license, is excluded because this licensee cannot have solicitors by virtue of its hybrid retail/brewer license.

license permit fee is \$100, with an additional \$100 fee for each solicitor who will attend consumer tastings.

To invoke the permit privilege, the New Jersey Class A or Class B licensee and the owner of the out-of-state winery, brewery or distillery must submit a written request for permission for their representatives to participate in a tasting at least ten days prior to the event. This written request will give the Division notice of the representative's participation. Failure to provide written notice may result in the revocation of the consumer tasting permit.

B. Participation at Tastings by the Representatives of Manufacturers or Distributors:

N.J.A.C. 13:2-37.1 permits suppliers, manufacturers and distributors to participate in consumer tastings "solely to provide educational commentary regarding the alcoholic beverages." Any actions by these industry members or their representatives is beyond the scope of providing educational commentary and would be deemed a violation of our tied-house statute. N.J.S.A. 33:1-43.

New Division regulation, N.J.A.C. 13:2-24.7, permits licensed New Jersey wholesalers, manufacturers, distributors or importers to donate alcoholic beverages to bona fide charitable organizations. A New Jersey supplier may donate alcoholic beverages to a social affair permittee, which is a bona fide charitable organization, that is hosting a consumer tasting. The permittee must be a charity that can show proof of its Internal Revenue Code 501(c) tax status. If the New Jersey manufacturer or distributor wants to donate alcoholic beverages to such a charity that holds a social affair permit, the manufacturer or distributor should petition the Division for a special permit. This petition should state the manufacturer's or distributor's need and use and verify that all appropriate taxes have been paid for the donated alcoholic beverage product. Donations of product are only for on-premise consumption use.

C. Required Pre-Approval of Each Tasting:

Under the terms of this permit the manufacturer or distributor must file a report to the Division at least 10 days prior to the tasting.

The form of a consumer tasting written request should contain the following:

- (1) The name of the manufacturer or distributor,
- (2) The license number of the manufacturer or distributor, if applicable,
- (3) The name of the representative,
- (4) The representative's solicitor permit numbers, if applicable,
- (5) A statement of the representative's ownership interest, if applicable,
- (6) The host's name and license number, if applicable,
- (7) The license number of the premises,
- (8) The location of the event,
- (9) The date of the event,
- (10) The hours of the event,
- (11) A description of the event,
- (12) The number of anticipated participants,
- (13) The ticket price,
- (14) A list of alcoholic beverages to be sampled and
- (15) The New Jersey Brand Registration numbers for each alcoholic beverage to be sampled.

D. Prohibited Activities:

Manufacturers and distributors or their representatives cannot directly or indirectly solicit any sale of any alcoholic beverage product or discuss specific product prices with the participants, the permittee or the retail licensee. Such

activities would violate N.J.A.C. 13:2-23.25's prohibition against a retailer having a direct or indirect business relationship with manufacturers and distributors or their representatives.

Manufacturers and distributors or their representatives cannot:

- (1) directly or indirectly solicit the sale of specific products of the distributor or manufacturer who is participating in any consumer tasting with the participants, permittee or retail licensee,
- (2) discuss specific product prices with the participants,
- (3) require that the licensee or permittee who is hosting a consumer tasting event make any purchase or future purchase of alcoholic beverage products,
- (4) violate this State's other applicable requirements for promotional activities and
- (5) violate any applicable federal laws and regulations.

As a part of the educational commentary, the distributor's or manufacturer's representative may discuss suggested retail prices for the products sampled with the participants of the consumer tasting.

V. Wine Tastings held by New Jersey Plenary Winery and Farm Winery Licensees

As a reminder, both New Jersey plenary winery and New Jersey farm winery licensees are permitted by statute to offer samplings of their wines to consumers. N.J.S.A. 33:1-10. "Sampling" is defined by statute to mean "the selling at a nominal charge or the gratuitous offering of an open container not exceeding one and one-half ounces of any wine." N.J.S.A. 33:1-10(2a & 2b). New Jersey wineries can conduct samplings at their winery premises and upon approval of an application, at selected salesrooms and county salesrooms. See id.; N.J.A.C. 13:2-10.1 to 10.7. These salesrooms may be located within a premises where another mercantile business

2. New Jersey wineries can also conduct tastings under a New Jersey Wine Industry Advisory Council (NJWIAC) permit for events sponsored by the New Jersey Division of Agriculture.


is conducted. N.J.A.C. 13:2-10.1(c). Under Division statutes, winery licensees can have five additional salesrooms at a fee of \$200 per salesroom. In addition, winery licensees can also jointly operate with at least one other New Jersey winery a salesroom in each county at a fee of \$500 per county. Thus, New Jersey wineries may host gratuitous wine "tastings" of only their products at their winery, salesrooms or county salesrooms.

Should any licensee need further clarification concerning participation or hosting consumer tasting, please feel free to write to the Division.

4. NOTICE OF PERSONNEL APPOINTMENT.

Deputy Attorney General George N. Rover has been appointed as a Special Assistant to the Director. Mr. Rover is a graduate of Rutgers University - Newark and Rutgers Law School - Camden. He has been employed by the State of New Jersey since June 1992 in the Legal Affairs Section in the Office of the Attorney General.

Publication of Bulletin 2466 is hereby directed this
22nd Day of March, 1996



JOHN G. HOLL, DIRECTOR
DIVISION OF ALCOHOLIC BEVERAGE CONTROL