

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).  
Section was "Extension of license term".

**13:2-17.13 (Reserved)**

Recodified to 13:2-17.10 by R.1990 d.412, effective August 20, 1990.  
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).  
Section was "Transfer, extension or renewal subject to appeal".

**13:2-17.14 (Reserved)**

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

**13:2-17.15 (Reserved)**

Section was "Relaxation of appeals procedures".

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

**Subchapter Historical Note**

Pursuant to Executive Order No. 66(1978), Subchapter 18 was re-adopted as R.1984 d.178, effective April 26, 1984. See: 16 N.J.R. 495(a), 16 N.J.R. 1278(a). See also Chapter Historical Note and section annotations.

**13:2-18.1 Grounds for relief**

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

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

1. The appointment of a trustee, receiver or other similar custodian for all or any substantial part of the wholesaler's property based upon the provisions of N.J.S. 14A:14-2(2) or any other State or Federal provision similar to N.J.S. 14A:14-2(2);
2. The filing of the petition by the wholesaler, or an answer, not denying jurisdiction, in bankruptcy, under Chapter XI of the Federal Bankruptcy Act, or any similar law, State or Federal, whether now or hereafter existing, or if any such petition is filed against the wholesaler and not vacated or stayed within 15 days of such filing;
3. The making, by the wholesaler, of an assignment for the benefit of creditors;

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

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

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

7. The insolvency of the wholesaler;

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

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

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

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

1. The aggregate of its property, exclusive of any property which it may have conveyed, transferred, concealed, removed or permitted to be concealed or removed, with intent to defraud, hinder, or delay its creditors, shall not at a fair valuation be sufficient in amount to pay its debts; or
2. The wholesaler is unable, by its available assets or the reasonable use of credit to pay its debts as they become due; provided, however, that where such inability does not put the refusing seller in reasonable fear of

material economic loss from the transaction or transactions involved, refusal to sell shall not be authorized.

Amended by R.1979 d.138, effective May 1, 1979.  
See: 11 N.J.R. 143(a), 11 N.J.R. 257(c).  
Amended by R.1990 d.412, effective August 20, 1990.  
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).  
Stylistic revisions.

#### Case Notes

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).

### 13:2-18.2 Filing and serving petitions

(a) The petitioner shall file with the Director, Division of Alcoholic Beverage Control, an original and copy of a Verified Petition setting forth the identity of the parties, the subject matter of the petition, the identity and the brand registration number for each of the product(s) involved, the relief sought, the grounds therefor and such other matters required under N.J.S.A. 33:1-93.6 et seq.

(b) The petitioner shall serve, personally or by ordinary mail, a copy of the petition upon the respondent importer, blender, distiller, rectifier or winery no later than within five days from the filing of the petition. The original petition, together with acknowledgement or affidavit of service, shall be filed with the Director.

(c) The petition shall be accompanied by a filing 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 (a) and redesignated existing text, with revisions, as (b).  
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).

### 13:2-18.3 Answer to petition

Within 10 days after service of the copy of the petition, each respondent shall file an answer with the Director, together with proof of service of a copy thereof on the petitioner. The answer shall include a statement as to whether the respondent has refused to sell to the petitioner and, if so, the reasons for such refusal.

Amended by R.1990 d.412, effective August 20, 1990.  
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).  
Deleted exception regarding sale of malt beverages.

### 13:2-18.4 Interlocutory relief

(a) The petitioner may apply to the Director by verified petition and request interlocutory relief. The verified petition must allege that the petitioner will probably suffer substantial and irreparable injury before final determination of the proceeding unless interlocutory relief is granted.

(b) If it appears that the petitioner will probably suffer immediate, substantial and irreparable injury before a hearing can be held on the return date of the order to show cause, the Director may enter an ex parte order granting ad interim relief, provided the respondent is granted the right to move, on two days notice, to dissolve or modify said order. Ad interim relief can include an Order which requires, among other things, that the respondent sell designated product(s) to the petitioner upon terms as specified by the Director.

(c) Upon return of the order to show cause, the Director may grant interlocutory relief if it appears that a substantial question of law or fact has been raised and that the petitioner will probably suffer substantial and irreparable injury without such relief before final determination of the proceeding.

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 13:2-18.7. Revised (a) and deleted (b). Prior text at 13:2-18.4, "Hearing schedules; notice", repealed.  
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) and (c) and added (b).

### 13:2-18.5 Enforcement of Director's orders

All persons whether licensees or non-licensees, shall comply with the terms of any final, interlocutory or other order entered in these proceedings. In the event a respondent fails to comply with the terms of such order, the Director may, in addition to any penalty provided by law, enter an order prohibiting any licensed wholesaler from purchasing, directly or indirectly, any alcoholic beverage other than malt alcoholic beverages of such respondent until the Director finds that there has been compliance therewith.

Recodified from 13:2-18.8 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 13:2-18.5, "Discovery", repealed.

### 13:2-18.6 Jurisdiction

Upon the filing of the Verified Petition and answer, the Director shall determine whether the case is contested. If the case is determined to be contested, the Director shall either 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.

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 "Hearing procedure".  
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.

### 13:2-18.7 Public hearing

All proceedings shall be heard at a location designated by the Division of Alcoholic Beverage Control or by the Office of Administrative Law, whichever agency is hearing the case.