

2. In the Order for Emergent Hearing, the Director may impose such conditions to be in effect until the hearing date, as the Director, in the Director's sole discretion, deems necessary to protect the public health, safety and welfare.

(b) The Order for Emergent Hearing shall contain all of the information required for a Notice of Charges, as set forth in N.J.A.C. 13:2-19.2 and notify the licensee of the time and place of the hearing. The licensee must appear before the Director at the designated time and place for a plenary hearing to answer the charges.

1. An Order for Emergent Hearing regarding charges shall notify the licensee that a failure to appear shall be deemed a plea of non vult to the charges. Upon submission of a certification by the Division that service was made, the Director may impose upon the licensee the penalty or penalties stated in the Order for Emergent Hearing, without further notice.

(c) If the sole purpose of the emergent hearing is to address the imposition of pendent lite conditions, those conditions and the basis upon which the Division seeks to impose the conditions shall be set forth in the Order for Emergent Hearing, instead of the information required in N.J.A.C. 13:2-19.2. The licensee must appear before the Director at the designated time and place to address the issue of imposition of the conditions pending the plenary hearing.

1. An Order for Emergent Hearing regarding pendent lite relief only shall notify the licensee that a failure to appear shall be deemed to indicate no objection to the conditions only. Upon submission of a certification by the Division that service was made, the Director may impose upon the licensee the condition or conditions stated in the Order for Emergent Hearing, without further notice.

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

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

Former N.J.A.C. 13:2-19.4, Expiration or surrender of license; pending proceedings, recodified to N.J.A.C. 13:2-19.8.

13:2-19.5 License or permit subject to disciplinary proceedings

Disciplinary proceedings against a license or permit shall not be barred or abated because of the expiration, transfer, surrender, renewal or extension of the 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).

Clarified text.

Recodified from N.J.A.C. 13:2-19.1 by R.2001 d.447, effective December 3, 2001.

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

Former N.J.A.C. 13:2-19.5, Suspended license; transfers or extensions, recodified to N.J.A.C. 13:2-19.9.

Case Notes

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.

13:2-19.6 Suspension, cancellation or revocation

Any license or permit may be suspended, cancelled or revoked for proper cause, notwithstanding that such cause arose prior to a subsequent transfer or extension of the license, or arose during a prior license term of a license held by the licensee or his predecessor in interest or arose during the term of a prior permit held by the permittee.

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

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

Specified "subsequent" transfer or extension of license, and added clarifying language.

Recodified from N.J.A.C. 13:2-19.2 by R.2001 d.447, effective December 3, 2001.

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

Former N.J.A.C. 13:2-19.6, Jurisdiction and hearing procedure, repealed.

Case Notes

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.

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 suspended; unlawful activity premises. *Alcoholic Beverage Control Division v. M & O O, Inc. t/a Party Place*, 94 N.J.A.R.2d (ABC) 63.

Time for commencement and termination of licensee's five-day suspension. *Matter of Div. of Alcoholic Beverage Control v. Mr. G's, Inc.*, 93 N.J.A.R.2d (ABC) 59.

13:2-19.7 Pending proceedings; effect upon license or permit

When disciplinary proceedings are instituted and the license is transferred, extended or renewed, or a permit is extended or renewed during the pendency thereof, such proceedings shall be carried through to completion. Any order of suspension, cancellation or revocation therein shall apply without further proceedings to the transferred, extended or renewed 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).

Stylistic revisions.

Recodified from N.J.A.C. 13:2-19.3 by R.2001 d.447, effective December 3, 2001.

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

Former N.J.A.C. 13:2-19.7, Revoked license: licensee inability to work; transfer prior to revocation, recodified to N.J.A.C. 13:2-19.10.

13:2-19.8 Expiration or surrender of license; pending proceedings

Where a license expires or is surrendered and another license is issued or transferred to another person for the licensed premises subject to pending disciplinary proceedings, the premises shall continue to be subject to any order

made in the disciplinary proceedings declaring the premises ineligible to become the subject of a license under N.J.S.A. 33:1-31.

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

Added N.J.S.A. 33:1-31 limitation.

Recodified from N.J.A.C. 13:2-19.4 by R.2001 d.447, effective December 3, 2001.

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

13:2-19.9 Suspended license; transfers or extensions

When any license has been suspended, such suspension shall continue in full force and effect notwithstanding any transfer or extension of the license during the period of suspension.

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

Included "extension" of license.

Recodified from N.J.A.C. 13:2-19.5 by R.2001 d.447, effective December 3, 2001.

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

13:2-19.10 Revoked license: licensee inability to work; transfer prior to revocation

(a) A revocation shall render the licensee and the officers, directors and each owner, directly or indirectly, of more than 10 percent of the stock of a corporate licensee ineligible to hold or receive any other license, of any kind or class, or work, in any capacity, in any licensed premises, for a period of two years from the effective date of such revocation. A second revocation shall render the licensee and the officers, directors and each owner, directly or indirectly, of more than 10 percent of the stock of a corporate licensee ineligible to hold or receive any such license, or work, in any capacity, in any licensed premises, at any time thereafter.

(b) In the event that a license is transferred to another person or entity or a change in corporate structure has occurred, prior to the time that a license has been revoked, the Director shall review the facts of the revocation proceedings. The Director shall thereafter determine whether the holders or owners (either direct or indirect) of the license at the time the violation(s) occurred, at the time the license was revoked, or any interim times, either allowed, permitted or suffered the unlawful conduct or should have known the effects of a license revocation or should otherwise be subject to statutory disqualification. Thereafter, the Director may order that any or all of such holders and owners be statutorily disqualified, pursuant to the terms of N.J.S.A. 33:1-31 and (a) above.

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

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

Recodified from N.J.A.C. 13:2-19.7 and amended by R.2001 d.447, effective December 3, 2001.

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

Rewrote (b).

13:2-19.11 Penalty schedule, definition of violation, successive violations

(a) This section sets forth penalties for violations of the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq., or the rules or orders of the Director promulgated thereunder.

(b) The Director may suspend or revoke a license, even for a first violation.

(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 the first 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 level of violation.

(g) The penalty for a second, third or fourth violation shall only be imposed if the licensee has been notified in writing 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 Schedule ¹			First	Second	Third	Fourth
Statute, Regulation or Bulletin Item	Code	Description	Violation ²	Violation ²	Violation ²	Violation 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)1-6	ADV1	Improper advertising	5	10	20	
N.J.A.C. 13:2-24.10(a)7	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.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	BOOKS1	Failure to have true book or books of account available on the licensed premises, but produced within seven business days of demand	1	5	10	
N.J.A.C. 13:2-23.32	BOOKS2	Failure to maintain true books or books of account or failure to produce true books or books 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. 13:2-1.9(d)	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. 13:2-24.1	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

Statute, Regulation or Bulletin Item	Code	Description	First Violation ²	Second Violation ²	Third Violation ²	Fourth Violation ²
N.J.A.C. 13:2-23.13(a)3	E141	Employees list not complete or available on the licensed premises	1	5	10	
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.A.C. 13:2-23.31(b)2ii	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	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	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)	GAMB5	Unapproved video or slot machine or other gambling 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.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(a)3	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(a)3	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	

Statute, Regulation or Bulletin Item	Code	Description	First Violation ²	Second Violation ²	Third Violation ²	Fourth Violation ²
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. 13:2-23.16	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(a) and/or 16.11(c)	SOL1	Solicitor offered an order of alcoholic beverages for purchase or sale, other than allowed by law and the license of employer and/or to retail licensee with family member involved	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.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)	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			

Statute, Regulation or Bulletin Item	Code	Description	First Violation ² Revocation	Second Violation ²	Third Violation ²	Fourth Violation ²
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				
N.J.A.C. 13:2-16.11 and 23.28	WHOL	Wholesaler responsible for solicitor violating N.J.A.C. 13:2-16.11(a), (b) and/or (c)	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).

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.

(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).

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.

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

13:2-19.14 Warning letters and fine letters

The Director may, in the Director's sole discretion, issue a warning letter advising a licensee of a violation(s) or issue a fine letter, indicating that the Director will accept a monetary payment in lieu of prosecution.

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

13:2-19.15 Review by Director of penalties imposed by local issuing authorities

In reviewing the reasonableness of penalties imposed by local issuing authorities, reasonableness will be judged in accordance with the penalty schedule and other factors set forth in the record before the Director.

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

13:2-19.16 Application of subchapter

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

(b) To the extent that any of the penalties set forth in this subchapter are inconsistent with the penalties set forth in any earlier document(s), including, but not limited to, ABC Bulletins, the penalties set forth in this subchapter shall apply.

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

SUBCHAPTER 20. TRANSPORTATION OF
ALCOHOLIC BEVERAGES BY LICENSEES;
INSIGNIA

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

No licensee shall transport alcoholic beverages into, out of, or within the State of New Jersey in any vehicle unless it is owned, leased or contracted for by the licensee. Such

vehicle, while so used, shall first have issued therefor a transit insignia, special transit insignia, transportation license insignia issued pursuant to the provisions of this subchapter, or a limited transportation permit or emergency trip permit issued pursuant to the provisions of N.J.A.C. 13:2-21.

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

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

Substantially amended.

ii. In the case of the chief law enforcement officer seeking such employment, the prior written approval must be from the chief executive officer of the governing body of the jurisdiction which employs said chief officer;

iii. A police officer so employed shall not, while engaged in the selling, serving, possessing or delivering of any alcoholic beverages;

- (1) Have in his or her possession any firearm; or
- (2) Wear or display any uniform, badge or insignia which would identify him or her as a police officer; and

iv. No police officer so employed shall be permitted to work in excess of 24 hours a week in any such establishment.

(c) The Director may authorize, upon prior application, the employment of regular police officers, peace officers, or other persons whose powers and duties include the enforcement of the alcoholic beverage laws and regulations, by licensees who operate racetracks, stadiums, auditoriums, theatres and other such establishments whose primary business does not consist of the sale or service of alcoholic beverages, where the use of trained police officers may be required to provide crowd control, traffic control or security for large sums of money located at such establishments. Persons employed in such capacity may not distribute, possess or sell alcoholic beverages and may only accept such employment with the consent of their governmental employer.

(d) Nothing contained in this section shall prohibit any regular police officer, peace officer or any other person whose powers and duties include the enforcement of the alcoholic beverage control laws or regulations from assuming any leadership or titular position in any fraternal, veterans', religious or similar type of nonprofit organization that is a club licensee; provided, however that:

- 1. The actual licensee of the organization is not a police officer or a person whose duties include enforcement of the alcoholic beverage control laws and regulations; and
- 2. No police officer or person whose duties include enforcement of the alcoholic beverage control laws and regulations shall be involved in the alcoholic beverage operations of the club licensee.

Amended by R.1974 d.341, effective December 16, 1974.
 See: 6 N.J.R. 439(a), 7 N.J.R. 13(a).
 Amended by R.1979 d.67, effective February 15, 1979.
 See: 10 N.J.R. 557(a), 11 N.J.R. 146(a).
 Amended by R.1980 d.526, effective December 4, 1980.
 See: 12 N.J.R. 605(b), 13 N.J.R. 41(c).
 Amended by R.1990 d.412, effective August 20, 1990.
 See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

In (b)1, deleted text regarding sale or handling of alcoholic beverages by special officer; in (b)2, deleted text concerning employment "in a non-managerial capacity" and sale or handling of alcoholic beverages by officer; redesignated part of (b)2i as ii, and added iii and iv. Redesignated (b)3 as (c), and added (d).

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

Case Notes

Attorney's misconduct while serving as judge materially bore on his fitness to practice law and might merit further professional discipline against him, in his capacity as attorney, apart from removal as judge. Matter of Yaccarino, 117 N.J. 175, 564 A.2d 1184 (1989).

Failure of judge to disclose interest in liquor licenses in license applications and transfers found one of several grounds for removal from office; not necessary, in this case, to resolve issue of whether regulation bars license ownership by judge. Matter of Yaccarino, 101 N.J. 342, 502 A.2d 3 (1985).

13:2-23.32 Books of account

(a) All licensees shall have and keep, for an unlimited period of time, a permanent book or books of account in the English language 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.

(b) All licensees shall maintain for a period of five years, a record of all money or any other thing of value received in the ordinary course of business or received outside the ordinary course of business, a record of all money expended from such receipts; the name of the person receiving such money and the purpose for which such expenditures were made.

(c) All books and records pertaining to investments, receipts or expenditures shall be made available for inspection, upon demand, by the Director and the other issuing authority or the Director's deputies, inspectors, investigators and agents and other officers 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).
 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.

Case Notes

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

SUBCHAPTER 24. TRADE MEMBER DISCRIMINATION, MARKETING AND ADVERTISING

13:2-24.1 Discrimination in terms of sale

(a) Except as may otherwise be authorized by this subchapter, no manufacturer, supplier, importer, brand regis-

trant, 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 purchaser competitors, 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. Any discount, rebate, allowance or advertising service granted to a purchaser is 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.

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.

(b) 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.

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.

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.

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.

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.