

CHAPTER 2

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Authority

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

Source and Effective Date

R.1995 d.450, effective July 24, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Executive Order No. 66(1978) Expiration Date

Chapter 2, Division of Alcoholic Beverage Control, expires on July 24, 2000.

Chapter Historical Note

Unless otherwise expressly noted, all provisions of this chapter were adopted pursuant to authority of N.J.S.A. 33:1-1 et seq. and 52:17B-17 et seq. and were filed and became effective prior to September 1, 1969. Revised rules were filed and became effective on September 8, 1977, as R.1977 d.342. See: 9 N.J.R. 94(a), 9 N.J.R. 487(b). Amendments were filed and became effective on January 27, 1978, as R.1978 d.33. See: 10 N.J.R. 121(a). Amendments were filed April 4, 1979 to become effective May 1, 1979 as R.1979 d.138. See: 11 N.J.R. 143(a), 11 N.J.R. 257(c). Pursuant to order of the Appellate Division of the Superior Court in *Heir et al. v. Degnan et al. (A-2655-78)* and *Wine and Spirit Retailers of New Jersey, Inc. et al. v. Degnan et al. (A-2708-78)* dated April 10, 1979, the Director, Division of Alcoholic Beverage Control is restrained and enjoined from effectuating and enforcing these amendments. That order was lifted by the New Jersey Supreme Court February 11, 1980, but stayed on February 12, 1980 until March 10, 1980. This stay also covers R.1980 d.72 filed February 11, 1980. 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. See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c). Chapter 2 was readopted as R.1995 d.450, effective July 24, 1995. See: Source and Effective Date.

See section annotations for specific rulemaking activity.

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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APPENDIX

SUBCHAPTER 1. FILING OF APPLICATION AND ADVERTISING NOTICE OF APPLICATION FOR STATE LICENSE

13:2-1.1 Filing of application; advertising

Application for license must be filed on forms prescribed by the Director, Division of Alcoholic Beverage Control, in duplicate with the Division at or before the first insertion of advertisement and accompanied by the full annual license fee. If the application is to include as the licensed premises a building not yet constructed, plans for 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 overall room dimensions.

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 on forms promulgated by Director. Deleted sample forms.

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 substituted "prescribed" for "promulgated".

Case Notes

Municipal resolutions regulating retail liquor business need not be approved by the Division Director prior to adoption. Gober v. Tp. Committee, Pemberton Tp., 185 N.J.Super. 323, 448 A.2d 516 (Law Div.1982).

13:2-1.2 Corporate or partnership applicant; building not yet constructed

(a) If an applicant is a corporation, insert in the Notice of Application the names and residences of all officers and directors, and the names and residences of all stockholders holding one percent or more of any of the stock of said corporation. If in listing those stockholders, another corporation, partnership or other legal entity is noted, the Notice must also contain the required information concerning the officers, directors, stockholders, or partners of that corporation, partnership or other legal entity. If the applicant is a partnership, insert the names and residences of all general partners and any limited partner holding an interest of one percent or more.

(b) If the application is to include as the licensed premises a building not yet constructed, also insert in the Notice the following: "Plans of building to be constructed may be examined at the Office of the Director of the Division of Alcoholic Beverage Control, 140 East Front Street, Trenton, New Jersey 08625".

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), 10 percent holding changed to one percent or more holding; notice must contain information concerning other legal entities; limited partner added. In (b), address change.

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), changed Director's address.

13:2-1.3 Publication of notice of application

(a) Notice of application shall be published by all applicants for State licenses, except Transportation, Public Warehouse or Warehouse Receipts licenses, in the following form:

-NOTICE-

ALCOHOLIC BEVERAGE LICENSE

Take notice that _____ (Name of Applicant)

trading as _____ (Trade Name, if any)

has applied to the Director, Division of Alcoholic Beverage Control, for a State-issued _____ (Type of License)

license for premises situated at _____ (No.) (Street) (Municipality)

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

See*

(See ** to insert other information if applicable)

Objections, if any, should be made immediately in writing to: Director, Division of Alcoholic Beverage Control, CN 087, Trenton, New Jersey 08625.

(Name of Applicant)

(Address of Applicant)

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

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

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

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

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

_____ at _____ (Alcoholic Beverage Type) (No.) (Street) _____ (Municipality)

under the terms and conditions allowed by law."

(b) Where the premises sought to be licensed are located in the State of New Jersey, the notice of application shall be published once a week for two weeks successively, at least seven days apart, in a newspaper printed in the English language, published and circulated in each municipality in which the premises or any portion thereof, for example, office, warehouse, salesroom, are located. If, however, there shall be no such newspaper, then the notice shall be published in a newspaper printed in the English language,

published and circulated in the county or counties in which the licensed premises or any portion thereof are located.

(c) Where applicant does not maintain any licensed premises in the State of New Jersey, notice of application shall be published in the manner above described in the municipality wherein the duly authorized agent within the State upon whom service of process may be made is located.

(d) Where the applicant intends to conduct retail sales as may be authorized under its license, it shall provide an affidavit that a copy of notice in the proper form has been served personally or by ordinary mail on the clerk or board secretary of the municipality in which the retail sales will take place.

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

Added new (a); (a)-(b) redesignated (b)-(c). In (c), deleted registered agent for corporation.

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

In (a), changed Director's address and added notice of intent to sell requirements in (d).

13:2-1.4 Proof of publication

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

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

Added "copy of dated advertisement"; deleted form.

13:2-1.5 Applicants for renewal of annual State licenses

Applicants for renewal of annual State licenses issued by the Director are not required to advertise notice of application. In lieu thereof, the Director shall cause a general notice of application to be published once a week from the week of April 1 through the week of June 1 in a newspaper printed in the English language and published and circulated in the counties in which the premises of applicants for such renewals are located. The notice shall be published in the following form:

NOTICE OF
APPLICATION FOR RENEWAL OF
ALCOHOLIC BEVERAGE LICENSES

Notice is hereby given that applications to renew all annual alcoholic beverages licenses will be filed with the Director of the Division of Alcoholic Beverage Control or the municipal local license issuing authority and may be approved on or after May 1st of this year. Objection to any renewal should be made immediately in writing to the **Municipal Clerk** of the municipality where the license is located if that license sells alcoholic beverages to consumers or to the Director Div. of ABC, CN 087, Trenton, NJ 08625 for any other type alcoholic beverage license. No individual notices will be published with respect to license renewal applications.

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).
Amended notice.

Case Notes

Holder of retail consumption liquor license could not sell groceries on the premises. 164 Belmont Avenue Corp. v. Board of Alcoholic Bev. Control, 91 N.J.A.R.2d 1 (ABC).

13:2-1.6 Objections; hearing

The Director, upon receipt of a timely written objection duly signed by an objector, shall provide a hearing and all parties shall be notified of the date, hour and place thereof. No hearing need be held if no objection shall be lodged unless the Director deems one necessary in order to make his or her determination on the application. The Director shall not deny issuance, renewal or transfer of any license without first stating the reasons therefor and affording applicant the opportunity to be heard.

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 Director deems hearing necessary".

Case Notes

Failure to establish good cause for renewal of inactive license. In the Matter of Application of Paul, 92 N.J.A.R.2d (ABC) 87.

License renewal; narcotics violations. Ed and Jim's Idle Hour, Inc. t/a Griff's Inn v. Mayor and Board of Aldermen of the Town of Dover, 92 N.J.A.R.2d (ABC) 65.

Failure to establish good cause for the renewal. In the Matter of the Application of Matinee Liquors, Inc., 92 N.J.A.R.2d (ABC) 61.

Insufficient evidence that the licensee's operation constituted a nuisance. Allan Corp. v. Township Council of the Township of Garfield, 92 N.J.A.R.2d (ABC) 26.

13:2-1.7 Changes in facts; application

(a) Whenever any change shall occur in the facts as set forth in any existing filed application concerning a State-issued license, the licensee shall file with the Director an amendment to the license application in a form prescribed by the Director reflecting the change not later than 10 days after the occurrence.

(b) Corporate licensees shall file an amendment to reflect any stockholder change resulting in any person acquiring one percent or more of its stock. If the change affects less than one-third of the stock of the corporation, the licensee need only amend those pages that reflect the change in information. If the change affects one-third or more of the stock, a full application is required. Changes in limited partners shall be treated in the same manner as a stockholder change of a corporate 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).

Case Notes

Expansion of liquor license premises to include family theater; operation of two businesses. Nels Hart of Berkeley, Inc. v. Township Council of the Township of Berkeley, 92 N.J.A.R.2d (ABC) 73.

13:2-1.8 Publication of notice of change in corporate structure; form

(a) Every corporate licensee shall, in addition to filing written notice with the Director of changes in stockholdings, cause to be published in the following form a notice of change in corporate structure not later than 10 days after the occurrence whenever the stockholder change involves a new individual acquiring one percent or more of the stock.

—NOTICE—

Take notice that on _____ a change occurred in the stockholdings of _____ (Licensee) trading as _____ (Trade Name, if any) holder of _____ (Type of License) for premises located at _____ (No.) _____ (Street) _____ (Municipality) resulting in the following persons, each acquiring one percent or more of the corporate licensee's stock:

Table with 2 columns: Name, Residence Address

Any information concerning the qualifications of any of the above stockholders should be communicated in writing to the Director, Division of Alcoholic Beverage Control, CN 087, Trenton, New Jersey 08625.

(Name of Licensee)

(b) The notice of change in corporate structure shall be published once in a newspaper printed in the English language, published and circulated in each municipality in which the licensed premises is located. If, however, there shall be no such newspaper, then the notice shall be published in a newspaper printed in the English language, published and circulated in the county in which the licensed premises is located.

(c) Proof of publication of such notice shall be furnished by the licensee to the Director within 10 days after the date of publication with copy of the dated advertisement attached.

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

13:2-1.9 Rules of general application; relaxation

(a) The rules of this chapter may be relaxed by the Director upon a showing of undue hardship, economic or otherwise, on a licensee; that the waiver of the rule would

not unduly burden any affected parties; and, that the waiver is consistent with the underlying purposes of Title 33 and the implementing regulations. Waiver requests must be submitted in writing to the Director and shall include all documentation which supports the applicant's request for a waiver.

(b) No licensee, permittee, applicant or any shareholder, partner or other person having or applying for an interest in a license or permit shall refuse to submit for fingerprinting when so required by the Director or the local issuing authority.

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

(d) Checks submitted by a licensee, permittee or applicant which are returned unpaid to the Director or other issuing authority shall subject the licensee, permittee or applicant to disciplinary action or denial of current and future applications.

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).

Amended and redesignated existing text as (a) and added (b) through (d).

Case Notes

Late license renewal filing was allowed where licensee's deteriorating health was found to constitute special circumstances. Newby v. Division of Alcoholic Beverage Control, 96 N.J.A.R.2d (ABC) 137.

SUBCHAPTER 2. FILING OF APPLICATIONS AND ADVERTISING NOTICE OF APPLICATION FOR MUNICIPAL LICENSE

13:2-2.1 Application forms

Application for license must be filed with the issuing authority, in triplicate, on forms prescribed by the Director, Division of Alcoholic Beverage Control at or before the first insertion of advertisement together with the full annual license fee and an additional \$100.00 filing fee payable to the Division of Alcoholic Beverage Control. One copy of the application and the non-returnable filing fee of \$100.00 shall be forwarded by the issuing authority to the Director immediately upon receipt thereof, and a second copy returned to the applicant. If the application is to include as the licensed premises 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 overall room dimensions.

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

Added "in triplicate, on forms promulgated by the Director".
Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Substituted "prescribed" for "promulgated" and increased filing fees.

13:2-2.2 Form of notice of application

Notice of application shall be published in the following form:

-NOTICE-

ALCOHOLIC BEVERAGE LICENSE

Take notice that _____
(Name of Applicant)
trading as _____
(Trade Name, if any)
has applied to _____
(Name of Issuing Authority)
of _____
(Municipality)
for a _____ license for premises situated at
(Type of License)

(No.) (Street) (Municipality)

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

(See ** to insert other information if applicable)

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

_____, of _____
(Municipal Clerk) (Municipality and Mailing Address)

(Name of Applicant)

(Address of Applicant)

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

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

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

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

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

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

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

13:2-2.3 Issuing authority defined

(a) "Issuing authority" in the form of notice in N.J.A.C. 13:2-2.2 usually means the governing board or body of the municipality, whatever the name may be, for instance the mayor and council, the township committee, and so forth, except where a municipal board of alcoholic beverage control has been created, in which case such board is the issuing authority.

(b) If the application is made by a member of the issuing authority or by a corporation, organization or association in which any member of the issuing authority is interested, directly or indirectly, the Director of the Division of Alcoholic Beverage Control is the issuing authority in the form of notice and the notice must state that any objections should be addressed to the Director, Division of Alcoholic Beverage Control, PO Box 087, Trenton, New Jersey 08625-0087. This subsection shall not apply to club licenses.

Amended by R.1984 d.141, effective April 16, 1984.
See: 16 N.J.R. 345(a), 16 N.J.R. 916(a).
Deleted "25 Commerce Drive, Cranford, New Jersey 07016."
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 (b) inapplicable to club licenses.

13:2-2.4 Type of license defined

"Type of license" in the form of notice in N.J.A.C. 13:2-2.2 requires the name or kind of license that is involved in the application. It must be worded strictly in accordance with the statutory language, for instance, "plenary retail consumption license", "plenary retail distribution license", "club license", and so forth.

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.

13:2-2.5 Publication of notice of application

(a) The notice of application shall be published once a week for two weeks successively, in a newspaper printed in the English language, published and circulated in the municipality in which the licensed premise is located. If, however, there shall be no such newspaper, then the notice shall be published in a newspaper printed in the English language, published and circulated in the county in which the licensed premise is located.

(b) Proof of publication of the notice of application for license shall be furnished after the second publication with copies of the dated advertisements attached.

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), added "with copies of advertisements attached"; deleted form.

13:2-2.6 Applicants for renewal of municipal licenses

Applicants for renewal of municipal licenses, other than seasonal retail consumption licenses, issued by municipal issuing authorities are not required to advertise notice of application. In lieu thereof, the Director shall cause a general notice of application to be published in the form set forth in N.J.A.C. 13:2-1.5 once a week from the week of April 1 through the week of June 1 in a newspaper printed in the English language and published and circulated in the counties in which the premises of applicants for such renewals are located.

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

Stylistic revisions; deleted Notice.

13:2-2.7 Objections; hearing

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

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

Stylistic revisions.

Case Notes

Request to renew license; failure to prove ability to expeditiously activate license. In the Matter of Vaughn, 94 N.J.A.R.2d (ABC) 77.

Good cause; consideration of application for renewal; plenary retail consumption license. In the Matter of Donald T. Von Hagen Renewal Application Authorization, 94 N.J.A.R.2d (ABC) 74.

Good cause existed to activate liquor license. In the Matter of the Application of Salvatore Massamuto for Relief, 94 N.J.A.R.2d (ABC) 59.

Plenary Retail Consumption license would be granted to hotel where it met all criteria. Belleaire Resort Corp. v. Spring Lake Borough, 94 N.J.A.R.2d (ABC) 25.

Plenary retail consumption liquor license inactive for six years renewable upon conditions. In the Matter of the Application of Ocean Mile Development Group, Ltd. for Relief Pursuant to N.J.S.A. 33:1-12.39, 94 N.J.A.R.2d (ABC) 19.

Inactive liquor license renewed upon showing that public interest would be served and that applicant made continuous effort to develop project. In the Matter of the Renewal Application of the Pocket License of Branca Corp., 94 N.J.A.R.2d (ABC) 1.

13:2-2.8 Date of hearing

The date fixed for hearing shall not be sooner than five days (excluding Saturdays, Sundays and legal holidays) after the second publication and should not be later than 14 days

thereafter. For good cause, each issuing authority in the exercise of sound and fair discretion may, subject to appeal to the Director by the applicant if he proves that he is aggrieved by the delay, fix a date for hearing later than said 14 days or may adjourn the hearing, upon notification to all parties.

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

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

Stylistic revisions.

13:2-2.9 Hearing not required; reasons

(a) If there is no timely written objection and the issuing authority determines to approve the application, no hearing is required; but this in no way relieves the issuing authority from the duty of making a thorough investigation on its own initiative.

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

1. The submitted application form is complete in all respects;

2. The applicant is qualified to be licensed according to all standards established by the New Jersey Alcoholic Beverage Control Act, the regulations promulgated thereunder, as well as any pertinent local ordinances or Division-approved conditions; and

3. The applicant has disclosed and the authority has reviewed the source of all funds used in the purchase of the license and the licensed business and all additional financing obtained in connection with the licensed business.

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

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.

13:2-2.10 Decision on application; ad interim (temporary) permit

(a) A municipal issuing authority must render a decision within 45 days from the date of a duly filed application for issuance of a new license unless the applicant consents to an extension. Failure to act may be deemed a denial of application by the applicant for the purpose of allowing the applicant to appeal to the Director.

(b) If no action is taken on an application for renewal of license prior to the expiration of its term, the applicant may apply to the Director for issuance of an ad interim (temporary) permit authorizing the applicant to continue to conduct the licensed business until the application has been acted upon. If no action is taken on an application for renewal of a license within 90 days after the expiration of its term, the applicant may file an appeal with the Director from such failure to act on the renewal application.

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.

13:2-2.11 Denial of application; refund of fees

If the application for new or renewal license 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 State filing fee required to accompany such applications shall be retained by the Director as a processing fee.

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
Added "State filing fee retained as processing fee".

13:2-2.12 Application granted; proration of fee; refund

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 fee, the applicant shall be entitled to a refund of the excess. Any new license issued for failure to timely renew 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 warranted.

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
Added "for a new license", "except in connection for failure to timely renew" and "effective immediately following last day of preceding term".

13:2-2.13 Special conditions

If a resolution granting an application for license is adopted sooner than five business days (excluding Saturdays, Sundays and legal holidays) after publication of the second notice of application, the resolution shall set forth in a special condition that the license will not be issued until the five business days have elapsed. If a written objection to issuance of the license is filed within such period, the license shall not be issued pending hearing and 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).
Stylistic revisions.

Case Notes

Settlement terms sustain license's special condition. *F.G.P.S.V., Inc. v. Borough of Pleasant Beach*, 97 N.J.A.R.2d (ABC) 4.

Liquor license requirements would be relaxed where local authority's refusal to modify special conditions imposed on licensee were found to be unreasonable. *Wil-Dam Corp. t/a Shakers v. Mayor and Council of the Borough of Carlstadt*, 96 N.J.A.R.2d (ABC) 131.

Action of the local issuing authority which approved its person-to-person license transfer application "subject to" local zoning board approval of petitioner's request to operate as a discotheque was an impermissible condition precedent and should be reversed. *The Iliad & Odyssey, Inc. v. Northvale*, 9 N.J.A.R. 382 (1983).

Local government body has principal jurisdiction and primary authority over imposition of special conditions for liquor license renewal; conditions restricting service to patrons at tables and in conjunction with restaurant operation reasonable; condition banning rock music unreasonable and vague (Division's Final Decision). *A.H.S., Inc. v. Tp. Committee, Tp. of Wall*, 1 N.J.A.R. 284 (1979), reversed (App.Div. 1980).

Nunzio DeFalco v. West Caldwell, ABC Bulletin No. 2243, Item No. 2 (October 15, 1976).

13:2-2.14 Changes in facts; application

(a) Whenever any change shall occur in the facts as set forth in any application for a retail license, the licensee shall file with the municipal issuing authority an amendment to the license application on a form prescribed by the Director reflecting the change and not later than 10 days after the occurrence.

(b) Corporate licensees shall file an amendment to reflect any stockholder change resulting in any person acquiring one percent or more of its stock. If the change affects less than one-third of the stock of the corporation, the licensee need only amend those pages that reflect the change in information. If the change affects one-third or more of the stock, a full application is required. Changes in limited partners shall be treated in the same manner as a stockholder change of a corporate licensee.

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 "an amendment to the license application on form promulgated by Director"; added (b).
Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).
In (a), substituted "prescribed" for "promulgated".

13:2-2.15 Publication of notice of change in corporate structure; form

Every corporate licensee shall, in addition to filing written notice with the municipal issuing authority of changes in stockholdings, cause to be published a notice of change in corporate structure in the following form, not later than 10 days after the occurrence whenever the stockholder change involves a new individual acquiring one percent or more of the stock.

—NOTICE—

Take notice that on _____ a change
(Date)

occurred in the stockholdings of _____,
 trading as _____ (Licensee) holder of
 _____ (Trade Name, if any) for premises located
 _____ (Type of License and Number)
 at _____ (No.) _____ (Street) _____ (Municipality)

resulting in the following persons, each acquiring in the aggregate one percent or more of the corporate licensee's stock:

Name	Residence Address
_____	_____
_____	_____

Any information concerning the qualifications of any of the above current stockholders should be communicated in writing to:

_____ of _____
 (Municipal Clerk) (Municipality)

 (Name of Licensee)

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

Added "not later than 10 days after the occurrence whenever the stockholder change involves a new individual acquiring one percent or more of the stock". Amended Notice.

13:2-2.16 Publication of notice of change in corporate structure

(a) The notice of change in corporate structure shall be published once in a newspaper printed in the English language, published and circulated in the municipality in which the licensed premises is located. If, however, there shall be no such newspaper, then the notice shall be published in a newspaper printed in the English language, published and circulated in the county in which the licensed premises is located.

(b) Proof of publication of such notice shall be furnished by the licensee to the municipal issuing authority within 10 days after the date of publication with a copy of the dated advertisement attached.

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), added "with copy of dated advertisement attached".

SUBCHAPTER 3. ISSUANCE OF RETAIL LICENSES BY MUNICIPAL ISSUING AUTHORITIES; SPECIAL REVIEW OF ATLANTIC CITY LICENSES

13:2-3.1 License certificate; form

The Director, Division of Alcoholic Beverage Control shall establish the form and content of all license certificates and shall make certificates for licenses available to the municipal issuing authority in each municipality issuing licenses.

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).

13:2-3.2 Required records

The municipal issuing authority shall maintain full and complete records concerning each license in its municipality, including information relative to the license's issuance, renewal, transfer, disciplinary sanctions, special conditions, extension of license to a fiduciary, payment of fees and any other matter the director or municipal issuing authority may deem appropriate.

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).

13:2-3.3 (Reserved)

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 "Numbering license certificates".

13:2-3.4 License certificate signed by issuer

Each license certificate shall be signed either in the name of the municipality or its municipal board, whichever is the issuing authority. It shall also bear the actual signature, at the place indicated, of such municipal officer or agent as the governing board or body of the municipality or the municipal board, as the case may be, shall have designated to sign and to deliver such certificate on its behalf.

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 13:2-3.6. Repealed section was "License certificate stubs".

13:2-3.5 Issuance of license certificate; resolution of issuing authority

(a) No license certificate shall be signed, issued or delivered by any person unless and until expressly directed to do so by a resolution of the issuing authority, which resolution shall, among other things, specifically set forth the name and trade name, if any, of the person, association, firm or corporation adjudged thereby to be entitled to a license, and the kind thereof, address of the licensed premises, and effective date of the license, and shall order issuance and delivery of such license by such municipal officer or agent as the issuing authority shall, thereby or by some previous resolution, designate to sign and deliver such certificate in its behalf.

(b) Unless another specific date is identified in the resolution concerning an application for issuance or transfer of a license, the effective date shall be the date of the adoption of the resolution by 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 13:2-3.7. Added (b). Repealed section was "Names on license certificates".

Case Notes

Licensing authority must follow state law's schoolhouse prohibitions when reviewing alcohol license renewals until state court declares law unconstitutional. *Youth Consultation Services v. Board of Commissioners of Union City*, 97 N.J.A.R.2d (ABC) 33.

Liquor license limited to building area where alcohol served. *The Quay, Inc. v. Sea Bright Borough Mayor and Council*, 96 N.J.A.R.2d (ABC) 15.

13:2-3.6 Certification of license activity

Each municipal issuing authority shall make or cause to be made daily certification to the Director of all licenses granted during the preceding business day, which certification shall include any license application filings or amendments, any fees to be remitted to the Director, and any resolutions 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 13:2-3.8. Added "license application filings, amendments, fees and resolutions". Deleted 1-9.
Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Deleted enumeration of (a).

13:2-3.7 Atlantic City; alcoholic beverage licenses

(a) The Municipal Board of Alcoholic Beverage Control of the City of Atlantic City shall forward to the Division of Alcoholic Beverage Control a copy of all applications for issuance, renewal or transfer of any alcoholic beverage license.

(b) No action shall be taken by the Board with respect to any application until completion of an appropriate investigation by the Division of Alcoholic Beverage Control or its designees.

(c) Upon completion of the investigation, the Division of Alcoholic Beverage Control shall certify whether granting of the application is in the public interest.

(d) Upon a finding by the Division that granting of the application will not be contrary to the public interest, the Board may act upon the application in any way consistent with its legal authority.

(e) Upon a finding by the Division that the granting of the application would be contrary to the public interest, the Board shall deny the application.

(f) The applicant shall retain the right conferred by N.J.S.A. 33:1-22 to appeal to the Director from the denial of an application by the Board and shall be afforded a hearing.

R.1977 d.348, eff. September 16, 1977.

See: 9 N.J.R. 487(c).

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 13:2-3.10. Stylistic revisions.

13:2-3.8 (Reserved)

Recodified to 13:2-3.6 by R.1990 d.412, effective August 20, 1990.

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

Section was "Daily certification of licenses granted".

13:2-3.9 (Reserved)

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

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

Section was "Daily certification; accompanying resolution".

13:2-3.10 (Reserved)

Recodified to 13:2-3.7 by R.1990 d.412, effective August 20, 1990.

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

SUBCHAPTER 4. ISSUANCE, RENEWAL OR TRANSFER OF MUNICIPAL RETAIL LICENSES (OTHER THAN CLUB LICENSES) BY THE DIRECTOR

Subchapter Historical Note

All provisions of this subchapter were filed and became effective prior to September 1, 1969. This subchapter was readopted pursuant to Executive Order 66(1978) as R.1985 d.332, effective June 7, 1985. See: 17 N.J.R. 1052(a), 17 N.J.R. 1661(a). See chapter and section levels for further amendments.

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

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 \$50.00 in cash, money order or check drawn 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.

Sec: 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.

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

In (a), deleted submission of supplemental forms requirement; re-designated (a)2. as (b) and added "board secretary".

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

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

Deleted requirement that checks be certified.

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

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

1. A fee of \$50.00 in cash, money order or check drawn 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.

Sec: 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.

Sec: 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.

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

Deleted requirement that checks be certified.

13:2-4.5 Fee for combined transfers; certification

(a) Transfers of license both as to person and place may be applied for simultaneously and in a single application, accompanied by a fee of \$50.00 in cash, money order or check drawn 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.

Sec: 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.

Sec: 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.

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

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

Sec: 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.

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

Deleted requirement that checks be certified.

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.

Sec: 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.

Sec: 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.

Sec: 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.

Sec: 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.

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

Changed Director's address.

13:2-4.8 Refund of fees

If the application for license issuance or transfer 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. If an application for a renewal of license is denied, refund of fees shall be in accordance with N.J.A.C. 13:2-11. The \$50.00 State fee required to accompany the application shall be retained as a processing fee by the Director.

Amended by R.1973 d.234, effective August 30, 1973.
 See: 5 N.J.R. 356(a).
 Amended by R.1980 d.304, effective July 3, 1980.
 See: 12 N.J.R. 343(b), 12 N.J.R. 494(b).
 Amended by R.1985 d.332, effective July 1, 1985.
 See: 17 N.J.R. 1052(a), 17 N.J.R. 1661(a).
 Fee changed from \$55.00 to \$50.00.
 Amended by R.1990 d.412, effective August 20, 1990.
 See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
 Recodified from 13:2-4.9. Added "processing fee" language. Prior text at 13:2-4.8, "Advertising notice of application", recodified to 13:2-4.7.
 Amended by R.1995 d.450, effective August 21, 1995.
 See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).
 Provided for refund of fees upon denial of license renewal application.

13:2-4.9 Proration of fee

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

Amended by R.1990 d.412, effective August 20, 1990.
 See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
 Recodified from 13:2-4.10. Added N.J.S.A. 33:1-12.18 exceptions. Prior text at 13:2-4.9, "Refund of fees", recodified to 13:2-4.8.

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

The rules applicable to filing a notice of change in the facts set forth in the application for a retail license and to publishing a notice of change in corporate structure and furnishing proof thereof (N.J.A.C. 13:2-2.14 through 2.16)

shall apply to all retail licensees holding licenses issued by the Director. However, the licensee shall file such notice with and furnish such proof directly to the division; and where the notice concerns a change in corporate structure, the notice as published shall state that information concerning the qualifications of any of the stockholders of the corporate licensee shall be addressed to the Director of the Division of Alcoholic Beverage Control, PO Box 087, Trenton, New Jersey 08625-0087.

Amended by R.1985 d.332, effective July 1, 1985.
 See: 17 N.J.R. 1052(a), 17 N.J.R. 1661(a).
 Address changed.
 Amended by R.1990 d.412, effective August 20, 1990.
 See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
 Recodified from 13:2-4.11. Deleted filing "with a municipal issuing authority" and stipulated filing of notice "directly to the Division"; cross-references correction; change of address. Prior text at 13:2-4.10, "Proration of fee", recodified to 13:2-4.9.
 Amended by R.1995 d.450, effective August 21, 1995.
 See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).
 Changed Director's address.

13:2-4.11 (Reserved)

Recodified to 13:2-4.10 by R.1990 d.412, effective August 20, 1990.
 See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
 Section was "Notice of change in facts in application".

SUBCHAPTER 5. ISSUANCE OF SPECIAL PERMITS BY DIRECTOR

Subchapter Historical Note

Pursuant to Executive Order No. 66(1978), Subchapter 5 was re-adopted as R.1984 d.175, effective April 26, 1984. See: 16 N.J.R. 492(a), 16 N.J.R. 1277(a). See also Chapter Historical Note and section annotations.

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. Minutes of meetings;
6. Membership roster;
7. Financial records;
8. Documentation of Federal Income Tax exemption or application therefor; and
9. Such other information as the Director may deem appropriate.

(b) A fee, in the sum of \$50.00, per day, in cash, check, or money order 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 \$75.00 for such other organizations, and must be received at least seven 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.

13:2-5.2 Special concessionaire permit

(a) Application for a special concessionaire permit may be made to the Director by any individual, partnership, or corporation 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 fixed by the Director, and must be paid with the application in either cash, check or money order payable to the Division of Alcoholic Beverage Control.

(c) Application must be supported by the following documents before permit will be issued by the Director:

1. Letter of authorization form, and copy of agreement with, the State, county, or municipal official or body charged with responsibility over public buildings or lands at which the sale of alcoholic beverages is sought;
2. Letter of applicant detailing manner and method of proposed operation under permit;

3. Plan or sketch of premises to be used in accordance with permit;

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

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

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

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

NOTICE

ALCOHOLIC BEVERAGE PERMIT

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

(No.) (Street) (Municipality)

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

See *

See ** to insert other information applicable

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

(Name of Applicant)

(Address of Applicant)

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

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

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

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

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

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

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

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

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

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

Case Notes

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

13:2-5.3 Special permit for the sale or purchase of alcoholic beverages

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

(b) An application for such special permit shall be filed with the Division at least seven days before the proposed sale on forms to be prescribed by the Director and accompanied by payment of fees as set forth by the Director. The fees for such permits shall not be less than \$5.00 nor more than \$1,000.

(c) Upon issuance of the special permit, the temporary storage and transportation of alcoholic beverages pending sale shall be authorized, as well as the sale to and transportation by the purchaser.

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

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.

13:2-5.4 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 \$5.00 nor more than \$1,000.

(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.

SUBCHAPTER 6. EXTENSION OF LICENSE**13:2-6.1 Petition for extension of license**

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

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

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

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

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

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

13:2-6.2 Special permit to operate licensed business

Where an application for extension of license cannot be made immediately because the fiduciary has not yet qualified, the Director, Division of Alcoholic Beverage Control, may issue a special permit to allow the licensed business to continue operations temporarily until the license is formally extended. The issuance of any special permit shall not indicate any opinion as to the merits of the formal petition to extend the license.

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

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

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

13:2-6.3 Proof of appointment; assignments

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

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

13:2-6.4 Endorsement of licenses

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

"This license is hereby extended, subject to all of its terms and conditions to, (Executor, or as the case may be) until, 19."

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.

13:2-6.5 (Reserved)

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

Section was "Daily certification of license extensions".

SUBCHAPTER 7. TRANSFERS OF STATE AND MUNICIPAL LICENSES
Subchapter Historical Note

Pursuant to Executive Order No. 66(1978), Subchapter 7 was re-adopted as R.1984 d.176, effective April 26, 1984. See: 16 N.J.R. 493(a), 16 N.J.R. 1277(b). See also Chapter Historical Note and section annotations.

13:2-7.1 Transferability of license

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

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

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

Case Notes

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

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

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

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

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

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

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

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

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

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

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).

Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

Clarified transfer by "current licensee"; added text regarding forms promulgated by Director.

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

Substituted "prescribed" for "promulgated"

Case Notes

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

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

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

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

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

13:2-7.4 Notice of transfer application, form

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

**NOTICE
ALCOHOLIC BEVERAGE CONTROL**

Take notice that application has been made to _____
 _____ of _____
 (Name of Issuing Authority) (Address)
 to transfer to _____
 (Name of transferee)
 trading as _____ for premises located at
 (Trade Name, if any)

 (Address of premises to which transfer is sought)
 the _____ heretofore issued to
 (Type of License and Number)
 _____, trading as _____
 (Name of Licensee in full) (Trade Names, if any)
 for the premises located at _____
 (No.) (Street) (Municipality)
 The person(s) who will hold an interest in this license is/are:

 (Name(s))

See *
 (See ** to insert other information if applicable)
 Objections, if any, should be made immediately in writing to:
 _____, of _____
 (Municipal Clerk) (Address)
 or
 Director, Division of
 Alcoholic Beverage
 Control)

 (Name of Applicant)

 (Address of Applicant)

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

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

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

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

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

If the application is for a State license for a building not yet constructed, insert "Plans of building to be constructed

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

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

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

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

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

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

Amended by R.1974 d.4, effective January 4, 1974.

See: 6 N.J.R. 82(a).

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

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

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

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

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

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

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

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

Case Notes

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

13:2-7.5 Objections; hearing

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

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

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

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

Case Notes

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

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

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

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

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

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

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

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

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

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

13:2-7.6 Date of hearing

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

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

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

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

13:2-7.7 Hearing not required; reasons

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

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

1. The submitted application form is complete in all respects;
2. The applicant is qualified to be licensed according to all standards established by Title 33 of the New Jersey

statutes, the regulations promulgated thereunder as well as the pertinent local ordinances and conditions imposed consistent with Title 33;

3. The applicant has disclosed and the issuing authority has reviewed the source of all funds used in the purchase of the license and the licensed business and all additional financing obtained in connection with the licensed business and;

4. The transferee has executed a valid consent to transfer the license.

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

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

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

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

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

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

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

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

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

Deleted old (b)4.

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

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

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

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

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

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

Case Notes

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

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

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

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

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

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

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

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

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

Substituted "prescribed" for "promulgated".

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

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

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

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

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

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

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

Substituted "prescribed" for "promulgated".

13:2-7.10 Combined transfer

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

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

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

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

Case Notes

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

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

Applications for transfers of license to other premises only, or applications for transfer of license to another person only, shall be filed in triplicate and accompanied by a fee of 10 percent of the full annual license fee for said license, which fee shall be retained by the Director or other issuing authority as the case may be, whether or not the transfer is granted, and is to be accounted for as are other license fees. If the application is for transfer of a retail license to be acted upon locally, it must also be accompanied by a filing fee of \$100.00 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.

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 \$100.00 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.

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:

This license, subject to all of its terms and conditions, is hereby transferred, effective _____, 19____,

from _____
(Date)
(Name) and/or (Address)

to _____
(Name) and/or (Address)

(Name of Issuing Authority)

By: _____
(Duly authorized official)

Dated: _____, 19____

(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.

13:2-7.15 Certification of license transfers

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

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

Recodified from 13:2-7.23. Municipal certification requirements delineated on weekly basis. Prior text at 13:2-7.15, "Fee for license transfer to other premises", recodified to 13:2-7.11.
Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Deleted enumeration of (a).

13:2-7.16 (Reserved)

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

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

13:2-7.17 (Reserved)

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

Section was "Fee for combined license transfer".

13:2-7.18 (Reserved)

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

Section was "Special condition for early grant".

13:2-7.19 (Reserved)

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

Section was "License certificate".

13:2-7.20 (Reserved)

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

Section was "Endorsement; stub in license book".

13:2-7.21 (Reserved)

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

Section was "Endorsement signature".

13:2-7.22 (Reserved)

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

Section was "Order or resolution of endorsement".

13:2-7.23 (Reserved)

Recodified to 13:2-7.15 by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Section was "Daily certification".

13:2-7.24 (Reserved)

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

Section was "Accompanying resolution".

SUBCHAPTER 8. CLUB LICENSES

Subchapter Historical Note

Pursuant to Executive Order No. 66(1978), Subchapter 8 was re-adopted as R.1984 d.177, effective April 26, 1984. See: 16 N.J.R. 494(a), 16 N.J.R. 1277(c). See also Chapter Historical Note and section annotations.

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 course 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.

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.

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

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

Stylistic revision.

SUBCHAPTER 9. (RESERVED)

Subchapter Historical Note

Subchapter 9, Warehouse Receipts Licenses was repealed by R.1995 d.450, effective July 24, 1995. See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

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

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

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

(b) All applicants for a farm winery license shall comply with the application, advertising and hearing provisions of this chapter. The application shall be filed on a form prescribed by the Director in which the applicant shall demonstrate its ability to comply with the requirements of N.J.S.A. 33:1-10.2b. The applicant shall file a statement of intent which shall include the following information: number of acres engaged in cultivating grapes or growing fruit; location of acreage with respect to the proposed licensed premises; means by which acreage is under the applicant's control; plan under which New Jersey grown fruit will constitute at least 51 percent of wine product initially with plans to increase that percentage over five years; intent to sell products to wholesalers, retailers, and/or consumers;

number of gallons projected to be produced annually; and intent for off winery premises retail sales locations.

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

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

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

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

13:2-10.2 License certificate endorsement

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

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

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

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

Added provisions for farm winery licenses.

13:2-10.3 Labeling wine sold at retail

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

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

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

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

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

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

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

13:2-10.4 Hours of retail sales

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

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

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

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

Added provision for farm winery.

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

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

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

Section was "Prior consideration given vineyard-owning applicants".
Amended by R.1995 d.450, effective August 21, 1995.

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

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

13:2-10.6 Joint retail salesroom

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

(b) Applicants for a joint retail salesroom permit shall comply with the application, advertising, and hearing provisions of this chapter. The application shall also be accompanied by a sketch of the proposed joint salesroom premises depicting the area to be included within the scope of the license and the perimeter measurements. If the sales location is to be within another mercantile business operation, the application shall be accompanied by a description of the business relationship with the other business and shall include at a minimum, a copy of the lease agreement; a statement of how the winery sales outlet will maintain separate accounting for sales; a description of how the applicant will compensate the sales employees; and a description of any consumption or sampling to take place including how this will be controlled, and will state its plan for demarcating the licensed premises.

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

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

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

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

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

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

13:2-10.7 Parcel delivery service

Plenary and farm wineries, who wish to ship their wines in this State by parcel delivery services, must comply with the provisions of N.J.S.A. 33:1-28.1 through 28.4.

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

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

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

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

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

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

13:2-10.8 (Reserved)

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

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

Section was "Hours of retail sales".

SUBCHAPTER 11. (RESERVED)

Subchapter Historical Note

Subchapter 11, Farm Winery Licenses and Retail Privileges, was repealed by R.1995 d.450, effective July 24, 1995. See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

SUBCHAPTER 12. SPECIAL PERMITS FOR HOME MANUFACTURE OF MALT ALCOHOLIC BEVERAGES AND WINES FOR PERSONAL OR HOUSEHOLD USE OR CONSUMPTION

13:2-12.1 Special malt alcoholic beverage and wine permits

(a) Malt alcoholic beverages and wines for personal or household use or consumption may be manufactured only under the provisions of a special permit, issued by the Director. This permit allows the manufacture within the home of the permittee or other authorized premises used in connection therewith, during the permit period, malt alcoholic beverages and wines in quantities of not more than 200 gallons.

(b) Malt alcoholic beverages and wines manufactured under the authority of such permit may not be sold under any circumstances, nor may it be used for any purpose other than for personal or household use or consumption of the permittee. The fee for this permit is \$10.00.

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).

Provided for malt alcoholic beverage permits and increased permit fee.

13:2-12.2 (Reserved)

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.

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 "Ineligibility of licensees".

13:2-12.3 Ineligibility of premises

(a) No permit shall be issued for the manufacture of malt alcoholic beverages or wines on premises that are also licensed for the retailing, wholesaling or manufacturing of alcoholic beverages.

(b) "Non-commercial premises" referenced in N.J.S.A. 33:1-75 and as used in this section shall include premises in which equipment and space are leased to a permittee for the purpose of brewing malt alcoholic beverages or fermenting wines for personal or household use or consumption.

(c) Nothing contained within this section shall prohibit the issuance of a special permit for home manufacture of malt alcoholic beverages and wines to a permittee who utilizes an authorized non-commercial premises offering the use of space, equipment, ingredients, bottling supplies, advice and expertise exclusively for the production of the permittee's malt alcoholic beverage or wine. No operation as described in this section shall be permitted unless:

1. The non-commercial premises shall obtain a public warehouse license in accordance with N.J.S.A. 33:1-14.1;

2. The owner of the non-commercial premises shall provide written notice of the proposed operation to, and shall receive written approval from the Director. The Director shall advise the appropriate municipality of any pending applications. Upon timely receipt of a duly signed written objection to the operation of the non-commercial premises, which must be received within 30 days of the notification to the municipality, the Director will afford a hearing to all parties and notify the owner of the non-commercial premises and the objector of the date, hour and place thereof;

3. The owner of the non-commercial premises shall keep records of permittees using the facility to produce malt alcoholic beverages and wines. These records are to be retained for a period of two years and must be available for inspection by the Director, the Director's authorized deputies, inspectors and investigators, and by any officer defined by N.J.S.A. 33:1-1p; and

4. Representatives of the non-commercial premises shall not provide physical assistance to, or on the behalf of, permittees in the production or bottling of malt alcoholic beverages and wines, nor storage other than that necessary to manufacture the malt alcoholic beverages or wines.

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 malt alcoholic beverages in (a) and added (b) and (c).

13:2-12.4 Ineligibility of persons under the legal age

No permit shall be issued to any person under 21 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).
"21 years" was "18 years".

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

Substituted "persons under the legal age" for "minors".

13:2-12.5 Other disqualification

No permit shall be issued to any person who has been convicted of an offense involving "unlawful alcoholic beverage activity", as defined in N.J.S.A. 33:1-1(x), subject to a waiver of this prohibition in the discretion of the Director after the lapse of 12 months from the date of such conviction.

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

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

Revised text regarding conviction of a violation to reflect N.J.S.A. 33:1-1(x).

13:2-12.6 Number of permits per year

No more than one malt alcoholic beverage and one wine permit shall be issued to any individual during any calendar year.

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

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

"Calendar year" was "fiscal year".

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

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

Added provision for malt alcoholic beverages.

13:2-12.7 Transfer of permits

No permit shall be transferable from person to person, and transfer from premises to premises may only be made with the written permission of 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).

Stylistic revisions.

13:2-12.8 Revocation of permit

Violation of the provisions of the permit shall be grounds for revocation.

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

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

Stylistic revision.

SUBCHAPTER 13. EXECUTION OF QUESTIONNAIRE BY STATE LICENSEES, AND THEIR PRINCIPALS AND EMPLOYEES

13:2-13.1 Execution of questionnaires by State licensees and principals

Every person who, individually or as a member of a partnership, holds a manufacturer's, wholesaler's, public warehouse, warehouse receipts, broker's or transportation license (except railroad carriers, but not excepting their affiliated or subsidiary transportation companies engaged in transporting alcoholic beverages) shall execute a questionnaire, on a form prescribed by the Director. In addition, every person who is an officer, director or holder of more than one percent of the stock of a corporation holding any such license, shall execute a questionnaire, on a form prescribed by the Director.

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

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

Stipulated use of questionnaire form promulgated by Director; "one percent" of stock was "10 percent" of stock.

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".

13:2-13.2 Execution of questionnaires by employees of State licensees; exemptions

(a) Every person employed by or connected in any capacity whatsoever with the alcoholic beverage business conducted in this State by the holder of any license specified in N.J.A.C. 13:2-13.1 shall execute a questionnaire, on a form prescribed by the Director.

(b) This requirement shall not apply to:

1. Any person holding a solicitor's permit or an employment permit issued by the Director;
2. Any person whose employment does not exceed 10 working days in any one calendar year;
3. Stenographers, telephone operators, clerks, office personnel and other employees who do not handle any alcoholic beverages and have no direct or substantive role in the conduct of the licensee's alcoholic beverage business; or
4. Any person whose only connection with a licensed corporation is that of registered or authorized agent for the service of process.

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

In (a), specified use of questionnaire form promulgated by the Director; in (a)5, "licensed corporation" was "licensed foreign corporation".

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

Created (b) from existing text and made stylistic changes.

13:2-13.3 Photograph of person executing questionnaire

Each questionnaire shall have attached thereto one color passport type photograph, two inches by two inches, of the person who has executed such questionnaire, which photograph shall have been taken not more than 30 days prior to the execution of the questionnaire.

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

Specified "color" passport photo of person "who has executed" questionnaire.

13:2-13.4 Maintenance of questionnaires upon licensed premises

All questionnaires shall be kept upon the licensed premises, available for inspection by the Director, his or her deputies, inspectors, investigators and agents and other officers defined by N.J.S.A. 33:1-1(p).

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

Deleted 13:2-13.5 exception and obsolete language; added N.J.S.A. 33:1-1(p) reference.

13:2-13.5 (Reserved)

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

Section was "Criminal convictions disclosed in questionnaire".

13:2-13.6 (Reserved)

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

Section was "Failure to execute questionnaire; employment".

SUBCHAPTER 14. EMPLOYMENT BY LICENSEES OF A PERSON FAILING TO QUALIFY AS A LICENSEE

13:2-14.1 Restriction upon a minor's employment activities on a licensed premises

(a) No licensee shall allow, permit or suffer any person under the age of 18 years to sell, serve or solicit the sale of any alcoholic beverage, or to participate in the manufacture, rectification, blending, treating, fortification, mixing, processing, preparing or bottling of any alcoholic beverage. It shall not constitute a defense to any prosecution for violation of this rule that the employment of a person under the age of 18 years is permitted under N.J.A.C. 13:2-14.2.

(b) No licensee shall allow, permit or suffer any person under 18 years of age to be employed as an entertainer on any premises where the consumption of alcoholic beverages is permitted unless such minor's employment shall be authorized pursuant to N.J.S.A. 34:2-21.1 et seq. of the New Jersey Child Labor Law and the rules and regulations established thereunder.

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

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

Recodified from 13:2-14.2. Added (b). Prior text at 13:2-14.1, "Criminally disqualified persons", repealed. The following annotation pertained to that section:

Amended by R.1974 d.40, effective February 15, 1974.
 Sec: 6 N.J.R. 17(a), 6 N.J.R. 119(c).

Case Notes

Bar's business closed for 25 days for hiring underage entertainer on basis of obviously altered birth certificate. *Avens v. Atlantic City Municipal Board of ABC*, 96 N.J.A.R.2d (ABC) 1.

13:2-14.2 Minor's employment permit; fees

(a) No licensee, except a retail licensee operating in conjunction with a bona fide hotel or public restaurant, shall allow, permit or suffer the employment of any person under the age of 18 years, in or upon the licensed premises, unless such person obtains an employment permit from the Director of the Division of Alcoholic Beverage Control no later than 10 days from commencement of employment or unless the licensee holds a blanket employment permit issued by the Director pursuant to N.J.A.C. 13:2-14.4.

(b) The fee for an individual permit is \$10.00 per calendar year.

Amended by R.1971 d.24, effective March 1, 1971.

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

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

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

Amended by 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 13:2-14.3. Revised permit requirements; added N.J.A.C. 13:2-14.4. Recodified prior text at 13:2-14.2, "Minor's activities on licensed premises", to 13:2-14.1.

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).

Stylistic changes.

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 \$500.00 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".

13:2-14.5 Restrictions upon employing criminally disqualified persons

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

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

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

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

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

(a) Any person convicted of a crime involving moral turpitude may apply to the Director, in the manner and form prescribed by the Director, for a rehabilitation employment permit. Whenever that application is made and it appears to the satisfaction of the Director that such person's employment in the alcoholic beverage industry will not be contrary to the public interest, the Director may, in the exercise of sound discretion, issue such employment permit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Added (c).

Case Notes

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

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

13:2-16.14 Responsibilities of employer

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.

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

13:2-16.15 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).

SUBCHAPTER 17. APPEALS

Subchapter Historical Note

All provisions of this subchapter were filed and became effective prior to September 1, 1969. This subchapter expired in accordance with Executive Order No. 66(1978) on October 1, 1984. Readoption was filed December 17, 1984 as R.1984 d.608. See: 16 N.J.R. 2954(a), 17 N.J.R. 91(a). See also Chapter Historical Note and section annotations.

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.

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

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

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.

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.

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

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 shall appear that a substantial question of fact or law has been raised, and that irreparable injury to the appellant would otherwise result, the extension of license, subject to such conditions as may be imposed, shall be continued pending a final determination of the appeal, or the expiration of the license term, whichever comes sooner.

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.

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 (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 "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 readopted 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

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).

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.

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 13:2-18.7, "Interlocutory relief", to 13:2-18.4.

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

Changed hearing location.

13:2-18.8 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 its conduct.

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 13:2-18.8, "Enforcement of director's orders", to 13:2-18.5.

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.

SUBCHAPTER 19. DISCIPLINARY PROCEEDINGS

Subchapter Historical Note

All provisions of this subchapter were filed and became effective prior to September 1, 1969. Pursuant to Executive Order No. 66(1978), Subchapter 8 was readopted as R.1984 d.606, effective December 17, 1984. See: 16 N.J.R. 2957(a), 17 N.J.R. 92(a). See also Chapter Historical Note and section annotations.

13:2-19.1 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.

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.

13:2-19.2 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.

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.

13:2-19.3 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.

13:2-19.4 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.

13:2-19.5 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.

13:2-19.6 Jurisdiction and hearing procedure

(a) A Division instituted disciplinary proceeding shall be considered a contested case upon the entry of a "not guilty" plea by the licensee or upon the failure of the licensee to enter a timely plea. Contested cases shall be filed with the Office of Administrative Law pursuant to N.J.A.C. 1:1-5.1 or retained by the Director under the provisions of N.J.S.A. 52:14F-8. 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.

(b) In uncontested cases before the Division, written argument as to penalty may be submitted to the Director within 10 days after entry of the plea. No oral argument may be had before the Director unless the Director decides to hear oral argument and notifies the parties or their attorneys of the time and place fixed therefor.

Amended by R.1979 d.393, effective October 1, 1979.

See: 11 N.J.R. 580(f).

Amended by R.1984 d.606, effective January 7, 1985.

See: 16 N.J.R. 2957(a), 17 N.J.R. 92(a).

Old section hearings substantially amended.

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

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

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).

Deleted requirement of a motion by the Director for oral arguments to be heard.

13:2-19.7 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 prior to a change in corporate structure has occurred, prior to the time at which the license has been revoked, the Director shall review the facts of the revocation proceedings. The Director shall thereafter determine whether or not the holders and owners (either direct or indirect) of the license at the time the violation(s) occurred; at the time the license was ordered revoked; or any interim times, either allowed, permitted or suffered the unlawful conduct or knew or should have known of the effects of a license revocation or should be sanctioned for any other sound reasons. In the exercise of sound discretion, 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 N.J.A.C. 13:2-19.7(a).

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

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

SUBCHAPTER 20. TRANSPORTATION OF ALCOHOLIC BEVERAGES BY LICENSEES; INSIGNIA

Subchapter Historical Note

All provisions of this subchapter were filed and became effective prior to September 1, 1969. Pursuant to Executive Order No. 66(1978), Subchapter 20 was readopted as R.1985 d.333, effective June 7, 1985. See: 17 N.J.R. 1054(a), 17 N.J.R. 1662(a). See also Chapter Historical Note and section annotations.

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

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

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

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

Substantially amended.

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

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

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

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

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

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

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

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

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

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

Substantially amended.

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

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

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

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

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

Added (c).

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

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

1. The driver of the vehicle has in his or her possession a bona fide, authentic and accurate delivery slip, invoice, manifest, waybill, or similar document stating the bona fide name and address of the purchaser or consignee, and the brand, size of container, quantity and price of each item of the alcoholic beverages being delivered or transported; or

2. The driver of the vehicle has in his or her possession a route card which shall contain the name, address and standing order of the customer, and the entry at the time of delivery of the date of delivery, the brand, size of container, quantity delivered and the price charged. In addition to such route cards, there must be carried in the vehicle a loading list setting forth the total quantity of alcoholic beverages loaded for delivery, indicating as to each brand loaded the total quantity of each size of container; and

3. The original or true copy of such delivery slip, invoice, manifest, waybill, route card or similar document shall be retained by the licensee at his licensed premises for a period of one year from the date of delivery, and shall be available for inspection by any person authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq., unless the Director shall have granted to the licensee written permission to keep such documents at another designated place.

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

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

2. The parcel delivery service must first be registered and approved by the Director. Application for approval

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Allowed for mail or telephone wine order purchases.

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

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

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

(Signature by or for licensee)

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

(c) Except that with regard to the following:

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

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

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

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

Substantially amended.

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

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

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

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

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

(a) No transit insignia, special 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 or special 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.

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 \$50.00 for each insignia, in cash, money order or check payable to the order of the Division of Alcoholic Beverage Control.

(b) Application for special transit insignia, which may be issued for passenger type vehicles and consists of a sticker that is less conspicuous than a transit insignia, shall be filed with the director upon a prescribed form accompanied by the full fee of \$50.00 for each permit, in cash, money order or check payable to the order of the Division of Alcoholic Beverage Control.

(c) Application for transportation license insignia shall be filed with the director upon a prescribed form and shall be issued at a cost of \$20.00 for each insignia, in cash, money order or check 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.

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

(a) All transit insignia and special 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).

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

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

(b) Special transit insignia must be directly affixed to the rearmost side window on the driver's side of the vehicle. The insignia shall be placed in the lower rear corner of such window, shall be affixed from the inside facing outward and shall be clearly visible at all times.

(c) Transportation license insignia shall either be affixed to the exterior of the vehicle 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).

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

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

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

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

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

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

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

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

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

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

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

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

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

13:2-20.10 Search of licensed vehicle

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

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

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

Old text deleted and new text recodified from section 15.

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

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

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

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

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

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

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

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

Historical Note

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

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

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

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

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

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

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

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

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

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

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

Section was "Importation by licensed manufacturer or wholesaler."

13:2-21.2 Interstate transportation for personal use; amount limitation; permit

(a) Alcoholic beverages intended in good faith for personal use and not for sale may be transported into this State from a point outside New Jersey by any person in a vehicle under his control, without any transportation license or permit, to the extent permitted by N.J.S.A. 33:1-2 that is, not exceeding one-fourth barrel or one case containing not in excess of 12 quarts in all, of beer, ale or porter, and one gallon of wine, and two quarts of other alcoholic beverages within any consecutive period of 24 hours.

(b) Interstate transportation of alcoholic beverages intended in good faith for personal use in excess of the limits set forth in this section is prohibited; unless the consumer:

1. Has the alcoholic beverages transported by a New Jersey licensed alcoholic beverage transporter; or

2. Acquires from the Division a special permit to authorize the interstate transportation for a fee of \$25.00 as set forth in N.J.S.A. 33:1-2. No such permit shall be issued until the applicant establishes that there has been payment of all applicable New Jersey Alcoholic Beverage taxes.

Repealed by R.1989 d.371, effective July 17, 1989.

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

Section was "Transportation through New Jersey."

Recodified 13:2-21.4, with amendments, to 13:2-21.2.

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

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

Made reference to interstate transportation throughout the section; deleted (b); renumbered (c) as (b); deleted former (c)1 and increased the transportation fee.

13:2-21.3 Transportation through New Jersey

(a) Alcoholic beverages may be transported through the State of New Jersey in any vehicle provided the following terms and conditions are met:

1. No delivery is made in New Jersey;

2. The alcoholic beverages may lawfully be sold and transported from the state of origin;

3. The driver of the vehicle possesses a bona fide, accurate waybill, bill of sale, invoice, receipt or similar document stating the name and address of the seller and buyer, the type and quantity of alcoholic beverages being transported and the places of origin and destination; and

4. The alcoholic beverages may lawfully be delivered to and received in the state of destination.

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

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

Section was "Importation by a licensed transporter."

13:2-21.4 Limited transportation permit

(a) Alcoholic beverages not intended for delivery, sale or use in New Jersey may be transported from the licensed premises in this State of a manufacturer, wholesaler or public warehouse licensee, to points outside this State; or between points outside this State and piers of import or export located within the State by the holder of a New Jersey transportation license or a limited transportation permit.

(b) Application for a limited transportation permit shall be made to the Division on a form prescribed by the Director accompanied by a fee of \$400.00.

(c) A limited transportation permit has a term of one year terminating on September 30, unless sooner canceled by the Director.

(d) The holder of a limited transportation permit cannot transport alcoholic beverages unless the vehicles have affixed thereto a limited transportation permit insignia.

(e) Limited transportation permit insignia are obtainable from the Division in the same manner, with the same eligibility requirements, transfer restrictions and insignia location as a transit insignia as set forth in N.J.A.C. 13:2-20. The cost for this limited transportation permit insignia is \$40.00 per vehicle.

Amended by R.1989 d.371, effective July 17, 1989.
See: 21 N.J.R. 1304(a), 21 N.J.R. 2047(a).

Recodified to 21.2 from 21.4, with stylistic changes and new subsections added.

In (a): deleted language about labeling of alcoholic beverages and added "without any transportation in N.J.S.A. 33:1-2, that is."

Added (b) and (c).

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

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

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

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

Deleted (c)1.

13:2-21.5 Emergency trip permit

(a) The Director, Division of Alcoholic Beverage Control, or any designated agent of the Director may issue a special emergency trip permit for the temporary or emergency transportation of alcoholic beverages into or out of the State in any vehicle not otherwise authorized by license or permit issued pursuant to N.J.A.C. 13:2-20 or this subchapter.

(b) An emergency trip permit shall authorize the delivery into or out of the State for a particular singular shipment identified in the permit from a specified source of origin to a specified destination. The permit shall remain in effect for the duration of the trip, or for 24 hours from the time of issuance, whichever period is longer.

(c) Applications for an emergency trip permit shall be on a form prescribed by the Director and may be issued by the Director or his designated agent for such purpose.

(d) The fee for an emergency trip permit is \$25.00, which shall be deposited in the State Treasury. A surcharge in an amount allowed by the Director may be collected and retained by the agent when the permit is issued by that designated agent.

(e) A designated agent shall maintain true and accurate books of account, electronically transmit to the Division at time of issuance a copy of the issued permit, remit emergency trip permit fees to the Division within seven business days after issuance, and post an adequate performance bond if required.

(f) A designated agent serves at the will of the Director and may be dismissed without cause upon 30 days notice.

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

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

Section was "Special permits."

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

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

Provided permit effectiveness period.

13:2-21.6 Prohibited transportation; seizure of unlawful property

No alcoholic beverages shall be transported into, through or out of the State except in accordance with this subchapter. Alcoholic beverages transported in violation of this subchapter and the vehicle containing the same, are unlawful property and are subject to seizure and forfeiture by the Director in accordance with N.J.S.A. 33:1-66.

Repealed by R.1989 d.371, effective July 17, 1989.

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

Section was "Transportation by retail transit licensees."

Recodified 13:2-21.8, with amendments, to 13:2-21.6.

13:2-21.7 Search of vehicle

By acceptance of a special permit issued pursuant to this subchapter for the transportation of alcoholic beverages in excess of the quantities authorized by law, or a limited transportation permit, or an emergency trip permit, the holder of the permit consents to the inspection and search of the vehicle for which such permit is issued, without search warrant, by any person authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq.

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

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

Recodified to 21.4 from 21.7, with stylistic changes and new subsections added.

Added (b)-(c) to explain the application process, permit and cost requirements.

Original section 21.7 "Limited transportation permit" was recodified to section 21.4.

13:2-21.8 (Reserved)

Repealed by R.1989 d.371, effective July 17, 1989.

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

Recodified to 21.6 from 21.8.

Substituted "this subchapter" for reference to "rules."

Added "Director in accordance with N.J.S.A. 33:1-66" as seizure authority.

SUBCHAPTER 22. LICENSEE TRAINING AND CERTIFICATION

Authority

N.J.S.A. 33:1-3, 12, 12.40 through 12.48, 23, 25, 26, 27, 31, 39 and 93.

Source and Effective Date

R.1992 d.445, effective November 2, 1992.
See: 24 N.J.R. 1958(b), 24 N.J.R. 4055(b).

Subchapter Historical Note

Subchapter 22, Transportation of Alcoholic Beverages by Railroad Carriers, was repealed by R.1990 d.412, effective August 20, 1990. See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c). See also Chapter Historical Note.

13:2-22.1 Licensee training program established

All holders of plenary or limited retail distribution licenses issued under the provisions of N.J.S.A. 33:1-12 shall successfully complete educational training courses at such times, under such conditions, and with identified consequences for noncompliance, as are hereinafter set forth in this subchapter.

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

13:2-22.2 Requirements for successful completion; time for completion

(a) All holders of plenary or limited retail distribution licenses at the time this subchapter becomes operative shall successfully complete an initial educational training program within nine months of March 9, 1994. Successful completion shall entail attendance during the entire training program and satisfactory participation in program's group exercise and questioning activities.

(b) Whenever a plenary or limited retail distribution license is acquired as a newly issued license, or by an approved person-to-person transfer of license, or any currently existing plenary or limited retail distribution license held by a corporation is subject to a change of 33 $\frac{1}{3}$ percent or more of its corporate stockholders, individuals as specified in N.J.A.C. 13:2-22.3 shall be required to attend and successfully complete an initial educational training program within nine months of acquiring the new license or 33 $\frac{1}{3}$ percent or more interest in such license.

(c) All holders of plenary or limited retail distribution licenses that have successfully completed an initial educational training program shall be required to have appropriate individuals attend and successfully complete supplemental continuing educational training programs if determined necessary by the Director based upon modifications and changes in the law, regulations, policy or societal conditions. The schedule for supplemental training shall be set forth in the Alcoholic Beverage Control Bulletin and further communicated to all affected licensees.

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

13:2-22.3 Individuals required to attend

(a) One or more of the following individuals shall be required to attend the educational training programs on behalf of the plenary or limited retail distribution licensee:

1. For licenses held by an individual as a sole proprietorship, or for licenses held by a partnership, the required attendee shall be the individual owner of the license, or at least one of the partners, respectively, if such owner or partner is actively engaged in the operation or control of the business.

2. For licenses held by a corporation, the required attendee shall be at least one of the corporate officers or a stockholder owning at least 25 percent of the corporate stock, if such person is actively engaged in the operation or control of the business.

3. Where any licensee designates a manager on its license application, the required attendee shall also include that individual, in addition to the persons identified in (a)1 or (a)2 above.

4. Where an owner, partner or holder of 25 percent or more of the corporate stock, is not actively involved in the operation or control of the business, then such license must have at least one individual designated as a manager as disclosed on the license, which person must attend the training.

5. Where any licensee holds more than one license subject to the requirements of this subchapter, at least one person for each separate license must attend and successfully complete the training.

6. In addition to the above, any licensee may register as an attendee, on a space available basis, any other officer, stockholder, clerk or other employee actively engaged in the operation or control of the licensed business.

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

13:2-22.4 Dates and location of training

The educational training programs required under this subchapter shall be available and reasonably accessible to all plenary and limited retail distribution licensees in the State. The training programs shall be offered at least once every three months, subject to need, in the geographical area covered by each of the current three telephone area codes in New Jersey; as well as at least once annually on a Statewide basis.

13:2-22.5 Designation of entity to conduct the training programs

In order to satisfy the training requirements on the most cost efficient basis, and in furtherance of the authority set forth in N.J.S.A. 33:1-12.45, the Director, Division of Alcoholic Beverage Control may contract with a non-profit educational organization in this State to administer and conduct all or part of the educational training programs required by this subchapter.

13:2-22.6 Training program curriculum

(a) The Director, Division of Alcoholic Beverage Control, shall establish and revise annually the course content and shall approve the individual instructors or lecturers who will conduct the training programs, in consultation with any non-profit educational organization he or she may have contracted with in accordance with N.J.A.C. 13:2-22.5.

(b) The curriculum for the initial training programs shall include, but is not limited to, an explanation and development of the following:

1. The provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq., as it relates to the distribution, transportation, sale, and marketing of alcoholic beverages by retail distribution licensees; with detailed emphasis placed on the provisions of law governing the sale and delivery of alcoholic beverages to persons under the legal age;
2. The rules and regulations promulgated by the Director, Division of Alcoholic Beverage Control, N.J.A.C. 13:2, governing the sale, advertising, transportation, required records, promotion and marketing of alcoholic beverages, the disciplinary and adjudicatory procedures and consequences attendant to violative activity, and the permitted and prohibited conduct and use of the license and the licensed premises;
3. The application of municipal ordinances and regulations concerning the licensure, hours of sale, location, restrictions and permitted use of retail licenses and licensed premises established by municipal governing bodies or municipal boards of alcoholic beverage control;
4. Relevant administrative policies and determinations of the Director, Division of Alcoholic Beverage Control, the requirements and procedures for the collection and remittance of New Jersey taxes, and other State and

Federal laws and regulations that impact upon the retail alcoholic beverage industry of the State of New Jersey; and

5. The relationship and application of the 10 point legislative declaration of policy and purpose set forth in N.J.S.A. 33:1-3 to the conduct and use of retail liquor licenses.

(c) The curriculum for the supplemental training program shall include, but not be limited to, any changes in the Alcoholic Beverage Control Act or other related laws affecting retail licensed businesses, new or amended regulations of the Division of Alcoholic Beverage Control, administrative and judicial policy changes, prevailing market or societal conditions and reinforcement or further expansion of matters addressed in the initial training program or revisions thereto.

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

13:2-22.7 Registration fees

(a) Each attendee shall be required to pay a registration fee in an amount to be established by the Director, Division of Alcoholic Beverage Control, giving due consideration to the actual expenses required to properly operate and maintain the educational training programs. The cost of registration shall be reviewed annually by the Director against the actual operational expenses and adjusted accordingly. In no event shall the registration fee for each attendee be less than \$50.00 nor more than \$150.00.

(b) A schedule of registration fees and any subsequent amendments thereto shall be set forth and published in the Alcoholic Beverage Control Bulletin, and otherwise disseminated to all affected licensees.

(c) For purposes of administration, if the Director contracts with a non-profit educational organization pursuant to N.J.A.C. 13:2-22.5, the full registration fee shall be remitted to the contracting educational organization. That organization shall forward 20 percent of the fee to the Director, within seven business days after receipt for deposit in the State Treasury. The balance of the fee shall be retained by the educational organization to reimburse it for the costs associated with the conduct and maintenance of the educational training programs, including the scheduling, notice and promotional expenses, site expenses, instructional expenses (other than personnel of the Division of Alcoholic Beverage Control or other State employees), course materials, and other related expenses.

(d) The non-profit educational organization shall maintain true and accurate books of account concerning all aspects of the operation and maintenance of the educational training program, which records shall be made available for inspection by the Director upon demand. The organization shall provide the Director with a full and complete fiscal

and operational report detailing the program's activities on an annual basis; and it shall post an adequate performance bond if required by the Director.

13:2-22.8 Certification of educational training or order of deferment

(a) Upon the satisfactory completion of an initial or any supplemental educational training program required under this subchapter, the holder of a plenary or limited retail distribution license shall receive from the Director, Division of Alcoholic Beverage Control, a Certificate of Educational Training. The certificate shall include the date and location of the completed training program, the name of the attendee or attendees on behalf of the licensee, and the licensee's name, address and license number. The Certificate of Educational Training may be displayed on the licensed premises and must be made available to the licensing issuing authority at the time of any application for renewal of the license.

(b) Any holder of a plenary or limited retail distribution license who is unable to attend an initial or supplemental training program within the required time period, may apply to the Director, no later than 30 days before the expiration of the requisite training time period, for a deferment of the requirement for attendance in the educational program. The request for deferment shall be made to the Director on a form to be prescribed by the Director and accompanied by a non-refundable processing fee of \$25.00. If the Director is satisfied that there is good cause for the deferment, the Director shall issue an Order of Deferment of the training requirement, subject to conditions thereon as may be appropriate.

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

13:2-22.9 Sanctions for noncompliance

(a) Any holder of a plenary or limited retail distribution license who fails to attend and successfully complete the required initial or supplemental educational training program within the time period set forth in this subchapter, and who has not received a currently valid Order of Deferment, shall be subject to the following administrative sanctions to be imposed by the Director, Division of Alcoholic Beverage Control.

1. The first failure to attend or successfully complete the training program within the time periods set forth in this subchapter shall constitute a first offense and shall subject the licensee to a monetary penalty of \$250.00 in lieu of institution of formal disciplinary proceedings, with a requirement that the training be completed within the following three months.

2. Failure to attend or successfully complete the training program within the three month extension after a first offense shall constitute a second offense and subject the licensee to a monetary penalty of \$500.00 in lieu of institution of formal disciplinary proceedings, with a requirement that the training be completed within the following three months.

3. Failure to attend or successfully complete the training program within the additional three month extension granted a second offender shall constitute a third offense and subject the licensee to a monetary penalty of \$1,000 in lieu of institution of formal disciplinary proceedings, with a requirement that the training be completed within the following three months.

4. Any failure to comply with the final three months extension afforded a third offender shall subject the licensee to formal administrative charges that can lead to an indefinite suspension of license, with leave granted to lift the suspension upon payment of a monetary penalty of \$2,000 and proof of satisfactory completion of the educational training program.

(b) False or misleading representations by a licensee in its petition for a deferment are grounds for suspension or revocation of its license.

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

13:2-22.10 (Reserved)

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 "Subchapter operative date".

SUBCHAPTER 23. CONDUCT OF LICENSEES AND PERMITTEES AND USE OF LICENSED PREMISES

Subchapter Historical Note

Pursuant to Executive Order No. 66(1978), Subchapter 23 was re-adopted as R.1984 d.51, effective February 14, 1984. See: 16 N.J.R. 29(a), 16 N.J.R. 428(a). See also Chapter Historical Note and section annotations.

13:2-23.1 Prohibition against serving persons under the legal age and intoxicated persons

(a) No licensee shall sell, serve or deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, directly or indirectly, to any person under the legal age to purchase or consume alcoholic beverages, or allow, permit or suffer the consumption of any alcoholic beverage by any such person in or upon the licensed premises.

(b) No licensee shall sell, serve or deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, directly or indirectly, to any person actually or apparently intoxicated, or permit or suffer the consumption of any alcoholic beverage by any such person in or upon the licensed premises.

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.

License suspended for allowing, permitting and suffering possession of controlled dangerous substance on premises; good faith effort to stop activity not found. *Div. of Alcoholic Beverage Control v. Ty-Dan Corp.*, 5 N.J.A.R. 273 (1980), affirmed.

13:2-23.6 Prohibition against immoral activities; disturbance; nuisance on premises

(a) No licensee shall engage in or allow, permit or suffer in or upon the licensed premises:

1. Any lewdness or immoral activity;
2. Any brawl, act of violence, disturbance, or unnecessary noise;
3. Nor shall any licensee allow, permit or suffer the licensed place of business to be conducted in such a manner as to become a nuisance.

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

Tavern owner duty-bound to summon police if reasonably foreseeable that patron may otherwise be harmed by criminal acts of another. *Dubak v. Burdette Tomlin Memorial Hosp.*, 233 N.J.Super. 441, 559 A.2d 424 (A.D.1989), certification denied 117 N.J. 48, 563 A.2d 817.

Violation finding upheld against challenge that regulation invalid due to lack of standard for lewdness; contested case decisions provide conduct illustrations or precedents for lewdness available to any licensee. *G. & J.K. Enterprises, Inc. v. Div. of Alcoholic Beverage Control*, 205 N.J.Super. 77, 500 A.2d 43 (App.Div.1985).

Violation of regulation by tavern owner does not give rise to action by policeman for injuries sustained in answering call for assistance. *Entwistle v. Draves*, 200 N.J.Super. 1, 490 A.2d 313 (App.Div.1985), affirmed 102 N.J. 559, 510 A.2d (1986).

Licensee loses liquor license for operating business as a nuisance. *Antoine Services, Inc. v. City of Linden*, 97 N.J.A.R.2d (ABC) 9.

Prior suspension of club's plenary retail consumption license for acts of lewdness by club's dancers supported new license suspension for repeat violation. *Jensa, t/a Club Phoenix v. The City of Asbury Park*, 96 N.J.A.R.2d (ABC) 76.

Suspension of club's liquor license was warranted by multiple and flagrant violations of state law, including alleged incidents of lewd conduct by club's dancers and patrons. *Alcoholic Beverage Control v. Jayson, Inc.*, 96 N.J.A.R.2d (ABC) 71.

Incidents of lewdness on business premises warranted suspension of liquor license. *D & Z Realty v. City of Asbury Park*, 96 N.J.A.R.2d (ABC) 41.

Liquor license renewal denied where bar owners failed to comply with special condition and operated bar as a public nuisance. In the *Matter of Nathan's Realty, Inc.*, 96 N.J.A.R.2d (ABC) 25.

Lewd conduct by dancers within sight of licensee warranted revocation of liquor license. *Alcoholic Beverage Control v. Quesada*, 95 N.J.A.R.2d (ABC) 88.

Illegal drug activity on licensed premises with licensee's knowledge warranted revocation of license. *Township of Nutley v. Rockyn Juke Box*, 95 N.J.A.R.2d (ABC) 81.

Lewdness of female go-go dancer warranted 45-day suspension of liquor license. *Jonilo v. Municipal Board*, 95 N.J.A.R.2d (ABC) 1.

Go-go bar's license revoked upon showing of lewd or immoral activity. *Division of Alcoholic Beverage Control v. Wemar, Inc.*, 94 N.J.A.R.2d (ABC) 82.

License suspended for allowing lewd and immoral conduct on premises ("Go-Go" dancers); good faith effort to stop activity not found. *State of N.J. v. G. & J.K. Enterprises, Inc.*, 8 N.J.A.R. 588 (1985).

License suspended for allowing lewd and immoral conduct on premises (topless dancers); while constitutionality of ordinance and regulation must be reviewed by court of plenary jurisdiction, regulation examined and found constitutional; violative activity not protected free speech. *Canal Street Pub. Inc. v. Municipal Bd. of Alcoholic Beverage Control, City of Paterson*, 6 N.J.A.R. 221 (1982).

13:2-23.7 Prohibition against lottery and gambling; exceptions

(a) No licensee shall engage in or allow, permit or suffer in or upon the licensed premises:

1. The conduct of any lottery;
2. Any ticket or participation right in any lottery to be sold or offered for sale;
3. Any pool-selling, bookmaking or any unlawful game or gambling of any kind;
4. Any slot machine or device in the nature of a slot machine which may be used for the purpose of playing for money or other valuable thing;
5. Nor shall any licensee possess, have custody of, or allow, permit or suffer in or upon the licensed premises any gambling paraphernalia including, but not limited to, any slip, ticket, book, record, document, memorandum or other writing pertaining in any way to any lottery, pool-selling, bookmaking or unlawful game or gambling of any kind.

(b) This rule shall not apply to bingo, raffles or New Jersey State Lottery, or tickets or participation rights therein, being conducted pursuant to appropriate license under the Bingo Licensing Law (N.J.S.A. 5:8-24), Raffles Licensing Law (N.J.S.A. 5:8-50), State Lottery Law (N.J.S.A. 5:9-11) or other activity authorized by State law. However, in any instance of bingo at licensed premises, no licensee, during the period between the commencement of the first and the conclusion of the last game, shall sell, serve, or deliver or allow, permit or suffer the sale, service, delivery or consumption of any alcoholic beverage in or upon any part of the licensed premises where the bingo or any part thereof is being conducted.

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).

Prohibited gambling paraphernalia on licensed premises.

Case Notes

Video poker, blackjack, dice, roulette and other electronic forms of traditional gambling games or devices are slot machines within the meaning of this regulation and, therefore, are prohibited on licensed

premises. *Rosenkranz v. Vassallo*, 193 N.J.Super. 319, 473 A.2d 991 (App.Div.1984) on remand 9 N.J.A.R. 297 (1984).

Warrant needed to search the nonpublic areas of a licensed tavern for evidence of general criminality, unrelated to the operation of the licensed activity. *State v. Williams*, 168 N.J.Super. 359, 403 A.2d 31 (App.Div.1979), affirmed 84 N.J. 217, 417 A.2d 1046 (1980).

Warrantless searches of persons and tavern for lottery slips upheld (citing former N.J.A.C. 13:2-21.7). *State v. Carangelo*, 151 N.J.Super. 138, 376 A.2d 596 (Law Div.1977).

Liquor license was suspended for various violations, including possession of illegal gambling device on premises. *Division of Alcoholic Beverage Control v. Deleon Inc.*, 96 N.J.A.R.2d (ABC) 95.

Video machine easily adapted to actual gaming cannot be placed upon liquor-licensed premises unless exception to the proscription have been issued for the machine. *Rosenkranz v. Div. of Alcoholic Beverage Control*, 9 N.J.A.R. 297 (1984).

13:2-23.8 Eastern Standard Time change

(a) On the first Sunday of April of each year, at 2:00 A.M., the clocks in each licensed premises will be advanced one hour in observance of Eastern Daylight Savings Time. The official time will then become 3:00 A.M., and in any municipality having a closing time later than 2:00 A.M., the remaining hours of sale will be calculated accordingly.

(b) On the last Sunday of October of each year, at 2:00 A.M., the clocks in each licensed premises will be turned one hour back in observance of Eastern Standard Time. The official time will be 1:00 A.M., and in any municipality having a closing hour later than 2:00 A.M., remaining hours of sale will be calculated accordingly.

(c) In either case, (a) or (b) above, licensed premises having closing hours of 2:00 A.M. or earlier, will be unaffected.

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

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

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

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

In (a), "first Sunday" was "last Sunday".

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 the "Official Time".

13:2-23.9 Prohibition against adulterated alcoholic beverages

(a) No licensee shall manufacture, transport, possess, sell, barter, give away, offer for sale or furnish any alcoholic beverages adulterated with any foreign or harmful substance.

(b) Nothing in this section shall prohibit licensees from storing and temporarily retaining such beverages for purposes of returning same to a manufacturer or wholesaler provided the container is immediately resealed and labeled with the name and address of the customer and the date of return by the customer.

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

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

Added (b).

13:2-23.10 Restriction upon receiving prohibited deliveries of alcoholic beverages

No licensee shall receive, possess or sell any alcoholic beverage transported into this State in violation of N.J.A.C. 13:2-20 and 13:2-21.

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

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

Added reference to 13:2-20.

13:2-23.11 Consumption of alcoholic beverages and possession of open containers prohibited upon retail distribution licensee's premises; exception

(a) No retail distribution licensee shall allow, permit or suffer any alcoholic beverage to be consumed in or upon the licensed premises nor shall such licensee possess or allow, permit or suffer any open containers of alcoholic beverage in or upon the licensed premises.

(b) Nothing in this provision shall prohibit opened bottles of alcoholic beverages returned by a customer as allegedly defective from being possessed by such licensee pending return to the manufacturer or wholesaler; provided the container is immediately resealed and labeled with the name and address of the customer and the date of return by the customer.

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

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

Revised and designated existing text as (a) and (b).

13:2-23.12 Receiving alcoholic beverages from prohibited source

(a) No retail licensee shall purchase or obtain any alcoholic beverage except from the holder of a New Jersey manufacturer's or wholesaler's license or pursuant to a special permit first obtained from the Director.

(b) The purchase of alcoholic beverages by one retailer from another and sale of alcoholic beverages by one retailer to another are prohibited; provided, however, that the passage of title in any alcoholic beverages from transferor to transferee of a license may be authorized by special permit obtained from the Director.

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

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

Designated existing text as (a) and (b).

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

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

Stylistic changes.

Case Notes

Licensee's failure to comply with purchase and hiring regulations and statutes supports suspension. *Division of Alcoholic Beverage Control v. Chestnut, Inc.*, 97 N.J.A.R.2d (ABC) 31.

13:2-23.13 Maintaining copies of current license certificate; application, list of employees; availability for inspection

(a) No licensee shall conduct the licensed business unless:

1. The current license certificate is at all times conspicuously displayed on the licensed premises in such plain view as to be easily read by all persons visiting such premises;

2. A photostatic or other true copy of the application for the current license as well as the last filed long-form

application (if current application is the short form), is kept on the licensed premises; and

3. A list, on a form prescribed by the Director, containing the names and addresses of, and required information with respect to, all persons currently employed on retail licensed premises, is kept on the licensed premises.

(b) Such application copy and such list shall be available for inspection by the Director, the Director's deputies, inspectors and investigators, and by any officer defined by N.J.S.A. 33:1-1(p).

(c) A licensee shall be deemed to have complied with the requirements of (a)3 above if the information required to be kept on the licensed premises is contained in a computer system, accessible from the licensed premises, and the information can be immediately produced at the request of anyone authorized in (b) above to request such information.

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

In (a)3, specified form "promulgated" by the Director.
Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

In (a), substituted "prescribed" for "promulgated" and added (c).

Case Notes

Violation finding upheld; failure to keep list of employees cannot be excused by attempting to classify "exotic dancers" as independent contractors, as they were working in furtherance of the licensed premises. *G. & J.K. Enterprises, Inc. v. Div. of Alcoholic Beverage Control*, 205 N.J.Super. 77, 500 A.2d 43 (App.Div.1985).

Sales and delivery of alcoholic beverages before legal hours of sale warranted 18-day license suspension. *Hardys Liquor Deli v. Alcoholic Beverage Control*, 95 N.J.A.R.2d (ABC) 94.

13:2-23.14 Prohibition against indecent matter upon licensed premises

No licensee shall allow, permit or suffer in or upon the licensed premises or have in his possession or distribute or cause to be distributed any obscene, indecent, filthy, lewd, lascivious or disgusting recording, printing, writing, picture or other matter.

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

13:2-23.15 Possession of container mislabeled as to fill prohibited; exception

No licensee shall knowingly display, sell or deliver any alcoholic beverage in an original container having a content of fill less than that stated on the container or label thereof, subject to such tolerance as permitted by Federal law and regulation; and no licensee shall possess such a container except for the sole purpose of return for credit or replacement consistent with N.J.A.C. 13:2-23.11 and 39.1.

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

13:2-23.16 Prohibited promotions

(a) Except for consumer alcoholic beverage tastings or tasting dinners conducted in accordance with N.J.A.C. 13:2-37, no licensee or registrant privileged to sell or solicit the sale of alcoholic beverage within this State shall, directly or indirectly, allow, permit or suffer any practice or promotion that:

1. Offers to the public at large unlimited availability of any alcoholic beverage for a set price; or

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:
 - i. Branded or unique glassware or souvenirs in connection with a single purchase, or
 - ii. Consumer mail-in rebates offered by alcoholic beverage producers or importers in accordance with N.J.A.C. 13:2-24.11; or
 - iii. In off-premises promotions, where the licensee or registrant provides a thing of value or an alternate means of entry to obtain a thing of value that is not unduly burdensome; or
 - iv. In off-premises promotions, case discounts offered on the same or on different alcoholic beverages, as permitted by N.J.A.C. 13:2-24.9; or

3. Requires or allows a consumer to prepurchase more than one drink or product at a time via tickets, tokens, admission fees, two for one, or the like, as a condition for entry into a licensed premises or as a requirement for service or entertainment thereon.

(b) A prohibited promotion is one that offers any prize, gift or award which consists of alcoholic beverages or coupons or gift certificates which may be redeemed for alcoholic beverages. 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.

(c) 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).

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 Responsibility of licensee for employee conduct

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 or employee 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.

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

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.
 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.

13:2-23.30 Prohibition against hindering an investigation

No licensee shall, directly or indirectly, fail, on demand, to produce, exhibit or surrender to the Director, the Director's deputies, inspectors or investigators and any officer as defined by N.J.S.A. 33:1-1(p), any and all matters and things which the Director or other issuing authority is authorized or empowered to investigate, inspect or examine; nor shall any licensee, directly or indirectly, fail to facilitate, or hinder, delay or cause the hindrance or delay, of any investigation or inspection of the licensed business or of the licensed premises or of any search thereof 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 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

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

13:2-23.31 Law enforcement officers; ownership prohibition; employment restrictions

(a) No license shall be held by any regular police officer, any peace officer or any other person whose powers or duties include the enforcement of the alcoholic beverage law or regulations, or by any profit corporation or association in which any such officer or person is interested, directly or indirectly.

(b) No licensee shall employ or have connected with him in any business capacity whatsoever any such officer or person, except that:

1. Nothing herein shall prohibit a licensee from employing in a non-managerial capacity a special police officer; and
2. A licensee, upon prior written application to and written approval by the Director, may employ a regular police officer, peace officer or other person whose powers and duties include the enforcement of the Alcoholic Beverage Law (other than an officer employed by the Division of State Police) provided that such officer shall not be employed in a jurisdiction in which the officer is officially employed and further provided:
 - i. Written application pursuant to (b)2 above shall include prior written approval of such employment by

the chief law enforcement officer of the jurisdiction which employs said officer or person and proof that written notice of the application has been provided to the chief law enforcement officer of the jurisdiction where the licensee is located.

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

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

(1) Have in his or her possession any firearm; or

(2) Wear or display any uniform, badge or insignia which would identify him or her as a police officer; and

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

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

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

1. The actual licensee of the organization is not a police officer or a person whose duties include enforcement of the alcoholic beverage control laws and regulations; and

2. No police officer or person whose duties include enforcement of the alcoholic beverage control laws and regulations shall be involved in the alcoholic beverage operations of the club licensee.

Amended by R.1974 d.341, effective December 16, 1974.

See: 6 N.J.R. 439(a), 7 N.J.R. 13(a).

Amended by R.1979 d.67, effective February 15, 1979.

See: 10 N.J.R. 557(a), 11 N.J.R. 146(a).

Amended by R.1980 d.526, effective December 4, 1980.

See: 12 N.J.R. 605(b), 13 N.J.R. 41(c).

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

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

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

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

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

Stylistic changes.

Case Notes

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

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

13:2-23.32 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**

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.

Subchapter Historical Note

This subchapter was filed and became effective prior to September 1, 1969. Amendments were filed and became effective on August 24, 1970 as R.1970 d.101. See: 2 N.J.R. 76(a). Further amendments were filed and became effective on April 6, 1972 as R.1972 d.67. See: 4 N.J.R. 50(a), 4 N.J.R. 105(c). Additional amendments were filed and became effective on August 30, 1973 as R.1973 d.234. See: 5 N.J.R. 356(a). Additional amendments were filed and became effective on December 16, 1974 as R.1974 d.341. See: 6 N.J.R. 439(a), 7 N.J.R. 13(a). Further amendments to this subchapter were filed on April 4, 1979, effective on May 1, 1979 as R.1979 d.138 (except N.J.A.C. 13:2-24.6 which became effective on April 12, 1979). See: 11 N.J.R. 143(a), 11 N.J.R. 257(c). Pursuant to Executive Order No. 66(1978), Subchapter 24 was readopted as R.1984 d.155, effective April 12, 1984. See: 16 N.J.R. 412(a), 16 N.J.R. 1095(a). See also Chapter Historical Note and section annotations.

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.

13:2-24.1 Discrimination in terms of sale

(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, 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.

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.

(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 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 monthly reports of all delinquent retail accounts by license number, license name, the amount due, and the date due; and

3. Cause to be submitted to the Division annually, evidence in the form of a report outlining what it or its agent has done and will do to insure compliance with ABC credit regulations.

(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.

(g) The provisions of this regulation 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 a formal debt liquidation plan has been entered into by such a licensee. In proceedings pursuant to (f) above, the Director will decline to entertain claims predicated upon set-offs or other defenses more appropriately resolved by the parties in a court of competent jurisdiction.

(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).

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; and

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; and

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.

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 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".

7. The Current Price List shall be a public record and nothing herein 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).

13:2-24.7 Marketing initiatives

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.

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

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

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

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

13:2-24.8 Sales below cost; prohibited

(a) Notwithstanding other provisions of this subchapter, no wholesaler distributor or other licensee, privileged to sell

to retailers, and no retail licensee, shall offer to sell or sell alcoholic beverages at a price below "cost" except for authorized samples and donations pursuant to N.J.A.C. 13:2-24.7, or upon petition to and approved by the Director, pursuant to a bona fide "close out" sale.

(b) "Cost" is defined as the actual proportionate invoice price and freight charge to a distributor or wholesaler and the actual proportionate invoice price to a retailer, as the case may be, of any given container of an alcoholic beverage product, plus applicable State and Federal taxes. The actual invoice price shall be determined by the "last-in-first-out" method applying generally accepted accounting principles.

Amended by R.1980 d.304, effective July 3, 1980.
See: 12 N.J.R. 343(b), 12 N.J.R. 494(b).

13:2-24.9 Combination and tied sales

(a) No licensee shall sell or offer to sell any alcoholic beverage product upon terms that permit purchase of that product, by size and price, only when purchased in conjunction with a different product or the same product in a different size.

(b) Subject to the provisions of N.J.S.A. 33:1-12, the holder of a Class C license, notwithstanding a local ordinance to the contrary, may sell alcoholic beverages in combination with packaged holiday merchandise prepackaged as a unit with other suitable objects as gift items to be sold only as a unit.

(c) The holder of a Class A or B license authorized to sell to retailers, may sell any combination of distilled spirits, malt alcoholic beverages and wine, provided that the combined products offered for sale are all within one of the three noted categories.

(d) The holder of a Class C license, or the holder of any Class A or B license which has the privilege to sell at retail, may sell at retail, may sell, at retail, any combination of alcoholic beverages with or without any other suitable objects provided that such sale is in accordance with the 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).
Amended by R.1996 d.271, effective June 17, 1996.
See: 27 N.J.R. 2051(a), 28 N.J.R. 3177(a).

13:2-24.10 Advertising and consumer protection

(a) No manufacturer, importer, registrant, wholesaler, distributor or retailer shall include in any advertising material or in any advertisement, directly or indirectly, any statement, illustration, design, device, name, symbol, sign or representation that:

1. Is false or misleading;
2. Is obscene or lewd;
3. Contains the name of or depiction of any biblical character or religious character or symbol;
4. Portrays a minor or child or items or symbols which are generally associated with children or which tends to induce minors to purchase alcoholic beverages;
5. Tends to create or give the impression that the use of an alcoholic beverage has curative or therapeutic effects or enhances athletic prowess;
6. Offers an alcoholic beverage product for sale to consumers which is not immediately available in reasonable supply at the price, size and age specified, unless advertised at a stated limited quantity;
7. Offers alcoholic beverage pricing information in affiliation with other non-identically owned licensees in a communication which fails to truthfully disclose and prominently indicate;
 - i. The identity of the individual licensee who established the pricing information; and
 - ii. That the specific prices and products featured may not be available at all businesses represented or indicated as being affiliated.

Amended by R.1980 d.304, effective July 3, 1980.
See: 12 N.J.R. 343(b), 12 N.J.R. 494(b).
Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

13:2-24.11 Manufacturers' rebates and coupons

(a) Subject to the provisions of this section, a manufacturer, distiller, blender and rectifier, brewer, vintner, or any importer may offer mail-in rebates or refunds of a portion of the purchase price of alcoholic beverages directly to consumers.

1. No such rebate may be for more than the full amount of the retail purchase price of the alcoholic beverage. In addition, the reimbursement of first-class postage to the consumer for the cost of mailing in the rebate offer for redemption is permitted.
2. Any such rebate offer shall require a form, with all the terms and conditions of the rebate offer clearly stated thereon, to be completed and mailed by a consumer who must be of legal age to purchase alcoholic beverages. A proof-of-purchase may also be required to be submitted with the form. Such forms shall be distributed to consumers via advertisements in newspapers, magazines, or circulars of general distribution; by general address mailings; by point-of-sale tear-off pads on retail licensed premises; or by neck-hangers or other attachments on bottles or packaging or other similar means of distribution; provided that such pads, neck-hangers, or other attachments or other similar means of distribution shall be non-discriminatorily distributed to licensees within a targeted advertising area.

3. Any rebate offered in accordance with this section shall be mailed to the consumer completing the form at the address shown thereon in the form of cash or check only.

4. At least 10 days prior to the commencement of any rebate promotion offered in accordance with this section, the manufacturer, distiller, blender and rectifier, brewer, vintner, or importer making such rebate offer shall file in duplicate with the Director of the Division of Alcoholic Beverage Control a statement setting forth all terms and

conditions of the rebate offer, including, but not limited to, the amount of rebate, any proof-of-purchase requirement, the effective dates of the offer, the marketing area in which the offer will be promoted, how the offer will be advertised to the public and the name and address of any clearinghouse retained to process rebates. A facsimile or copy of the rebate offer form shall also be filed in duplicate. The Division shall promptly be notified of any change in the terms of a rebate offer prior to such changes taking place.

(b) No manufacturer, distiller, blender and rectifier, brewer, vintner, importer, wholesaler or distributor shall provide or distribute by any means whatsoever any coupon or certificate redeemable for a discount on or "cents-off" the purchase price of any alcoholic beverage by a consumer at any retail licensed premises, nor shall any retail licensee redeem any such coupon or certificate.

(c) A retail licensee may advertise a net final price or a reduction in the price of an alcoholic beverage product or package offered for sale by reason of a manufacturer's rebate or refund, provided that the manufacturer's rebate or refund is conspicuously displayed in the advertising.

New Rule, R.1983 d.361, effective September 6, 1983.
See: 15 N.J.R. 1003, 15 N.J.R. 1478(a).
Amended by R.1983 d.644, effective January 17, 1984.
See: 15 N.J.R. 1830(a), 16 N.J.R. 146(a).

(a)5 and (a)6 added, (c) added.
Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Added other means of providing rebate forms.
Administrative Correction.
See: 28 N.J.R. 1552(a).

13:2-24.12 Display services

(a) No licensee, permittee, or registrant privileged to engage in the commerce of alcoholic beverages in this State shall, directly or indirectly, furnish to, provide payment for, receive or accept anything of value from, or otherwise utilize in any manner whatsoever, any display service unless such service has registered with the Division in a form prescribed by the Director. Such registration shall include:

1. The name and address of the display service and all officers, directors, partners, stockholders and/or employees thereof unless a publicly traded corporation, in which case only officers, directors and stockholders having at least one percent interest need be furnished;
2. An affidavit or certification that no person listed in (a) above would be disqualified from having an interest in an alcoholic beverage license in this State;
3. Copies of all existing display service agreements with licensees, permittees, registrants, suppliers, importers, manufacturers or cooperatives doing business in the State of New Jersey; and
4. The issuance of a registration acknowledgement, which shall be renewable on May 1 of each year.

(b) Every licensee, permittee or registrant privileged to engage in the commerce of alcoholic beverages in this State shall maintain on its licensed premises all written agreements and detailed records of all transactions with any display service for a period of three years.

Amended by R.1984 d.140, effective April 16, 1984.
See: 15 N.J.R. 1921(a), 16 N.J.R. 916(b), 16 N.J.R. 1278(b).
Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
Stylistic revision.
Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Deleted (b) and renumbered (c) as (b).

**SUBCHAPTER 25. DIVERSION,
TRANSSHIPMENT AND REGISTERED
DISTRIBUTION**

Subchapter Historical Note

Pursuant to Executive Order No. 66(1978), Subchapter 25 was re-adopted as R.1984 d.179, effective April 26, 1984. See: 16 N.J.R. 496(a), 16 N.J.R. 1278(c). See also Chapter Historical Note and section annotations.

13:2-25.1 Plenary and wine wholesalers: Delivery from warehouse inventory

No plenary wholesale licensee or wine wholesale licensee shall deliver alcoholic beverages to a licensed retailer other than from inventory in a warehouse located in New Jersey and operated under a plenary wholesale license or a wine wholesale license. Such "inventory" shall be deemed to include only alcoholic beverages which shall have been stored in such warehouse for at least a period of 24 continuous hours.

Amended by R.1979 d.138, effective May 1, 1979.
See: 11 N.J.R. 143(a), 11 N.J.R. 257(c).
Amended by R.1980 d.72, effective February 11, 1980.
See: 11 N.J.R. 285(b), 12 N.J.R. 156(a).

13:2-25.2 Registered distribution

No plenary wholesale, wine wholesale or limited wholesale licensee shall sell or deliver any brand of alcoholic beverage intended for resale in this State unless the alcoholic beverage is acquired from the brand owner, or his authorized agent, or a wholesale licensee designated as a New Jersey registered distributor by the brand owner or his authorized agent pursuant to N.J.A.C. 13:2-33.

New Rule, R.1979 d.138, effective May 1, 1979.
See: 11 N.J.R. 143(a), 11 N.J.R. 257(c).
Amended by R.1980 d.72, effective February 11, 1980.
See: 11 N.J.R. 285(b), 12 N.J.R. 156(a).
Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Revised former (a) and deleted (b), regarding accommodation sales or transfers.

Case Notes

N.J.A.C. 13:2-25.2(a) valid as serving purpose of identifying licensees subject to taxation through filing of documentation, as providing marketplace and industry stability, as solving problem of industry member identification and as promoting and enhancing interbrand competition; rule does not adversely affect consumers or violate anti-trust laws (Director's Decision). In Re: Todd Seifert, 4 N.J.A.R. 294 (1983).

13:2-25.3 State beverage distributor

(a) No State beverage distributor shall sell or deliver to any retailer or consumer malt alcoholic beverages other than from inventory in a warehouse or salesroom located in New Jersey and operated under a State beverage distributor's license. Such "inventory" shall be deemed to include only malt alcoholic beverages which shall have been stored in such warehouse for at least a period of 24 continuous hours.

(b) No State beverage distributor shall sell or deliver any brand of alcoholic beverage intended for resale in this State unless the alcoholic beverage is acquired from the brand owner or his authorized agent, or a New Jersey distributor designated by the brand owner or his authorized agent.

New Rule, R.1980 d.72, effective February 11, 1980.

See: 11 N.J.R. 285(b), 12 N.J.R. 156(a).

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

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

Revised (a) to specify "any retailer or consumer" and malt beverage inventory, and (b) to include "any brand of alcoholic beverage".

Case Notes

N.J.A.C. 13:2-25.3(b) valid as serving purpose of identifying licensees subject to taxation through filing of documentation, as providing marketplace and industry stability, as solving problem of industry member identification and as promoting and enhancing interbrand competition; rules does not adversely affect consumers or violate anti-trust laws (Director's Decision). In Re: Todd Seifert, 4 N.J.A.R. 294 (1983).

SUBCHAPTER 26. RETAIL COOPERATIVE PURCHASES

Subchapter Historical Note

Fill standards previously in this subchapter were recodified to 13:2-27. Pursuant to Executive Order No. 66(1978), Subchapter 26 was readopted as R.1984 d.180, effective April 26, 1984. See: 16 N.J.R. 497(a), 16 N.J.R. 1279(a). See also Chapter Historical Note and section annotations.

13:2-26.1 Restrictions on cooperative purchases

(a) A Class C retail licensee, as defined in N.J.S.A. 33:1-12, may join with another Class C licensee in a cooperative agreement for the purchase and transportation of alcoholic beverages, provided that such agreement and activity shall conform to the following standards:

1. The cooperative may hire employee(s) to act in an administrative or management capacity for the cooperative's purchase, storage and transportation of alcoholic beverages, provided:

i. The employee meets with the qualification requirements of N.J.S.A. 33:1-25 and N.J.A.C. 13:2-14.5;

ii. The employee applies for and receives a permit from the Director of the Division of Alcoholic Beverage Control upon a format prescribed by the Director; and

iii. The employee has no ownership of, employment with or financial interest in a Class A, B or C license;

2. The number of Class C licensees joined in any agreement shall not exceed the largest number of plenary retail distribution licenses, as defined in N.J.S.A. 33:1-12(3)(a), issued to any one person or entity in this State at the time of the prior most recent annual renewal of such licenses;

3. No cooperative agreement may prohibit any licensee from joining any other cooperative agreement;

4. No cooperative agreement may prohibit any retailer from advertising or selling any product at any otherwise lawful price;

5. Any licensee may withdraw from any cooperative agreement upon 30 days written notice and no penalties may be charged for such withdrawal;

6. All purchases on credit through or by cooperative agreement shall be reduced to writing, signed by the wholesaler and each individual participating member of the cooperative, and be consistent with the credit provisions of N.J.A.C. 13:2-24. Such credit terms shall include adequate assurances of payment by each individual participating member by either the posting of a bond by the cooperative member or a provision that each member of the cooperative shall be jointly and severally liable for payment for the purchases made through the cooperative. A copy of such written agreements shall be maintained by the wholesaler in its marketing manual and by the registered buying cooperative;

7. All individual purchases through or by cooperative agreement shall be separately invoiced consistent with N.J.A.C. 13:2-20.4, and shall contain the cooperative's registration number;

8. All purchases through or by cooperative agreement shall be transported consistent with N.J.A.C. 13:2-20, N.J.S.A. 33:1-13 and N.J.S.A. 33:1-28;

9. No licensed party to a cooperative agreement shall co-mingle inventory, funds or other assets inconsistent with this subchapter and N.J.A.C. 13:2-23.21;

10. Any purchase or transfer in violation of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq. or the regulations promulgated thereunder, shall be a violation by all members of the cooperative purchase agreement;

11. Nothing herein shall be deemed to require the servicing of any cooperative agreement with quantity or cash discounts if there exists no corresponding justification for the differential pursuant to N.J.A.C. 13:2-24.1(b)1;

12. Each registered cooperative buying group may maintain a public warehouse provided that the cooperative complies with N.J.S.A. 33:1-14, the cooperative public warehouse maintains assigned space for each individual participating member, and the inventory is transferred to that space within 72 hours after delivery pursuant to N.J.A.C. 13:2-23.21. All purchases through or by the cooperative agreement must be transported to and from the warehouse consistent with N.J.S.A. 33:1-13, N.J.S.A. 33:1-28 and N.J.A.C. 13:2-20; and

13. Each registered cooperative buying group may maintain a bank account and invoice, assess and charge its members for the cost and expense, including capital and operational expenditures, of establishing, maintaining and providing services.

(b) No cooperative buying group may participate in any business transaction permitted by (a) above, unless the cooperative is registered with the Division in a form prescribed by the Director. Such registration shall include:

1. The identity and State issued license numbers of the members;
2. A copy of the cooperative agreement; and
3. The issuance of a special permit by the Director, which shall be renewable annually on August 1.

New Rule, R.1979 d.138, effective May 1, 1979.
 See: 11 N.J.R. 143(a), 11 N.J.R. 257(c).
 Amended by R.1980 d.72, effective February 11, 1980.
 See: 11 N.J.R. 285(b), 12 N.J.R. 156(a).
 Amended by R.1980 d.304, effective July 3, 1980.
 See: 12 N.J.R. 343(b), 12 N.J.R. 494(b).
 Amended by R.1990 d.412, effective August 20, 1990.
 See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
 In (a), stylistic revisions; corrected references.
 Amended by R.1995 d.450, effective August 21, 1995.
 See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).
 Amended requirements for cooperative employees at (a)1 and added (a)12 and (a)13.

SUBCHAPTER 27. LABELING AND STANDARDS OF FILL; DEPOSIT MARKED CONTAINERS

Subchapter Historical Note

Pursuant to Executive Order No. 66(1978), Subchapter 27 was re-adopted as R.1984 d.181, effective April 26, 1984. See: 16 N.J.R. 497(b), 16 N.J.R. 1279(b). See also Chapter Historical Note and section annotations.

13:2-27.1 Adoption of Federal requirements

Federal regulations, as amended or supplemented from time to time, relating to labeling and standards of fill concerning distilled spirits, wine and malt alcoholic beverages packaged for shipment in interstate or foreign commerce, are made a part hereof and shall also apply to alcoholic beverages packaged purely for intrastate shipment within New Jersey.

Amended by R.1971 d.148, effective August 27, 1971.
 See: 3 N.J.R. 111(b), 3 N.J.R. 181(b).
 Amended by R.1976 d.252, effective October 1, 1976.
 See: 8 N.J.R. 336(c), 8 N.J.R. 439(c).
 Amended by R.1979 d.138, effective May 1, 1979.
 See: 11 N.J.R. 143(a), 11 N.J.R. 257(c).

13:2-27.2 Deposit marked containers

(a) No manufacturer, supplier, importer, brand registrant, wholesale or retail licensee or permittee shall sell, distribute

or market for resale to a consumer in New Jersey or purchase for resale to a consumer in New Jersey any malt alcoholic beverage product, except for malt coolers, packaged in a bottle or can marked for deposit of another state.

(b) The provisions of (a) above shall not apply where an application is received from the brand registrant or its authorized agent of a malt alcoholic beverage which is accompanied by a certification from an appropriate officer that the total of all shipments from the brewery of malt alcoholic beverages for the past full or part calendar year in New Jersey did not exceed 3,000 barrels of 31 fluid gallons capacity or their container equivalent. False or misleading certifications shall be punishable by suspension or revocation of all brand registrations filed by the brewery or its authorized agent.

(c) For the purposes of (a) above, "malt coolers" shall be defined as a flavored malt beverage made from a base of malt beverage and flavored with fruit juices, aromatics, essences, or other flavoring in quantities and proportions such that the resulting product possesses a character and flavor distinctive from the base malt beverages and distinguishable from other malt beverages and is generally considered a "malt cooler" product.

(d) When the Director, after providing notice and an opportunity to be heard, determines that, for an otherwise exempt product, the purposes for lifting the prohibition of selling alcoholic beverage containers marked for deposit of another state are no longer being served, the Director shall prohibit the sale, distribution or marketing for resale or purchase for resale to a consumer in New Jersey, of that product when packaged in a container marked for deposit of another state. The Director's determination shall be based upon a finding of evidence of transshipping, economic hardship caused to licensed wholesalers, degradation of tax revenues, violation of the primary source law, or for other good cause.

New Rule, R.1984 d.50, effective March 5, 1984.
 See: 16 N.J.R. 31(a), 16 N.J.R. 428(b).
 Amended by R.1996 d.142, effective March 18, 1996.
 See: 28 N.J.R. 61(a), 28 N.J.R. 1552(b).
 Application limited to malt alcoholic beverages.

SUBCHAPTER 28. (RESERVED)

Subchapter Historical Note

Subchapter 28, Decanting of Wine, was repealed by R.1995 d.450, effective July 24, 1995. See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

SUBCHAPTER 29. RECORDS

Subchapter Historical Note

This subchapter was filed and became effective prior to September 1, 1969. Amendments to this subchapter were filed on April 4, 1979, as

R.1979 d.138, effective May 1, 1979. See: 11 N.J.R. 143(a), 11 N.J.R. 257(c). Pursuant to Executive Order No. 66(1978), Subchapter 29 was readopted as R.1984 d.182, effective April 26, 1984. See: 16 N.J.R. 498(a), 16 N.J.R. 1279(c). See also Chapter Historical Note and section annotations.

13:2-29.1 Public records

(a) The following enumerated records required to be maintained by law or other regulation by the Director shall constitute public records of the Division:

1. All license or permit applications filed with the Director, subject to nondisclosure of information protected by Federal or State law;
2. All filed administrative disciplinary charges, transcripts of Division disciplinary hearings, Office of Administrative Law initial decisions and reports and recommendations, and Conclusions and Orders of the Director;
3. All filed administrative appeal pleadings, transcripts of Division appeal hearings, Office of Administrative Law initial decisions and reports and recommendations, and Conclusions and Orders of the Director;
4. All Ordinances or Resolutions of local issuing authorities that may be filed with the Division;
5. All product information and other filings required to be made by licensees and permittees by law or regulation; and
6. All records, pleadings, documents and orders, exclusive of investigative reports, pertaining to duly instituted seizure proceedings, pocket license applications and tax revocation proceedings.

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

In (a)2 and 3, added text regarding OAL determinations.

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

Stylistic changes.

13:2-29.2 Confidential records

(a) For purposes of investigative confidentiality and integrity, the following records constitute "confidential records" of this Division and shall not be available for inspection or photocopy:

1. All initial reports received concerning alleged violations;
2. All investigative records or reports prepared by Division personnel, or prepared on behalf of this Division by other duly authorized law enforcement agencies of municipal, State or Federal governments, or their agencies or subdivisions;

3. All questionnaires, documents, records and reports required to be filed with the Director by licensees, permittees and other persons interested, directly or indirectly, with such licensees or permittees, the primary purpose of which is for the use in any investigative matter authorized by the Director;

4. All intergovernmental and intra-Division memoranda, reports, documents or records of and to this Division, including, but not limited to Criminal History Record Information supplied by a Criminal Justice Agency;

5. All such other documents, records, reports and memoranda the Division shall possess, where the primary purpose is the investigation and enforcement of the Alcoholic Beverage Law and its regulations;

6. All solicitors' statements of compensation; and

7. Tax reports and documents filed by licensees regarding the payment of monetary penalties.

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

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

Added (a)7.

13:2-29.3 Inspection, reproduction and availability of records; copy fees

(a) As hereinabove defined and limited, every citizen of this State, during regular business hours, shall have the right to inspect such public records at the Division's offices, and, under the supervision of a Division representative, to copy such public records by hand or purchase copies of same upon payment as hereinafter set forth.

(b) The fee for supplying copies of Division records shall be based upon the total number of pages or parts thereof to be purchased for each individual report or separate record filed with this Division, not upon the ultimate number of pages provided.

1. First page to Twentieth page _____ \$1.00 per page;
2. Twenty-first to Fortieth page _____ \$0.75 per page;
3. All pages over Forty (40) _____ \$0.50 per page.

(c) If the Director finds that there is no risk of damage or mutilation of such records and that it would not be incompatible with the economic and efficient operation of the office and the transaction of public business, any citizen who is seeking to copy any individual record or report which exceeds 100 pages may be permitted to use his own photographic process, approved by the custodian, upon the payment of a fee of \$25.00 per day.

(d) Special records such as computer printouts, tapes and discs or other computer records of the Division may be made available, in the discretion of the Director, upon payment of such special costs relating to the development and reproduction thereof, and upon such terms as shall insure their integrity and the privacy of information contained therein, when required by law.

Amended by R.1990 d.412, effective August 20, 1990.
 See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
 Stylistic revisions.
 Amended by R.1995 d.450, effective August 21, 1995.
 See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).
 Stylistic changes.

13:2-29.4 Licensee records; storage systems and availability of records

(a) Upon written application to the Director accompanied by all relevant specifications and descriptions, the Director, in the exercise of sound discretion, may approve alternate methods or locations for storage of any record required to be maintained by licensees, provided that such a record system permits access to all required records so that they are "readily retrievable" and "accurate".

(b) Records are "readily retrievable" if when relating to a transaction from the date of request they are:

1. Not more than three months old and are produced for inspection immediately upon demand;
2. Not more than one year old but in excess of three months old, and are produced for inspection within two business days; or
3. In excess of one year old and produced for inspection within seven business days.

(c) Records are "accurate" if they are reduced copy of the original document or otherwise correctly reflect all information contained on the original required record.

(d) Computer systems and programs may be used to store records required to be maintained by law or other regulation if such records are retrievable within the time limits as enumerated in this section.

Amended by R.1990 d.412, effective August 20, 1990.
 See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
 Revised heading; in (b)1, added "immediately" to "upon demand".
 Amended by R.1995 d.450, effective August 21, 1995.
 See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).
 Added (d).

SUBCHAPTER 30. REGISTRATION OF STILLS

13:2-30.1 Stills to be registered

Every still, distilling apparatus and parts thereof, located within this State, whether set up, dismantled or in the process of construction, shall be registered with the Director of the Division of Alcoholic Beverage Control.

13:2-30.2 Registration form; contents

Such registration shall be upon forms prescribed by the Director designated as registry certificates, which may be obtained from the Director upon request, and which shall set forth the description and location of the still, distilling

apparatus and parts thereof, and the names and address of the owner and the person having possession, control or custody thereof.

Amended by R.1990 d.412, effective August 20, 1990.
 See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
 Specified "forms promulgated by the Director".
 Amended by R.1995 d.450, effective August 21, 1995.
 See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).
 Substituted "prescribed" for "promulgated".

13:2-30.3 Possession of registry certificate on premises

Certificates must be completed and returned to the Director in duplicate, and one of said certificates, bearing due endorsement by the Director of the receipt thereof, shall be returned to the registrant and must at all times be kept on the premises where the still, distilling apparatus and parts thereof are located.

Amended by R.1990 d.412, effective August 20, 1990.
 See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
 Substituted "completed and returned" for "executed and transmitted".

13:2-30.4 Removal of registered still

No registered still, distilling apparatus and parts thereof shall be transported, except pursuant to written permission first obtained from the Director, and any registered still, distilling apparatus and parts thereof removed from the premises described in the registry certificate without such permission shall be deemed forthwith unregistered.

13:2-30.5 Sale of registered still; notice

When any registered still, distilling apparatus and parts thereof are sold or become the subject of a contract of sale, the registrant shall forthwith notify the Director of the name and address of the purchaser and the place where said still, distilling apparatus and parts thereof are to be delivered.

13:2-30.6 Stills of licensed distillery, rectifier or blender

None of the foregoing rules shall apply to any still, distilling apparatus and parts thereof, possessed by or in the custody or control of any licensed distillery or rectifier and blender, when located at the licensed premises and used in connection with the operation of the licensed business, and such stills, distilling apparatus and parts thereof are hereby declared registered during the continuance of the license.

SUBCHAPTER 31. SEIZURE HEARINGS

Subchapter Historical Note

All provisions of this subchapter were filed and became effective prior to September 1, 1969. Pursuant to Executive Order No. 66(1978), Subchapter 31 was readopted as R.1984 d.602, effective December 17, 1984. See: 16 N.J.R. 2959(a), 17 N.J.R. 92(b). See also Chapter Historical Note and section annotations.

13:2-31.1 Hearings generally

Contested case hearings to determine whether seized property constitutes unlawful property and shall be forfeited, shall be conducted according to N.J.A.C. 1:1 and either retained by the Director, Division of Alcoholic Beverage Control under the provisions of N.J.S.A. 52:14F-8 or filed with the Office of Administrative Law pursuant to N.J.A.C. 1:1-5.1.

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

Deleted language regarding hearings open to the public.

13:2-31.2 Procedures; return of property seized

(a) Prior to final determination by the Director, claims for the return of property seized under N.J.S.A. 33:1-66 or N.J.S.A. 33:2-3 may be made to the Director by payment in cash, under protest, of the retail value of the seized property, or by the posting of a proper bond with sureties satisfactory to the Director in a sum double the retail value of the property. In lieu of such cash bond or surety bond, a claimant may institute an action for replevin against the Director in any court of competent jurisdiction according to the forms and procedure, including the delivery of a bond, of such court; such action to be commenced within 30 days from the seizure of such property and not thereafter. The Director may, in the exercise of sound discretion, refuse to entertain any such claim for the posting of a bond to obtain return of the property seized made more than 30 days from the date of the final order of forfeiture.

(b) The Director's appraisal of the retail value of seized property, upon claim for its return, shall be controlling.

(c) A person making payment in cash, or the posting of a proper bond, under protest, may either institute suit to recover such payment in a court of competent jurisdiction under the provisions of N.J.S.A. 33:1-66 or elect, by written stipulation satisfactory to the Director, to have the matter heard as a contested case and to have the Director decide whether the claim shall be recognized or denied, and whether such cash or bond should be forfeited or returned.

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

Stylistic revisions.

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

Stylistic changes.

13:2-31.3 Forfeiture and sale of seized property

(a) The order of forfeiture of seized property after hearing terminates all property interests therein and in any proceeds therefrom, including the interests of the owner, any conditional vendor, chattel mortgagee or lienor. The standards and procedure on claims addressed to the Director for the return of unlawful property or recognition of outstanding interests therein shall be as provided in (b), (c) and (d) below.

(b) Claims may be made by the person whose property has been seized or forfeited for the return of seized property on the ground that the claimant has acted in good faith and has unknowingly violated the law, by presenting evidence to that effect at the hearing. The Director may require a claimant to file a verified petition setting forth in detail all of the facts relied upon. Where the Director is satisfied that the claimant has acted in good faith and has unknowingly violated the law, he or she may order the return of the property upon payment by claimant of reasonable costs of seizure and storage.

(c) Claims may be made by any person having a bona fide and valid lien upon or interest in the seized or forfeited property for the recognition of the validity and priority of such lien or interest, by presenting evidence at the hearing that such claimant has acted in good faith, and had no knowledge of the unlawful use to which the property was put, or of such facts as would have led a person of ordinary prudence to discover such use. The Director may require such claimant to file a verified petition setting forth in detail the facts relied upon. If the claim is established to the satisfaction of the Director, the return of the property to the claimant may be ordered where it appears that the amount or value of such lien or interest exceeds the value of the property, subject to payment of reasonable costs of seizure and storage; or order the retention of the property for the use of the State, subject to the payment of the lien or interest less costs of seizure and storage; or order the sale of the property, subject to the payment of the lien or interest out of the proceeds of sale, after first deducting the reasonable costs of seizure and storage.

(d) Claims may be made by a common carrier whose vehicle has been seized for return of the vehicle by filing a verified petition with the Director substantiating such interest, together with a statement that claimant has acted in good faith and had no knowledge at the time of the seizure that the vehicle contained illicit alcoholic beverages. The Director may, if satisfied that these facts are established, order the return of the seized vehicle to the common carrier.

(e) Sale of forfeited property shall be conducted pursuant to the provisions of N.J.S.A. 52:27B-68.

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

Revised (c), regarding establishment of claim.

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

Added (e).

Case Notes

Seizure of property and cash from cafe owner who sold alcohol without license was upheld. *Micco v. Division of Alcoholic Beverage Control*, 96 N.J.A.R.2d (ABC) 140.

Property on unlicensed premises subject to forfeiture when used in unlawful alcoholic beverage activity. *Alcoholic Beverage Control v. Fernandes*, 95 N.J.A.R.2d (ABC) 103.

13:2-31.4 Hearing procedure

Upon determination that the matter is a contested case, the Uniform Administrative Procedure Rules of Practice (N.J.A.C. 1:1) shall govern the conduct of the case.

Amended by R.1979 d.393, effective October 1, 1979.
 See: 11 N.J.R. 580(f).
 Amended by R.1990 d.412, effective August 20, 1990.
 See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
 Stylistic revisions.

SUBCHAPTER 32. (RESERVED)**Subchapter Historical Note**

Subchapter 32, Sales of Forfeited Property, was repealed by R.1995 d.450, effective July 24, 1995. See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

**SUBCHAPTER 33. PRODUCT INFORMATION
FILING: BRAND REGISTRATION****Subchapter Historical Note**

Amendments of this subchapter repealing sections 3 and 5 through 7 and recodifying section 4 as section 3, were filed on April 4, 1979, as R.1979 d.138 to become effective on May 1, 1979. See: 11 N.J.R. 143(a), 11 N.J.R. 257(c). Previous amendments to the repealed sections were R.1972 d.158, effective August 11, 1972 (see: 4 N.J.R. 233(d)), R.1974 d.349, effective December 19, 1974 (see: 6 N.J.R. 437(c), 7 N.J.R. 13(b)); R.1975 d.238, effective September 2, 1975 (see: 7 N.J.R. 336(a), 7 N.J.R. 436(c)); and R.1978 d.75, effective March 1, 1978 (see: 9 N.J.R. 482(a), 10 N.J.R. 170(a)). An amendment repealed section 3 effective July 3, 1980 as R.1980 d.304. See: 12 N.J.R. 343(b), 12 N.J.R. 494(b). Pursuant to Executive Order No. 66(1978), Subchapter 33 was readopted as R.1985 d.279, effective May 8, 1985. See: 17 N.J.R. 794(a), 17 N.J.R. 1423(a). See also Chapter Historical Note and section annotations.

13:2-33.1 Brand registration schedule

(a) No licensee shall knowingly sell, offer for sale, deliver, receive or purchase, for resale in New Jersey, any alcoholic beverage (including private label brands owned by a retailer or exclusive brands owned by a manufacturer or wholesaler and sold by such manufacturer or wholesaler exclusively to one New Jersey retailer or group of affiliated retailers) unless there is first filed with the Director of the Division of Alcoholic Beverage Control a schedule, for each separate alcoholic beverage product, listing the following:

1. The full and correct brand or trade name;
2. Its nature and type;
3. Its age or vintage and proof or percentage of alcoholic content when stated on the label;
4. The sizes of standard packaging and the standard number of unit containers per standard case;

5. The date of label approval granted by the Federal Bureau of Alcohol, Tobacco and Firearms (B.A.T.F.), together with a copy of the B.A.T.F. Form 1649;

6. The names and license numbers of each New Jersey Class B licensee designated by the filer to be an authorized distributor of the product at wholesale;

7. The full name, address, telephone number, taxpayer identification number and New Jersey license number (if any) of the filer; and

8. An indication whether the schedule is an original filing or an amendment to any existing one.

(b) The brand registration schedule shall be filed by:

1. The manufacturer, importer or wholesaler who owns the brand or trade name and label; or

2. An importer or a wholesaler selling such brand who is appointed as authorized agent by the brand owner for the purpose of filing the brand registration schedule; or

3. In the case of private label brands, by the manufacturer or wholesaler supplying such private label brand to the retailer or by any wholesaler having authority, in writing, from the retailer or affiliated retailers owning such private label brand, except where the alcoholic beverages are imported by the retailer under a special permit issued by the director, in which case the retailer shall file the schedule and the labels.

(c) Whenever any change occurs, including but not limited to the addition or deletion of an authorized wholesaler, the filer of the brand registration schedule shall file an amended brand registration schedule within 10 days after the occurrence of such change.

Amended by R.1974 d.349, effective December 19, 1974.
 See: 6 N.J.R. 437(c), 7 N.J.R. 13(b).
 Amended by R.1985 d.279, effective June 3, 1985.
 See: 17 N.J.R. 794(a), 17 N.J.R. 1423(a).

Substantially amended.

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

In (a), clarified text.

Case Notes

Rule not promulgated to allow circumvention of importer-wholesaler antidiscrimination statute, but to identify the distribution network of alcoholic beverages to insure tax integrity: statute violation found. *Joseph H. Reinfeld, Inc. v. Schieffelin & Co.*, 94 N.J. 400, 466 A.2d 563 (1983).

Former rule held to be valid as serving purpose of identifying licensees subject to taxation through filing of documentation, as providing marketplace and industry stability, as solving problem of industry member identification and as promoting and enhancing interbrand competition; rule does not adversely affect consumers or violate anti-trust laws (Director's Decision). In Re: *Todd Seifert*, 4 N.J.A.R. 294 (1983).

13:2-33.2 Filing fees and forms

(a) Each filing of an original brand registration schedule shall be accompanied by a nonrefundable fee of \$23.00, and each filing of an amendment to a previously filed brand registration schedule shall be accompanied by a nonrefundable fee of \$10.00. Such fees shall be payable to the Division of Alcoholic Beverage Control.

(b) All filings shall be made on a form which the director shall provide for the filing of brand registration schedules. Filers, however, may utilize a photocopy of the form.

Amended by R.1985 d.279, effective June 3, 1985.
See: 17 N.J.R. 794(a), 17 N.J.R. 1423(a).

Old text deleted and new text substituted.
Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Increased filing fees.
Administrative change.
See: 31 N.J.R. 1360(a).

SUBCHAPTER 34. RESTRICTED BREWERY**Authority**

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

Source and Effective Date

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

Subchapter Historical Note

Subchapter 34, Alcohol Permits, was repealed by R.1990 d.412, effective August 20, 1990. See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c). Subchapter 34, Restricted Brewery, was adopted as New Rules by R.1995 d.450, effective August 21, 1995. See: Source and Effective Date. See also Chapter Historical Note.

13:2-34.1 Application for restricted brewery license

(a) All applicants for a restricted brewery license shall comply with the application, advertising and hearing provisions of this chapter. The application shall be accompanied by a description of the intended activities to be conducted under the authority of this license. The statement shall include the following information:

1. The amount of malt alcoholic beverage intended for brewing per year;
2. The site of restricted brewery license activities (must be immediately adjacent to retail license restaurant premises);
3. The name and license number of restaurant and seating capacity;
4. The license number of any other restricted brewery license which is issued to the plenary retail consumption licensee;

5. The manner in which the malt alcoholic beverage product will be sold by the open container, for immediate consumption on the restaurant premises, or as package goods for off premises consumption; and

6. A sketch of the proposed area of the licensed premises specifically setting forth the area in which the malt alcoholic beverage product will be sold.

(b) All applicants for a restricted brewery license shall provide this Division with the following documents:

1. Proof of posting of a tax bond with the New Jersey Division of Taxation;
2. Proof of registration as a brewer with the United States Bureau of Alcohol, Tobacco and Firearms (must be registered prior to issuance of license);
3. Compliance with all State, county and/or local requirements associated with manufacturing and waste water discharge;
4. Proof of notice to local issuing authority regarding intention to operate restricted brewery; and
5. Certification from local issuing authority that applicant has present ownership of an active plenary retail consumption license operated in conjunction with a restaurant.

13:2-34.2 License fees

There is a base license fee of \$1,000 which must be paid at the time of the initial application. This fee shall entitle the licensee to brew up to one thousand 31 fluid gallon barrels per year. There is an additional \$500.00 fee for every additional 1,000 barrels up to a 3,000 annual barrel limit. All fees shall be payable to the Division of Alcoholic Beverage Control.

13:2-34.3 Restaurant premises

(a) For the purposes of this license, a restaurant is defined as a premises which is regularly and principally used for the purpose of providing meals to its customers and having adequate kitchen and dining room facilities. The applicant shall submit a sketch of the restaurant premises which must be immediately adjacent to the restricted brewery. The sketch shall reflect the seating capacity of the restaurant, the menu provided to customers and the layout of the restaurant showing where the malt alcoholic beverage will be sold for off premises consumption, if any.

(b) The Director shall issue a restricted brewery license only to persons or entities who have identical ownership of an active plenary retail consumption license operated in conjunction with an immediately adjacent restaurant as defined herein. A site visit by the Division will be conducted to ensure compliance with these regulations.

(c) For purposes of this subchapter, the term “adjacent” shall include but not be limited to those premises which are entirely surrounded and enclosed within the restaurant licensed premises.

13:2-34.4 Tasting and sale for off-premises consumption

(a) A restricted brewery licensee may offer, without charge, no more than five ounces of the brewed malt alcoholic beverage for consumption on the licensed premises as a sampling of the brewed product. This sampling shall not be offered to the same customer more than once, for each malt beverage brewed on the premises, during the hours of sale on any day.

(b) In addition to the sale of brewed malt alcoholic beverage for on premises consumption, sales for off premises consumption may be conducted on the retail licensed premises.

(c) The containers in which the malt alcoholic beverage are sold for off-premises consumption shall be sealed refillable containers having labeling approved by the Division. The containers may be returned to the restricted brewery and at the time of refill shall be sealed by the licensee.

(d) Display and sale of the malt alcoholic beverages for off-premises consumption on the restaurant licensed premises shall comply with all pertinent provisions of N.J.A.C. 13:2-35.

13:2-34.5 Hearings

The Director shall hold a hearing if the governing body of the municipality in which the license will be located files a written objection with the Director. The Director shall thereafter issue the license only if such issuance will not be contrary to the public interest.

13:2-34.6 Disciplinary proceedings

Any disciplinary proceedings against a restricted brewery license shall be in accordance with N.J.A.C. 13:2-19. The institution of disciplinary proceedings against a restricted brewery license shall be considered separate and distinct from and shall not adversely affect the status of the plenary retail consumption license owned by the person or entity holding the restricted brewery license. However, the Director may institute disciplinary proceedings against the plenary retail consumption license when the factual basis of the violation charged involves the operation of both the plenary retail consumption license and the restricted brewery license.

1. A public barroom shall be a room containing a public bar, counter or similar piece of equipment, which must occupy not less than 15 percent of the total square footage of said room and which is designed for and used to sell and dispense alcoholic beverages by the glass or other open receptacle for consumption on the licensed premises.

2. The public bar, counter or similar piece of equipment must be equipped with hot and cold running water, sink, drainboard, a sufficient number of bar stools (minimum of one for each three feet of bar perimeter), utensils and glassware for the making and serving of mixed drinks, and a sufficient number of opened bottles of alcoholic beverages for the service of drinks to be consumed upon the licensed premises. A substantial portion of the bar must be visible from all public entrances to the barroom.

3. The principal public barroom shall be the room in which the main public bar is located. In determining which public barroom shall constitute the principal public barroom, consideration shall be given to the nature of the operation and volume of alcoholic beverage business for consumption on the licensed premises, the accessibility to the barroom, the size of the barroom, and the hours of operation.

4. A “perimeter wall” of a barroom is defined as an external, generally weight bearing wall of the barroom.

5. The “outside edge” of the cashier (package goods) sales counter is defined as the edge away from the licensee’s employee who is conducting sales (that is, the edge of the counter immediately facing the customer). The counter, the walking space behind the counter, and any shelving attached to the perimeter wall (behind the counter) must fall within the five foot limitation as set out in N.J.A.C. 13:2-35.4(a)2.

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 (a)4 and (a)5.

Case Notes

Transfer of retail consumption license with package sales to site adjacent to licensed premises with restaurant was granted. Pungoti v. Sayreville, 95 N.J.A.R.2d (ABC) 72.

13:2-35.2 Prohibition on sales of package goods from other than the principal barroom except by holders of the broad package privilege

(a) No holder of a plenary retail consumption license or seasonal retail consumption license, except as provided by N.J.S.A. 33:1-12.24 and 12.25, shall sell or display for sale any alcoholic beverage in the original container for off-premises consumption except from and in the bona fide public barroom of the licensed premises (the privilege to engage in such sale and display in other than such barroom being known as the “Broad Package Privilege”) unless:

SUBCHAPTER 35. SALE AND DISPLAY OF ALCOHOLIC BEVERAGES IN ORIGINAL CONTAINERS BY CONSUMPTION LICENSEES NOT HOLDING THE BROAD PACKAGE PRIVILEGES

13:2-35.1 Definitions

(a) For the purpose of this regulation:

1. On or before June 30, 1948, the Director of the Division of Alcoholic Beverage Control received from such a licensee's municipal license issuing authority certification that such licensee, on May 27, 1948, sold alcoholic beverages in original containers for consumption off the licensed premises, either to the exclusion of sale for consumption on the licensed premises or upon a portion of the licensed premises other than the public barroom; or

2. The Director of the Division of Alcoholic Beverage Control has approved a verified petition, received on or before June 18, 1948, by such a licensee alleging that on May 27, 1948, such licensee was not actually engaged in the sale of alcoholic beverages in original containers for off-premises consumption from a portion of the licensed premises other than the public barroom by reason of:

- i. Building alteration or construction in progress;
- ii. Prior destruction or loss of possession of the licensed premises; or
- iii. Non-operation of the entire licensed business, but that, prior to May 28, 1948, such licensee had sold alcoholic beverages in original containers for off-premises consumption from a portion of the premises other than the public barroom or had actually undertaken alteration or construction of the licensed premises to be licensed, intending and making provision thereon for the sale of alcoholic beverages in original containers for off-premises consumption from a portion of the premises other than the public barroom.

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

13:2-35.3 Notation of privilege on license certificate; daily certification

The Division of Alcoholic Beverage Control shall note the following on the face of the renewal license certificate of each holder of a license which includes the "Broad package privilege" as set forth in N.J.A.C. 13:2-35.2:

"This license bears the "Broad package privilege" pursuant to P.L. 1948, ch. 98 (N.J.S.A. 33:1-12.23 and N.J.A.C. 13:2-35.2)".

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

In former (a), changed "issuing authority" to "Division of Alcoholic Beverage Control"; deleted (b), regarding daily certifications.

13:2-35.4 Off-premises consumption sales; requirements and prohibitions

(a) No licensee without the "Broad package privilege" shall, with respect to the public barroom in which he may sell or display for sale alcoholic beverages in original containers for off-premises consumption:

1. Display package goods in the principal public barroom other than in an area located behind the bar or on shelving along the perimeter walls of the barroom, which shelving must not exceed two feet in depth, must be attached to the perimeter walls and run parallel to same, and may be located below and around the exterior windows but not in any way obstructing the windows;

2. Maintain a cashier service counter which exceeds more than three percent of the net sales area (with an area 30 inches behind a straight counter being included as part of the counter), nor shall any licensee maintain such counter, the outside edge of which is located more than five feet from a perimeter wall;

3. Maintain folding doors, gates, curtains, or other type of separation to be utilized for the purpose of closing off the package goods display area from the remainder of the barroom, except that such area may be roped off to the public during the hours when the sale of alcoholic beverages for off-premises consumption is prohibited;

4. Permit the public bar to be obstructed by low walls, screens, filigree, plants, flower boxes, racks, gondolas, movable shelves, fences, stacks of alcoholic beverages (including malt alcoholic beverages), or other mercantile items or merchandise.

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 13:2-35.5. In (a), added "Broad package privilege" qualification. Prior text at 13:2-35.4, "Lack of notation of privilege on license certificate", repealed.

Case Notes

Transfer of retail consumption license with package sales to site adjacent to licensed premises with restaurant was granted. *Pungoti v. Sayreville*, 95 N.J.A.R.2d (ABC) 72.

13:2-35.5 Multiple barrooms; package goods sales restricted to the bona fide principal barroom

No holder of a plenary retail consumption license or seasonal retail consumption license, without the "Broad package privilege" as set forth in N.J.A.C. 13:2-35.1, 35.2 and 35.3, who maintains at the same time more than one barroom on the licensed premises, shall sell or display for sale any alcoholic beverage in the original container for off-premises consumption except from and in principal bona fide public barroom on 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).

Recodified from 13:2-35.6. Revised heading. Recodified prior text at 13:2-35.5, "Off-premises consumption sales; requirements", to 13:2-35.4.

13:2-35.6 (Reserved)

Recodified to 13:2-35.5 by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
Section was "Multiple barrooms".

SUBCHAPTER 36. REQUESTS FOR ADVISORY OPINIONS

Subchapter Historical Note

Previous subject, repealed by R.1980 d.304, effective July 3, 1980; see: 12 N.J.R. 343(b), 12 N.J.R. 494(b), was amended by: R.1973 d.312, effective November 1, 1973. See: 5 N.J.R. 350(c), 5 N.J.R. 426(a). R.1974 d.239, effective August 28, 1974. See: 5 N.J.R. 420(c), 6 N.J.R. 410(b). R.1975 d.238, effective September 2, 1975. See: 7 N.J.R. 336(a), 7 N.J.R. 436(c). R.1975 d.263, effective September 2, 1975. See: 7 N.J.R. 383(a), 7 N.J.R. 482(c). R.1975 d.353, effective November 26, 1975. See: 8 N.J.R. 47(c). R.1976 d.71, effective March 4, 1976. See: 8 N.J.R. 71(b), 8 N.J.R. 203(b). R.1978 d.75, effective March 1, 1978. See: 9 N.J.R. 482(a), 10 N.J.R. 170(a). R.1979 d.138, effective May 1, 1979. See: 11 N.J.R. 143(a), 11 N.J.R. 257(c). R.1980 d.72, effective February 11, 1980. See: 11 N.J.R. 285(b), 12 N.J.R. 156(a). Pursuant to Executive Order No. 66(1978), Subchapter 36 was readopted as R.1984 d.184, effective April 26, 1984. See: 16 N.J.R. 500(a), 16 N.J.R. 1280(a). See also Chapter Historical Note and section annotations.

13:2-36.1 Advisory opinions

(a) Other than in proceedings instituted pursuant to N.J.S.A. 52:14B-8 (Declaratory Rulings), a written request for an interpretation, application, or other inquiry concerning the Division of Alcoholic Beverage Control's regulations, policies or practices shall only be considered if it sets forth issues not previously articulated by the Division or involves a substantial question of general applicability.

(b) All requests shall be sent to the Director, Division of Alcoholic Beverage Control, CN 087, Trenton, New Jersey 08625, and any request and corresponding advisory opinion may be reproduced in Bulletins issued by the Division which are publicly available upon subscription. Requests which are hypothetical in nature will not receive Division response. All requests shall contain a certification that the requesting party is not aware that the subject matter of the inquiry is presently an issue pending in any Federal or State court or any administrative adjudicatory forum. If the requesting party is aware that the subject matter of the inquiry is an issue pending in any court or forum, the nature of the proceedings and identification of the court or forum shall be fully described in the request for the advisory opinion.

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), "a written request" was "a written non-hypothetical request"; added new (b), with Division address for submitting requests; redesignated existing (b) as (c).

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

Added certification of the legal status of the inquiry subject matter in (b) and deleted (c).

SUBCHAPTER 37. CONSUMER ALCOHOLIC BEVERAGE TASTINGS AND TASTING DINNERS

Authority

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

Source and Effective Date

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

Amendments to Subchapter 37 were filed on April 4, 1979 as R.1979 d.138, effective on May 1, 1979. See: 11 N.J.R. 143(a), 11 N.J.R. 257(c). Pursuant to Executive Order No. 66(1978), Subchapter 37 was readopted by R.1984 d.185, effective April 26, 1984. See: 16 N.J.R. 501(a), 16 N.J.R. 1280(b). Subchapter 37, Contracts of Employment and Conduct of Solicitors, was repealed by R.1990 d.412, effective August 20, 1990. See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c). Subchapter 37, Consumer Alcoholic Beverage Tastings and Tasting Dinners was adopted as New Rules by R.1995 d.450, effective August 21, 1995. See: Source and Effective Date. See also Chapter Historical Note.

13:2-37.1 Consumer alcoholic beverage tastings or tasting dinner events

(a) Consumer alcoholic beverage tastings or tasting dinner events may be held under the following conditions:

1. The host for an event shall hold a valid permit or actively operated license exercising the on-premise consumption privilege;
2. No event shall be conducted on a plenary or limited retail distribution licensed premises;
3. The event shall be conducted and promoted in connection with an instructional or educational program for alcoholic beverage products;
4. All alcoholic beverages sampled at the event shall be obtained from the inventory of the host licensee or Annual State permittee or, if a social affair permittee, purchased in accordance with Division laws and regulations;
5. The event is not open to the general public, but is limited to a set number of consumers by a 24 hour advance ticket purchase;
6. Servings of alcoholic beverages per person are limited to:
 - i. No more than five ounces of a particular malt alcoholic beverage, or naturally fermented or sparkling wine at consumer tasting dinners,
 - ii. No more than one and one-half ounces of a particular naturally fermented or sparkling wine or four ounces of a malt alcoholic beverage at consumer tastings or

iii. No more than one-half ounce of a particular fortified wine or distilled spirit at consumer tastings or consumer tasting dinners; and

7. Suppliers, manufacturers or wholesalers of alcoholic beverages may apply for an annual special permit to participate in consumer tasting events solely to provide educational commentary regarding the alcoholic beverages. The fee for the annual special permit for the supplier, manufacturer or wholesaler shall be \$100.00 and an additional \$100.00 permit for each solicitor or duly authorized representative. Ten days prior to participating in the event, the permittee shall file with the Division a consumer tasting request on a form prescribed by the Director.

SUBCHAPTER 38. LIMITATION OF HOURS FOR SALE AND DELIVERY AT RETAIL OF ALCOHOLIC BEVERAGES IN ORIGINAL CONTAINERS FOR OFF-PREMISES CONSUMPTION

13:2-38.1 Retail package sales hours

(a) Subject to local options as expressed in the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq. and except as further specified in (b) below, no licensee shall allow, permit or suffer the sale, service or delivery of any alcoholic beverage at retail in its original container for consumption off the licensed premises, or the removal of any alcoholic beverage in its original container from retail licensed premises, before 9:00 A.M. or after 10:00 P.M. on any day of the week.

(b) However, if the sale of alcoholic beverages for consumption on the premises is authorized in a municipality, the sale, service or delivery of wine and malt alcoholic beverages in original containers for consumption off the premises shall be authorized on the same days and during the same hours.

(c) In cities of the first class, no licensee shall allow, permit or suffer the sale, service or delivery of any alcoholic beverage at retail in its original container for consumption off the licensed premises or the removal of any alcoholic beverage in its original container from retail licensed premises before 9:00 A.M. or after 10:00 P.M. on any day of the week.

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

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

Amended by R.1981 d.71, effective May 1, 1981.

See: 13 N.J.R. 37(b), 13 N.J.R. 238(b).

Added "Subject to . . . N.J.A.C. 13:2-38.2" and "pursuant to N.J.S.A. 33:1-40.3".

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

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

Revised to include service and wine; other textual revisions.

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 (b) and added (c).

13:2-38.2 Sunday sales hours for retail distribution licensees and state beverage distributors; effect of municipal ordinances and State statute on sale for off-premises consumption

(a) If a municipality has no ordinance or local law that authorizes the sale of alcoholic beverages for consumption on the premises on Sunday, then except as provided in (b) below, a municipality may by ordinance authorize the sale of wine and malt alcoholic beverages in original containers for consumption off-premises by retail distribution licensees and State beverage distributor's licensees any time between the hours of 12:30 P.M. and 6:30 P.M. on Sunday, in addition to such weekday hours as may be authorized by ordinance.

(b) However, in any city of the first class which prohibits the Sunday sale of alcoholic beverages for consumption on the premises, no licensee shall allow, permit or suffer the sale, service or delivery of any alcoholic beverage at retail in its original container for consumption off the licensed premises or the removal of any alcoholic beverage in its original container from retail licensed premises, at any hour on any Sunday.

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

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

Revised to include wine; deleted "bottle or can" from "original containers".

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

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

Added references to Sunday sale hours in existing text and added (b) regarding prohibition of Sunday sales in first class cities.

13:2-38.3 (Reserved)

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

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

Added "whether for on-premise or off-premise consumption".

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

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

Section was "Municipal ordinances and regulations".

SUBCHAPTER 39. RETURN OF ALCOHOLIC BEVERAGES; SOLICITOR'S DELIVERY

Subchapter Historical Note

Amendments to this subchapter which repealed sections 2 through 5 and recodified section 6 as section 2 were filed on April 4, 1979, as R.1979 d.138 to become effective on May 1, 1979. See: 11 N.J.R. 143(a), 11 N.J.R. 257(c).

Previous amendments to repealed sections were R.1974 d.239 effective August 28, 1974 (see: 5 N.J.R. 420(c), 6 N.J.R. 410(b)), and R.1975 d.238, effective September 2, 1975 (see: 7 N.J.R. 336(a), 7 N.J.R. 436(c)).

Pursuant to Executive Order No. 66(1978), Subchapter 39 was re-adopted as R.1984 d.186, effective April 26, 1984. See: 16 N.J.R. 501(b), 16 N.J.R. 1280(c). See also Chapter Historical Note and section annotations.

13:2-39.1 Reasons authorizing return of alcoholic beverages; inclusion in marketing manual; other required records

(a) No manufacturer, brewer, winery, distiller, rectifier and blender, wholesaler or distributor privileged to sell to retailers shall accept a return of any alcoholic beverages from a retail licensee for cash, credit or exchange, nor shall any retail licensee accept any cash, credit or exchange, except for one of the following reasons:

1. Defective product and breakage which occurred prior to or simultaneously with delivery of such products to the retailer;
2. Bona fide error in product delivered;
3. Product which may no longer be lawfully sold;
4. Product on hand when retail licensee terminates business (subject to applicable rights of other persons protected by State or Federal laws);
5. Change in product or labeling of product;
6. Discontinued product;
7. Product likely to spoil from retailers who are only open for a portion of the year;
8. Rotation of malt alcoholic beverage product consistent with the policy established by the brewer; or
9. Such other good cause as may be approved by the Director.

(b) A manufacturer, brewer, winery, distiller, blender and rectifier, wholesaler or distributor privileged to sell to retailers is not required to accept returns from a retail licensee for any of the reasons enumerated in (a) above; but should such licensee do so, the return policy shall be clearly identified in its "Marketing Manual" and shall be nondiscriminatorily applied to all similarly situated retail licenses.

(c) Every return of an alcoholic beverage by a retail licensee shall be accompanied by a return document truly dated and signed by a duly authorized representative of both the wholesale and retail licensee, and contain a detailed description of all product returned, the specific reason for the return, the original date of delivery and invoice number of the original purchase, the date of pick-up or return, the name of the person requesting the return, and the terms of return, that is, cash, credit or exchange. A copy of the return document shall be left with the retail licensee.

(d) The return document shall be retained for a period of one year on the licensed premises, unless the Director shall have granted to the licensee written permission to keep such documents at another designated place. Licensees shall make the return documents available for inspection by any person authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq.

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

Section was "Credit terms; disclosure on documents". The following annotations pertained to that section:

Amended by R.1975 d.238, effective September 2, 1975.

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

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

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

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

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

Stylistic changes.

13:2-39.2 Salesman or retailer pick-up notice

If alcoholic beverages are picked up at the licensed premises of a manufacturer or wholesaler by a retail licensee or by a solicitor for ultimate delivery to a retail licensee, proper invoices shall accompany the order and the manufacturer or wholesaler must, within a reasonable time of pick-up, mail a copy of the invoice to the destined retailer. Such copy of the invoice must have prominently printed or stamped thereon the following legend: "To the retailer—If you have not already received the merchandise herein, you must immediately give written notice to the Division of Alcoholic Beverage Control of such fact." Every retail licensee receiving such copy of the invoice shall immediately give written notice to the Division of Alcoholic Beverage Control if he has not already received such merchandise.

New Rule, R.1979 d.138, effective May 1, 1979.

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

Recodified from 13:2-39.5 by R.1990 d.412, effective August 20, 1990.

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

Prior text at 13:2-39.2, "Delivery and transportation documents", repealed. The following annotation pertained to that section:

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

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

13:2-39.3 (Reserved)

New Rule, R.1979 d.138, effective May 1, 1979.

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

Repealed by R.1981 d.71, effective November 1, 1981.

See: 13 N.J.R. 37(b), 13 N.J.R. 238(b).

13:2-39.4 (Reserved)

New Rule, R.1979 d.138, effective May 1, 1979.

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

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

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

Section was "Return of alcoholic beverages".

SUBCHAPTER 40. ISSUANCE OF IDENTIFICATION CARDS BY COUNTY CLERKS

DO NOT WRITE BELOW THIS LINE

Subchapter Historical Note

Pursuant to Executive Order No. 66(1978), Subchapter 40 was re-adopted by R.1985 d.395, effective August 5, 1985. See: 17 N.J.R. 1380(a), 17 N.J.R. 1900(a). See also Chapter Historical Note and section annotations.

13:2-40.1 Form of application; contents

Application for an identification card by a resident of a county in New Jersey who shall have attained the legal age to purchase and consume alcoholic beverages may be filed with the county clerk in the county wherein said applicant resides and shall be in the following form:

State of New Jersey, County of _____

IDENTIFICATION CARD APPLICATION

TO: County Clerk of County, New Jersey. The undersigned hereby applies for an identification card as proof of age, and submits the required fee in the amount established by law.

1. Full name of applicant _____
(First) (Middle) (Last)
2. Residence address _____
3. Height _____ Weight _____
(Ft.) (In.)
Color of Eyes _____ Color of Hair _____
4. Date of Birth _____
5. Place of Birth _____
(Municipality) (County) (State)
6. Father's name _____
(First) (Middle) (Last)
7. Mother's Maiden Name _____
(First) (Middle) (Last)
8. The applicant presents one or more of the following certificates to establish his or her age (check appropriate line):
 - Birth Certificate
 - Naturalization Certificate
 - Voter Registration Certificate
 - Other (_____)
9. The applicant submits two (2) recent color photographs, approximately 1½ inches by 1½ inches in size, of himself or herself, full face, without hat.
10. Has the applicant ever previously applied for an identification card.
If so, state the details thereof _____

WARNING: Any person not entitled thereto who shall have unlawfully procured or have issued or transferred to him or her an identification card shall be guilty of a disorderly persons offense and shall be sentenced to pay a fine of not more than \$300.00 or imprisonment for not more than 60 days. N.J.S.A. 33:1-81.7.

The applicant hereby certifies that all of the foregoing information and statements are true in all respects.

11. Signature of applicant _____ (Date)
12. Signature witnessed by: _____ (Date)
(County Clerk or Duly Authorized Deputy)

Photo 1½" x 1½"	Identification Card Number _____ Date of Issuance _____ Issued by _____
------------------------	---

Amended by R.1980 d.304, effective July 3, 1980.
See: 12 N.J.R. 343(b), 12 N.J.R. 494(b).
Amended by R.1985 d.395, effective August 5, 1985.
See: 17 N.J.R. 1380(a), 17 N.J.R. 1900(a).
Application card fee changed from "\$2.00" to "\$4.00".
Amended by R.1987 d.399, effective October 5, 1987.
See: 19 N.J.R. 1410(a), 19 N.J.R. 1823(a).
Deleted "of \$4.00" from form and substituted "in the amount established by law."
Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).
Added "Note" regarding duplicate driver's licenses in the application form.

13:2-40.2 Establishment of age

The applicant shall to the satisfaction of the county clerk establish his or her age by presentation of a birth certificate, naturalization certificate or any other proof required by the county clerk, which after examination shall be returned to the applicant. However, duplicate driver's licenses from any state shall not be used as proof of age or identity in applying for or receiving a County Identification Card.

Amended by R.1985 d.395, effective August 5, 1985.
See: 17 N.J.R. 1380(a), 17 N.J.R. 1900(a).
Added text "or her".
Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).
Added reference to duplicate driver's licenses.

13:2-40.3 Applicant's photographs

The applicant shall submit two recent photographs, approximately 1½ inches by 1½ inches in size, of himself or herself, full face, without hat.

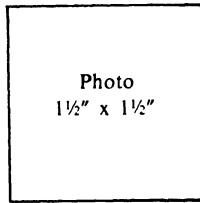
13:2-40.4 Execution of application

The applicant shall sign the application in the presence of the county clerk or his duly authorized deputy, who shall also sign and date such application.

13:2-40.5 Identification card; form

The identification card shall be 3½ inches wide by 2½ inches high in size, with black print on goldenrod basket weave safety paper containing a hidden Seal of New Jersey and the words State of New Jersey on its front side which is only visible under ultraviolet light, in the following form:

FRONT SIDE



) STATE OF NEW JERSEY
) COUNTY OF
) IDENTIFICATION
)
) CARD NO.
) --THIS IS TO CERTIFY THAT--
)
)
) --WHO RESIDES AT--
)
)
) HAS FURNISHED TO THE UNDER-
) SIGNED SATISFACTORY EVIDENCE
) OF HAVING ATTAINED THE AGE OF
) 21 YEARS.

HGT. WGT.
 HAIR EYES

DATE OF BIRTH

ATTEST: _____
 County Clerk or duly authorized deputy

 Date of Issuance

Holder's
 Signature _____

REVERSE SIDE

WARNING:

It shall be unlawful for the owner of an identification card to transfer said card to any other person for the purpose of aiding such person to secure alcoholic beverages. Any person who shall transfer an identification card for the purposes of aiding the transferee to obtain alcoholic beverages and any person not entitled thereto who shall have unlawfully procured or have issued or transferred to him or her an identification card shall be guilty of a disorderly persons offense and, upon conviction thereof, shall be sentenced to pay a fine of not more than \$300.00, or imprisonment for not more than 60 days. N.J.S.A. 33:1-81.7.

ALCOHOLIC BEVERAGE LICENSEES NOTE:

The presentation of this identification card by any person in connection with the purchase or attempted purchase of any alcoholic beverage shall constitute a defense to a charge under N.J.S.A. 33:1-77, if the retail licensee makes the sale in good faith reliance on this card and the appearance of the purchaser was such that an ordinary prudent person would believe the card holder to be of legal age.

State No. (preprinted sequential control number)

Amended by R.1985 d.395, effective August 5, 1985.
 See: 17 N.J.R. 1380(a), 17 N.J.R. 1900(a).

Substantially amended.
 Amended by R.1987 d.399, effective October 19, 1987.
 See: 19 N.J.R. 1410(a), 19 N.J.R. 1823(a).

Deleted text "of white index . . . with black print" and substituted "with black print . . . under ultraviolet light."
 Correction: Changed front of Identification Card.
 See: 20 N.J.R. 425(a).

13:2-40.6 Issuance of card; procedure

One of the submitted photographs of the applicant shall be mounted on an identification card in the upper left portion of the front side thereof. The card shall be signed by the applicant in the presence of the county clerk or his duly authorized deputy, who shall also sign the card. The official County seal shall be affixed so that it overlaps the photograph and a portion of the printed card. The card shall be inserted into a 10 gauge plastic sleeve that has on its back flap a red ink embossed Great Seal of the State of New Jersey. The plastic will be heat sealed and the laminated card delivered to the applicant. The other photograph of the applicant shall be attached to the application, which shall indicate the date of issuance of the card, the number thereof and the name of the person who issued it. A permanent record thereof shall be retained in the county clerk's office.

Amended by R.1985 d.395, effective August 5, 1985.
 See: 17 N.J.R. 1380(a), 17 N.J.R. 1900(a).

Substantially amended.
 Amended by R.1987 d.399, effective October 19, 1987.
 See: 19 N.J.R. 1410(a), 19 N.J.R. 1823(a).
 Substantially amended.

13:2-40.7 Fees

A fee in the amount established by law shall be paid to the county clerk for the issuance of an original identification card. In the event the card is lost, stolen or destroyed, the holder thereof may apply for a replacement card with new numbers by filing a new application in the same manner as for an original, with payment of fee along with an affidavit as to the loss, theft or destruction of the original card. Every replacement card shall prominently have stamped, typed or otherwise imprinted on the card the word "Duplicate".

Amended by R.1985 d.395, effective August 5, 1985.

See: 17 N.J.R. 1380(a), 17 N.J.R. 1900(a).

Fees changed from "\$2.00" to "\$4.00".

Amended by R.1987 d.399, effective October 19, 1987.

See: 19 N.J.R. 1410(a), 19 N.J.R. 1823(a).

Deleted "upon payment of an additional \$4.00 fee and upon making"; substituted "with payment of fee" and "in the amount established by law".

SUBCHAPTER 41. ISSUANCE OR TRANSFER OF PLENARY RETAIL CONSUMPTION LICENSES TO NON-PROFIT MUSICAL OR THEATRICAL CORPORATIONS; QUALIFICATIONS OF RESTAURANT OPERATORS

Authority

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

Source and Effective Date

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

Subchapter Historical Note

Subchapter 41, which concerned transitional provisions, was repealed by R.1981 d.71, effective March 4, 1981. Subchapter 41, Issuance or Transfer of Plenary Retail Consumption Licenses to Non-Profit Musical or Theatrical Corporations; Qualifications of Restaurant Operators, was adopted as New Rules by R.1995 d.450, effective August 21, 1995. See: Source and Effective Date.

13:2-41.1 Plenary retail consumption licenses for non-profit musical or theatrical corporations; restaurant operator; definitions

(a) For the purpose of this subchapter:

1. A "non-profit corporation" suitable for licensure is a bona fide non-profit entity which conducts musical or theatrical performances or concerts on a regular basis on premises with a total seating capacity of 1,000 persons or more.

2. "Licensed premises" shall include the premises where the musical or theatrical performance or concert is held, as well as any adjacent premises owned and operated by the non-profit licensee, and which premises have been licensed under an approved issuance or place-to-place transfer application.

3. A "restaurant operator" is a retail licensee or permittee or any person who has been qualified and approved for a retail license under the applicable provisions of the law and authorized by the Director to sell alcoholic beverages under the license issued to the non-profit corporation.

13:2-41.2 Issuance of special license

(a) All applicants for a special license issued pursuant to N.J.S.A. 33:1-19.7 shall comply with the application, advertising and hearing provisions of N.J.A.C. 13:2-2.

(b) A local issuing authority shall take no action upon an application for a license by a non-profit corporation until receiving the approval of the Director. Approval of an application will be conditioned upon a certification by the issuing authority and a finding by the Director that the following conditions have been satisfied:

1. The municipality intends to issue this special plenary retail consumption license;
2. The applicant is a bona fide non-profit corporation;
3. The applicant has exclusive possession and control of the premises to be licensed and the premises meet the requirements of N.J.S.A. 33:1-19.7; and
4. The applicant and premises are qualified for licensure and are in compliance with all applicable provisions of law.

13:2-41.3 Qualification of restaurant operator

(a) An application submitted by a restaurant operator to exercise the privileges of a special plenary retail consumption license issued to a non-profit corporation holding a special license issued pursuant to N.J.S.A. 33:1-19.7, may be approved by a local issuing authority upon receipt of the prior authorization of the Director.

(b) The Director's authorization is conditioned upon a finding that one of the following conditions has been satisfied:

1. The restaurant operator currently is a qualified retail licensee or permittee; or
2. If the restaurant operator is not currently a qualified retail licensee or permittee, the local issuing authority has caused an investigation into the background of the applicant and has certified to the Director that the restaurant operator has complied with the provisions of N.J.A.C. 13:2-2.

(c) All restaurant operator applicants shall disclose:

- i. The source of all funds used in the purchase of the license and the licensed business and have submitted all documents concerning their business arrangements with the non-profit corporation holding the license; and
- ii. Any other information that the Director may deem appropriate.

13:2-41.4 Privileges and limitations of special license

(a) A license issued pursuant to the provisions of N.J.S.A. 33:1-19.7 authorizes the sale of alcoholic beverages for consumption on the licensed premises only during performances and two hours immediately preceding and immediately following performances.

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

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

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

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

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

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

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

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

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

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

APPENDIX

Appendix to N.J.A.C. 13:2 is repealed by R.1995 d.450 effective August 21, 1995. The Appendix contained instructions regarding issuance of State and municipal licenses, transfer and extension of licenses, appeals from municipal action, disciplinary proceedings and forms. See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).