

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEWARK INTERNATIONAL PLAZA
U.S. Routes 1-9 (Southbound) Newark, N. J. 07114

BULLETIN 2342

March 11, 1980

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1. NOTICE TO ALL LICENSEES - DEREGULATION.

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NOTICE TO ALL LICENSEES

On February 11, 1980 the New Jersey Supreme Court rendered a decision in the "Deregulation" case, Heir v. Degnan, ___ N.J. ___ (1980), affirming substantially the position taken by Attorney General John J. Degnan and me. Two days later the Court entered an order "staying" or delaying Deregulation. That Court Order remained in effect while a review of the matter was sought before the United States Supreme Court. The U. S. Supreme Court has declined to order a further stay and the State Supreme Court order dissolved midnight March 10, 1980. "Deregulation" is now again in effect, subject, of course, to any further Court Orders. The following summary of significant areas of impact, presented pursuant to my Special Ruling powers pursuant to N.J.S.A. 33:1-39, is intended to assist you in knowledgeably complying with the new (amended) regulations and implementing the regulatory system.

SALES TAX

For six months from the date the Supreme Court rendered its decision, unless otherwise determined by the Legislature, the sales tax will continue to be collected at the time of sale from the wholesaler to the retailer. The tax will be based upon the price as established in the "Minimum Consumer Resale Price Book" of January 1, 1980. N.J.A.C. 13:2-41.5. Since taxes will continue to be prepaid by retailers, shelf pricing and price advertisements shall be offered to consumers as "all taxes included".

RETAIL SALES OF PACKAGE PRODUCTS

Except for sales tax purposes, the "Minimum Consumer Resale Price Book" is repealed. Each retailer must now individually determine the price at which it will sell package products. Retail sales of alcoholic beverages in original containers are prohibited at a price (1) below "cost" plus 18% markup from today, March 11, 1980, through May 9, 1980; and (2) at a price below "cost" plus 9% markup from May 10, 1980 through July 8, 1980; and (3) at a price below "cost" thereafter.

"Cost" is the actual wholesale invoice price of a bottle or case of a product to the retailer, plus any tax (sales tax) the retailer must pay or remit on that particular product. "Cost" is based on the last invoice of purchase of a product. (L.I.F.O. accounting method) N.J.A.C. 13:2-24.8 and 13:2-41.2.

WHOLESALE PRICE TO RETAILERS

The current "post-offs" and the "Wholesale Price List" will remain in effect through midnight March 31, 1980. Thereafter, beginning on April 1, 1980, prices of

spirit, wine and malt products will be made available to retailers on a monthly basis by the individual wholesalers and beer distributors (not the Division).

The wholesalers and distributors will be required to file their prices with the Division in the form of a "Current Price List" on the 15th of each month to become effective the 1st day of the next month. Those independently filed prices will become public records on the following day (16th of the month). Because of the timing of the Court decision, "Current Price Lists" will be accepted for April 1, 1980, effectiveness through March 21, 1980 and become publicly available the next business day. N.J.A.C. 13:2-24.6.

BRAND REGISTRATION

Under the new regulations, no wholesaler, beer distributor or retailer may sell a product unless it is "registered" with the Division. Because of the timing of the Court decision, product "brand registrations" will be required to be filed with the Division by May 1, 1980.

Until that date, sales of alcoholic beverages listed in the January 1, 1980 "Minimum Consumer Resale Price Book" or "Wholesale Price List" may continue to be made by retailers. Wholesalers are deemed to be authorized to distribute products which they offered to the trade as of the January 1, 1980 "Wholesale Price List". Beer distributors are authorized to distribute malt products for which they were indexed as distributors in the January 1, 1980 "Minimum Consumer Resale Price Book". N.J.A.C. 13:2-33.1. "New products" will be registered by the Division as they may occur on an ad hoc basis prior to May 1, 1980. Metric size changes and proof variations of products already filed or listed need not be filed until the May 1 registration.

RETAIL COOPERATIVE ADVERTISING

Pursuant to the opinion of the Supreme Court, non-identically owned retailers will be permitted to advertise on a cooperative basis, so long as it does not involve pricing. Heir v. Degnan, N.J.A.C. 13:2-24.11(a) (8).

RETAIL CREDIT

The existing "default" and "non-delivery" lists will be abolished effective April 14, 1980. Credit collection is now a business function of the industry. However, the new regulations contain some credit control. They include a transition provision that basically provides that all retail licensees in default or on non-delivery status for any delivery made prior to March 11, 1980 must satisfy outstanding financial purchase obligations by June 6, 1980 or, absent waiver from the Director, be precluded from purchasing any alcoholic beverages thereafter until the defaults are paid. N.J.A.C. 13:2-24.4, 39.3 and 41.4.

SUPPLIER PRICE FILINGS

Every manufacturer or supplier of spirit, wine and malt alcoholic beverage products must file its product prices to wholesalers or distributors with the Division by the 10th day of the month preceding the month for which the prices are to take effect. Thereafter, those prices shall remain the same until amended. Prices and discounts currently on file will be effective through April 30, 1980. All suppliers must file product pricings for May 1, 1980 by April 10, 1980. Such filings will become public records the following day. N.J.A.C. 13:2-24.5.

JOSEPH H. LERNER
DIRECTOR

2. NEW AMENDMENTS TO DIVISION REGULATIONS

The following is the text of the new amendments to the Division regulations as adopted April 4, 1979 and subsequently amended February 11, 1980. Pursuant to Executive Order No. 66 (1978), Subchapters 2, 5, 7, 8, 18, 24, 25, 26, 27, 29, 33, 36, 37, 39 and 41 shall expire on April 12, 1984.

Additions to the regulations are indicated by underlining thus; deletions indicated in brackets [thus]. Asterisks (*) indicate a printed omission of a regulation or portion thereof, which continue to be in effect. Where a Subchapter or Sub-regulation heading is [deleted], the entire text of the prior regulation has been repealed by amendment.

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

* * * * *

13:2-2.9 Hearing not required; reasons

(a) No hearing need be held if no written objection shall be lodged and the issuing authority determines to approve the application 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; and

(2) the applicant is 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 and conditions consistent with Title 33; and

(3) the applicant has disclosed and the authority 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.

[(b)](c) However, the issuing authority shall not disapprove the application 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.

* * * * *

SUBCHAPTER 5. ISSUANCE OF SPECIAL PERMITS BY DIRECTOR

13:2-5.1 Social affair permit

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

1. Certificate of incorporation;
2. Charter;
3. Constitution;
4. Bylaws;
5. Minutes of meetings;
6. Membership roster;
7. Financial records [,and so forth.];
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, certified 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 or educational 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 endorsed by the chief of police or his designee and the clerk of the municipality wherein the affair is to be held.

(d) No more than one social affair permit shall be issued to any one applicant per month, nor shall any such permit be granted for premises at which 25 prior social affair permits have been issued [with] 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 [wholesale license,] licensed wholesaler, distributor or retailer only, and to resell said alcoholic beverages, for on-premises consumption only. Within 10 days after the social affair, the permittee shall file with the director a signed and sworn inventory report on forms promulgated by the director showing all [wholesale purchase] purchases of alcoholic beverages and the source and disposition thereof. Failure to so file the said inventory report shall be cause for denial of any future applications for a social affair permit.

(f) 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.

(g) A special 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.

(h) The rules herein contained 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.

13:2-5.2 Special concessionaire permit

(a) Application for 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 organization is authorized to sell alcoholic beverages for immediate consumption on property owned by or under the control of, the State of New Jersey or any political subdivision thereof.

(b) The term of a special concessionaire permit shall be from July 1 through June 30 unless otherwise specified. The fee for said permit shall be fixed by the director, and must accompany application with either cash, certified 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 from, and copy of agreement with State, county, or municipal official or body charged with responsibility over public lands for which 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;

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

(d) Within ten 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 the
(Name of Applicant)
DIRECTOR of the New Jersey DIVISION OF ALCOHOLIC
BEVERAGE CONTROL for a SPECIAL CONCESSIONAIRE PERMIT
for premises situated at

(No.)

(Street)

(Municipality)

See below*, **, ***, ****

Objections, if any, should be addressed to the Director,
Division of Alcoholic Beverage Control.

(Name of Applicant)

(Address of Applicant)

*If applicant is a corporation, insert at this point the names and residences of all officers and all directors who have no other named office, and the names and residences of all stockholders holding more than ten percent of any of the stock of said corporation.

**If applicant is a partnership, insert at this point the name of the partnership and the names and residences of all partners.

***If applicant is a club, insert at this point the names and residences of the officers and the offices they fill respectively, and the names and residences of the directors, trustees or other governing body.

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

(f) Upon receipt of a duly signed written objection to the issuance of special concessionaire permit, the director will afford a hearing to all parties immediately notifying the applicant and the objector of the date, hour and place thereof.

1. No hearing need be held if no such 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 or distributor's license, for resale at the authorized premises. Said holder is expressly prohibited from purchasing alcoholic beverages from retail liquor licensees or from selling or offering for sale alcoholic beverages for off-premises consumption.

(h) The director may, in his 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 law, division rules and regulations and municipal ordinances. Failure to do so may result in disciplinary proceedings against the permittee.

(j) The rules herein contained shall be considered as general rules governing the issuance of a special concessionaire permit and may be relaxed or dispensed with by the director in any case where a strict adherence to them will result in hardship.

* * * * *

SUBCHAPTER 7. TRANSFERS OF STATE AND MUNICIPAL LICENSES

* * * * *

13:2-7.7 Publication of notice of application

(a) 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.

(b) A copy of such Notice shall be filed with the Division at the time of first publication and shall be available for inspection as a public record.

* * * * *

13:2-7.10 Hearing not required; reasons

(a) No hearing need [to] be held if no written objection shall be lodged and the issuing authority determines to approve the application, 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, and

(2) the applicant is 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 and conditions consistent with Title 33; and

(3) the applicant has disclosed and the authority 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) [However, the] The issuing authority shall not disapprove the application 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.

[(b)](d) In the event no action is taken on an application for transfer of a license within 60 days of the date of filing of the application, the applicant may file an appeal with the director as if the application had been denied.

* * * * *

SUBCHAPTER 8. CLUB LICENSES

* * * * *

13:2-8.6 Qualifications of officers and members

(a) No club license shall be issued nor renewal granted to any corporation, association or organization in which an officer or member of the governing body has been convicted of [a crime involving moral turpitude] 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 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, and

(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; and

(3) the club maintains all records required pursuant to N.J.A.C. 13:2-8.8 and 8.12.

* * * * *

SUBCHAPTER 18. PETITION PROCEEDINGS; DISCRIMINATION
AGAINST WHOLESALERS

13:2-18.1 Grounds for relief

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

(b) For purposes of subsection (a) of this section, 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 negotiations, 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 subparagraph (b)(7), 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.

SUBCHAPTER 23. CONDUCT OF LICENSEES AND USE OF LICENSED PREMISES

* * * * *

[DELETE] [13:2-23.15 Combination sales]

[DELETE] [13:2-23.16 Gifts and inducements; advertising novelties]

13:2-23.15 Possession of container mislabeled as to fill
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 39.4.

SUBCHAPTER 24. [EQUIPMENT, SIGNS AND OTHER ADVERTISING MATERIAL]

Trade Member Discrimination,
Marketing and Advertising

- [DELETE] [13:2-24.1 Items furnishable to retailers by manufacturers and wholesalers]
- [DELETE] [13:2-24.2 Possession of prohibited advertising material]
- [DELETE] [13:2-24.3 Advertising material on exterior of licensed premises]
- [DELETE] [13:2-24.4 Advertising unavailable alcoholic beverages]
- [DELETE] [13:2-24.5 Retail price and size advertising]

13:2-24.1 Discrimination in Terms of Sale

(a) Except as may otherwise be authorized by this Subchapter, no manufacturer, supplier, importer, brand 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:

a. 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

b. 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;

(2) differences in terms of credit, when justified by history or risk, to a particular customer or account in bona fide transactions not otherwise in restraint of trade and as is customary to the industry; the credit period usual and customary to the industry shall be deemed to be thirty days from date of delivery in the case of all sales of any alcoholic beverages to retailers; or

(3) price changes from time to time where changes are in response to changing conditions affecting the market for or the marketability of alcoholic beverage products, such as, but not limited to, actual or imminent deterioration of perishable products, obsolescence of seasonal products, distress sales pursuant to court order, or sales in good faith in discontinuance of business in the product concerned.

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.

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 Unfair Competition - Credit Practices

(a) Upon notice by a wholesaler or distributor of any alcoholic beverages to another wholesaler or distributor who offers for sale to retail licensees like or similar alcoholic beverage products, that a particular retail licensee is delinquent in payment for any delivery of alcoholic beverages originally sold upon credit terms in accordance with N.J.A.C. 24.1(b)(2), such noticed wholesaler or distributor may not sell or offer to sell like or similar alcoholic beverages to the delinquent retail licensee, except upon terms and conditions permitted by law or regulation to the noticing wholesaler or distributor. A sale or offer to sell on any terms of credit by the noticed wholesaler or distributor prior to satisfaction of delinquency shall establish that such noticed wholesaler or distributor has unfairly competed against the noticing wholesaler or distributor.

(b) In his discretion the Director may accept an offer of a compromise in lieu of suspension for a violation of this Regulation of a fine of not less than \$750.00 for a first offense and of not less than \$1500.00 for subsequent offenses.

13:2-24.5 Supplier Price Filings

(a) Every manufacturer, supplier, winery, brewer, importer, blender or rectifier intending to sell alcoholic beverages to wholesalers shall file with the Division a Current Price Listing to wholesalers containing as to each alcoholic beverage:

1. Its correct brand or trade name;
2. Its nature and type;
3. Its age and proof of alcoholic content when stated on the label;
4. The standard number of unit containers per standard case;
5. The capacity of each unit container; and
6. The bottle and standard case or container prices and, at the option of the manufacturer or supplier, the one-half and one-quarter standard case prices, which prices shall be individual for each alcoholic beverage brand and size and not in combination with any other alcoholic beverage brand and size.
7. All allowances, discounts, depletion credits or differentials which may be available and the periods of availability.

(b) Such filing shall be made with the Division not later than the 10th day of a month preceding the month for which it is to become first effective and such filing shall remain in effect as to each product not specifically amended by subsequent filing.

(c) Such filing shall be a public record and nothing herein shall preclude any filer from providing it directly to its registered distributors or wholesalers by mail, through sales personnel or through publication in trade journals.

(d) No filer of prices for distilled alcoholic beverages shall file a price or discount listing higher than the lowest price or lower than the highest discount at which any such distilled alcoholic beverage will be sold by the filer to any wholesaler or state agency which operates retail stores in any other State of the United States or in the District of Columbia.

(e) Such filings shall be provided to the Director separately from Brand Registration pursuant to Subchapter 33 and shall be provided in such form and accompanied by such fees as shall be established by the Director.

13:2-24.6 Required Records

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:

(a) 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 Subchapter 29, and

(b) 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

(c) (1) A "Current Price List," maintained in a separate book or ledger, containing:

(A) Prices, inclusive of 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; and

(B) The correct brand or trade name of the product, its nature and type, 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.

(2) The Current Price List shall be filed with the Division of Alcoholic Beverage Control no later than the 15th day of each calendar month, shall become effective the first day of the following calendar month and remain effective for that month.

(3) 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.

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

(5) 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 mail, through sales personnel or through publication in trade journals.

13:2-24.7 Marketing Initiatives

Subject to the foregoing provisions of this Subchapter, a licensed or registered manufacturer, supplier, importer, wholesaler or distributor may furnish or provide advertising or promotional materials to any retail licensee, except that samples may be provided to retailers 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 thereon.

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 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 consistent with N.J.A.C. 13:2-24.1(b)(3).

(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.

13:2-24.9 Trade Buyer - Combination and Tied Sales

(a) Notwithstanding other provisions of this Subchapter, no manufacturer, registrant, wholesaler, distributor or licensee privileged to sell alcoholic beverages to wholesalers, distributors, retailers, or other licensees in this State 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) Except for sales to retailers of malt alcoholic beverages; no wholesale licensee shall offer to sell or sell any alcoholic beverage product in combination with another product. For purposes of this subsection, a sale of products which are identical, except for size, in mixed lots (a mixed size sale) is not a combination sale.

(c) Nothing herein shall preclude a retail licensee from selling or offering for sale any product in combination with another product at a single unit price, provided that such unit price shall exceed the cost of the combined products and the individual unit price of each combined product is provided in advertising and shelf pricing.

[13:2-24.6] 13:2-24.10 Promotional advertising;
prohibitions

(a) No retail licensee shall allow, permit or suffer in or upon the licensed premises any advertising which utilizes promotional schemes unduly designed to increase the consumption of alcoholic beverages, via., "Open house", "singles night", tokens or tickets or admission fee redeemable for drinks only, all the alcoholic beverages you can drink for a set price, the absorption by the licensee of a patron's parking charge, gifts or souvenirs or trading stamps to be given with a purchase of alcoholic beverages, free drinks as an inducement to purchase package goods, the refunding of a percentage of the amount spent on drinks during a given period, the advertising of a gift or sale of alcoholic beverages for the benefit of charitable organization, any connotation of an increased value of purchase on alcoholic beverages ("savings", "bargains", "limited supply", "close out"), or any additional advertising scheme which is similarly promotional.

(b) The advertising of the existence of a "happy hour", "cocktail hour", or similar reduction in price per drink of alcoholic beverage during a specified period, or the existence of "free food", in or upon the licensed premises, is prohibited; provided, however, that a placard not visible from the exterior, not exceeding 12 inches by 24 inches located at each bar may advertise the reduction of the price per drink or the existence of "free food"; provided, further that decalcomania referring to the availability of the purchase of alcoholic beverages on credit may be placed in or upon the licensed premises, but may not be reproduced in other advertising media.

[DELETE] [13:2-24.7 Types of advertising prohibited]

13:2-24.11 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;
- (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 or 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 any alcoholic beverage product in its original container for sale, by any means whatsoever, that physically or conceptually joins, or connects or combines it to the advertisement or promotion of any non-alcoholic beverage product except non-alcoholic accessory beverages; or
- (8) offers any alcoholic beverage product for sale by or on behalf of licensees not identically owned, except as consistent with paragraph(b) of this regulation.

(b) No manufacturer, importer, registrant, wholesaler, distributor or retailer may advertise in any form or manner whatsoever unless that individual licensee has paid for such advertising except that consistent with Title 33 and Regulations promulgated thereunder, and its "Marketing Manual", a manufacturer or wholesaler, in a product advertisement, may specify the availability of a particular alcoholic beverage product or products at identified retail outlets, provided that no reference is made to a price at which the products will be or are offered for sale;

SUBCHAPTER 25 [DELIVERY TO RETAILERS FROM WAREHOUSE INVENTORY BY PLENARY AND WINE WHOLESALE LICENSEES]

DIVERSION, TRANSSHIPMENT, AND REGISTERED DISTRIBUTION

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, as the case may be.

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.

13:2-25.2 Plenary, Wine and Limited Wholesalers Registered Distribution

(a) No plenary wholesale, wine wholesale, or limited wholesale licensee shall sell, deliver, or include in its Current Price List any brand of alcoholic beverages not acquired from the owner of the brand or its registered supplier pursuant to Subchapter 33 or for which that wholesaler or distributor is not a registered wholesaler or distributor pursuant to Subchapter 33, except pursuant to waiver provisions of N.J.A.C. 13:2-33.1(b)3., when granted permission by the Director upon petition setting forth the brand name, the quantity to be acquired, the source of supply, and such other information as the Director may deem necessary.

(b) Nothing herein shall prohibit accomodation sales or transfers of alcoholic beverages by such a wholesaler: (1) to an affiliated wholesaler, or (2) to another such wholesaler registered pursuant to Subchapter 33 to sell the brand which is the subject of the sale or transfer to alleviate a bona fide temporary shortage of inventory. Except where the wholesaler is the registering brand owner pursuant to Subchapter 33, any other such sale or transfer of alcoholic beverages between wholesalers is prohibited.

13:2-25.3 State Beverage Distributors

(a) No State Beverage Distributor shall sell or deliver to another State Beverage Distributor malt alcoholic beverages other than from inventory; (1) from a warehouse located in New Jersey, (2) stored therein for a period of at least 24 continuous hours; and (3) operated pursuant to a State Beverage Distributors license.

(b) No State Beverage Distributor shall sell, deliver, acquire, or purchase or include in its Current Price List malt alcoholic beverages not acquired or purchased from the owner of the brand or its registered distributors pursuant to Subchapter 33, except pursuant to waiver provisions of N.J.A.C. 13:2-33.1(b)3., when granted permission by the Director upon petition setting forth the brand name, the quantity to be acquired, the source of supply, and such other information as the Director may deem necessary.

[SUBCHAPTER 26. MINIMUM STANDARDS OF FILL OF ALCOHOLIC BEVERAGES

[DELETE] [13:2-26.1 Schedule of fill for retail licensees

[DELETE] [13:2-26.2 Plenary retail licensees' compliance; fill standards]

[DELETE] [13:2-26.3 Manufacturer or wholesaler compliance with fill standards]

[DELETE] [13:2-26.4 Possession of container mislabeled as to fill]

SUBCHAPTER 26. RETAIL COOPERATIVE PURCHASES

13:2-26.1 Restrictions on Cooperative Purchases

(a) A Class C retail licensee, as defined in N.J.S. 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) No unlicensed person or entity may participate in any management capacity nor receive any compensation in connection with the purchase or transportation of alcoholic beverages; and

(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. 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; and

(3) no cooperative agreement may prohibit any licensee from joining any other cooperative agreement; and

(4) no cooperative agreement may prohibit any retailer from advertising or selling any product at any otherwise lawful price; and

(5) any cooperative agreement may be withdrawn from by any licensee upon thirty days written notice and no penalties may be charged for such withdrawal; and

(6) all purchases through or by cooperative agreement shall be made only on terms requiring payment upon delivery, or in the case of multiple delivery, upon the initial delivery or earlier; and

(7) all individual purchases through or by cooperative agreement shall be separately invoiced consistent with Subchapter 39; and shall contain the cooperative's registration number, and

(8) all purchases through or by cooperative agreement shall be transported consistent with Subchapter 20, N.J.S. 33:1-13 and N.J.S. 33:1-28; and

(9) no licensed party to a cooperative agreement shall co-mingle inventory, funds or other assets; and

(10) any purchase or transfer in violation of Title 33 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 multiple deliveries to licensees are required for an individual order.

(b) No cooperative buying group may participate in any business transaction permitted by subsection (a) of this regulation unless the cooperative is registered with the Division in a form prescribed by the Director. Such registration shall include (i) the identity and State issued license numbers of the members; and (ii) a copy of the cooperative agreement.

(c) No licensee shall, directly or indirectly, participate in any cooperative purchase unless the cooperative is registered pursuant to this regulation.

SUBCHAPTER 27. LABELING AND STANDARDS OF FILL

13:2-27.1 Adoption of Federal [labeling] requirements
Federal regulations, as amended or supplemented from time to time, relating to labeling [of] 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.

SUBCHAPTER 29. MISLEADING TRADE NAMES

[DELETE] 13:2-29.1 Names and signs implying false governmental sanction]

[DELETE] 13:2-29.2 Misleading names and signs concerning licensed business]

[DELETE] 13:2-29.3 Advertising; liquor stores]

SUBCHAPTER 29: Records

13:2-29.1 Public Records

The following enumerated records required to be maintained by law or other regulation by the Director, Division of Alcoholic Beverage Control, shall constitute public records of the Division:

(1) all license or permit applications filed with the Director, subject to non-disclosure of information protected by Federal or State law;

(2) all filed administrative disciplinary charges, transcripts of Division disciplinary hearings, Hearers' Reports and Conclusions and Orders of the Director;

(3) all filed administrative appeal pleadings, transcripts of Division appeal hearings, Hearers' Reports 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 filings, affirmation price filings, and such other filings required to be made by licensees and permittees by law or regulation;

(6) all records, pleadings, documents and orders, exclusive of investigative reports, pertaining to duly instituted seizure proceedings, pocket license applications and tax revocation proceedings.

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.

13:2-29.3 Inspection, Reproduction and Availability of Records

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 of such prices as hereinafter set forth.

(a) 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 of separate record filed with this Division, not upon the ultimate number of pages provided.

First Page to Twentieth page \$1.00 per page

Twenty-first to Fortieth page ... \$0.75 per page

All pages over Forty (40) \$0.50 per page

(b) 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, he may permit any citizen who is seeking to copy any individual record or report which exceeds 100 pages to use his own photographic process, approved by the custodian, upon the payment of a fee of twenty-five dollars (\$25.00) per day.

(c) Special records such as computer printouts, tapes and discs or other computer records associated with the Licensing Information System (ABC/LIS) 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.

13:2-29.4 Licensee Records - Storage Systems

(a) Upon written application to the Director accompanied by all relevant specifications and descriptions, the Director, in his 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 3 months old and are produced for inspection upon demand.

(2) not more than 1 year old but in excess of 3 months old, and are produced for inspection within 2 business days.

(3) in excess of 1 year old and produced for inspection within 7 business days.

(c) Records are "accurate" if they are a reduced copy of the original document or otherwise correctly reflect all information contained on the original required record.

SUBCHAPTER 33. [MINIMUM CONSUMER RESALE PRICES OF
ALCOHOLIC BEVERAGES]
PRODUCT INFORMATION FILING - BRAND REGISTRATION

13:2-33.1 [Schedule of retail prices filed with Director]
Schedule of Product Filing

(a) No licensee shall sell or offer for sale or deliver, or receive or purchase at wholesale or retail, any alcoholic beverage, including private label brands owned by a retailer and exclusive brands owned by a manufacturer or wholesaler and offered for sale or sold by such manufacturer or wholesaler exclusively to one New Jersey retailer, unless [a schedule of minimum consumer resale prices and labels for each brand of alcoholic beverage shall first have been] there is first filed with the Director of the Division of Alcoholic Beverage Control for each calendar [quarter period designated in section 3 of this subchapter, by:] year a schedule listing the following:

1. Its correct brand or trade name;
2. Its nature and type;
3. Its age and proof of alcoholic content when stated on the label;
4. The standard number of unit containers per standard case;
5. The capacity of each unit container; and
6. The names of all New Jersey licensees acknowledged by the filer to be an authorized distributor of the product at wholesale.

(b) The schedule shall be filed by:

1. The manufacturer or wholesaler who owns such brand; or

2. A wholesaler selling such brand who is appointed as exclusive agent by the brand owner for the purpose of filing such schedule; or
3. Any wholesaler with the approval of the director in the event that the owner of such brand does not file or is unable to file a schedule or designate an agent for such purposes; or
4. 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 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 [of minimum consumer resale prices] and the labels.

[DELETE]

[(b) Manufacturers and wholesalers intending to sell private label brands or exclusive brands of alcoholic beverages to retailers shall accompany such filings with the name and address of the retailer to whom such alcoholic beverages are to be sold. Except for special cause shown, in writing, to the director, no brand of alcoholic beverage which has been sold exclusively to one New Jersey retailer may be sold to any other New Jersey retailer or be listed for sale or sold to more than one New Jersey retailer unless the brand has not been delivered by the manufacturer or any wholesaler to such exclusive New Jersey retailer during a period of at least one year previously and no brand of alcoholic beverage which has been listed for sale or sold to more than one New Jersey retailer may be listed for sale or sold to one New Jersey retailer exclusively unless the brand has not been delivered by the manufacturer or any wholesaler to another New Jersey retailer during a period of one year previously.]

[DELETE]

13:2-33.2 Schedule filing dates

(a) The schedule of product filings [Schedules of minimum consumer resale prices required to be filed with the director] shall be filed in such form [to] and on such dates and upon payment of such fees as shall be prescribed by the Director.

[(b) Schedules of such prices shall be filed not later than the 20th day of February, May, August and November of each year for brands of alcoholic beverages other than malt alcoholic beverages to be sold or offered for sale to more than one New Jersey retailer, and not later than the 17th day of such months for brands of malt alcoholic beverages to be sold or offered for sale to more than one New Jersey retailer, such schedules to become effective on and after the first day of the succeeding April, July, October and January of each year.]

[DELETE]

[(c) Schedules of such prices for brands of alcoholic beverages to be sold or offered for sale exclusively to one New Jersey retailer shall be filed not later than the 20th day of March, June, September and December of each year, to become effective on and after the first day of April, July, October and January of each year, but schedules of such prices for new brands to be so sold or offered for sale may be filed not later than the 20th day of any month to become effective on the first day of the following month. A true copy of all such schedules shall be kept upon the retailer's licensed premises during the period when such schedule is in effect available for inspection by the public and by agents of the director.]

[DELETE]

[DELETE] [13:2-33.3 Publication of retail price lists; payment of costs]

[13:2-33.4] 13:2-33.3 Changes for good cause

The director may, upon adequate cause appearing therefor, suspend or defer the foregoing provisions as to the time of filing minimum consumer resale price listings, time of publication of minimum consumer resale price lists, and time of mailing to retailers, to permit changes in minimum consumer resale prices to take effect upon such shorter or longer notice as he may prescribe. Any minimum consumer resale price list and any minimum consumer resale price of a private label brand or exclusive brand then currently effective may be continued in effect after the scheduled publication date of the next succeeding minimum consumer resale price list or, in the case of private label brands and exclusive brands, after the scheduled effective date of the next succeeding minimum consumer resale price filing for such brands, and any price in such price list or of such private label brand or exclusive brand may be changed, temporarily, by announcement of the director upon his finding that an emergency exists.

[DELETE] [13:2-33.5 Selling below listed price]

[DELETE] [13:2-33.6 Price advertising]

[DELETE] [13:2-33.7 Inspection of price schedules]

SUBCHAPTER 36. WHOLESALE PRICES AND MAXIMUM REBATES, FREE GOODS, ALLOWANCES AND OTHER INDUCEMENTS

Note: This entire subchapter was to be deleted. A drafting oversight has left one subsection intact as set out below.

- [DELETE] [13:2-36.1 Schedules of prices filed with Director]
- [DELETE] [13:2-36.2 Schedule filing dates and contents]
- [DELETE] [13:2-36.3 Publication of wholesale price lists]
- [DELETE] [13:2-36.4 Authorized brands]
- [DELETE] [13:2-36.5 Inspection of wholesale-to-retail price filings]
- [DELETE] [13:2-36.6 Allowing changes for good cause]
- [DELETE] [13:2-36.7 Wholesale-to-wholesale prices; amended; reduced]
- [DELETE] [13:2-36.8 Wholesale-to-retail amended, reduced prices]

[13:2-36.9] 13:2-36.2 Deliveries; effective prices

All alcoholic beverages sold at reduced prices by manufacturers or wholesalers to wholesalers [or by wholesalers to retailers], as provided in [section 7 and 8 of] this subchapter, shall be delivered to and received by the wholesaler [or retailer, as the case may be,] within the [month] period for which the price reduction is effective, except that deliveries at reduced prices [pursuant to N.J.A.C. 13:2-35.7(a)] may be made to wholesalers by manufacturers and wholesalers during the seven days immediately preceding the first day of the [month] period for which the reduced prices are to be in effect.

- [DELETE] [13:2-36.10 Rebates and inducements]
- [DELETE] [13:2-36.11 Return of alcoholic beverages for credit]
- [DELETE] [13:2-36.12 Samples]
- [DELETE] [13:2-36.13 Promotional contest]
- [DELETE] [13:2-36.14 Participation retailer's on retail trade association affairs]
- [DELETE] [13:2-36.15 Distribution of wholesale price lists; payment of costs]

SUBCHAPTER 37. CONTRACTS OF EMPLOYMENT AND CONDUCT OF SOLICITORS

13:2-37.1 Solicitor's contracts

[DELETE PORTION] All contracts of employment between manufacturers or wholesalers engaged in the sale in New Jersey of alcoholic beverages, other than malt alcoholic beverages, and their solicitors shall be in writing and shall set forth truly the salary and commission or other compensation of any kind agreed to be paid to such solicitor. [No incentive bonus, incentive allowance or other incentive inducement shall be incorporated in any such contract or be paid by any manufacturer or wholesaler to any solicitor.] Said contracts shall be maintained by the employer for a period of three years from the date of execution. Contracts which are the result of collective bargaining shall be available for inspection by any licensee or authorized representative, thereof.

13:2-37.2 Filing of [contract and] statement of compensation with director

[DELETE PORTION] [Between March 25 and April 1 of each year, as to the holder of New Jersey solicitors' permits then employed, and within five days after the issuance of such solicitors' permits to solicitors thereafter employed, each manufacturer and wholesaler engaged in the sale in New Jersey of alcoholic beverages other than malt alcoholic beverages, employing persons who hold such solicitors' permits, shall file with the Director of the Division of Alcoholic Beverage Control a copy of the contract of employment pursuant to which said solicitor is employed as provided in section 1 of this subchapter. Written notice of modification of such contracts together with the provisions thereof shall be filed with the director within five days after such modification is effected. Any modification of a contract of employment between a manufacturer or wholesaler and any solicitor whereby the solicitor's salary or commission or compensation of any kind is increased with respect to sales of any particular brand of alcoholic beverages for a period of less than 90 days shall be deemed an incentive bonus, allowance or other inducement prohibited by section 1 of this subchapter.] On or before April 1 of each year, each [such] manufacturer and wholesaler employing any holder of a solicitor's permit during the preceding calendar year shall file with the director a true statement listing all compensation, itemized as to salary, commission, reimbursed expenses or otherwise, paid to each such solicitor by such manufacturer or wholesaler during such calendar year.

13:2-37.3 [Rebates and inducements]
General Prohibited Conduct

[DELETE
PORTION]

No holder of a solicitor's permit employed by a manufacturer or wholesaler of alcoholic beverages [other than malt alcoholic beverages] shall [furnish or offer to furnish], directly or indirectly, [to any retailer any gift, rebate or allowance of money or any thing of value (whether by sale, loan, gift or otherwise) or other discount or inducement including free goods, deals, combination sales, and similar merchandising devices; nor shall such holder of a solicitor's permit sell or offer to sell to any retailer, or solicit from any retailer any order for, any particular brand or brands of alcoholic beverages tied in with, or contingent upon the retailer's purchase of, some other beverage, alcoholic or otherwise, or any other merchandise or service.] engage in any conduct prohibited its employer by the provisions of Title 33 or any regulations promulgated thereunder. Nor shall he or she offer to sell, solicit, or sell alcoholic beverages at a price or upon terms or conditions or under promotions or contests not contained for the operative period in his or her employer's "Marketing Manual" and "Current Price List", kept pursuant to Subchapter 24.

[DELETE] [13:2-37.4 Promotional contests]

SUBCHAPTER 39. [EXTENSION OF CREDIT BY MANUFACTURERS AND
 WHOLESALEERS TO RETAIL LICENSEES]
CREDIT TERMS - REQUIRED RECORDS - RETURNS -NOTICES

13:2-39.1 Credit terms - disclosure on documents

Subject to N.J.A.C. 13:2-39.2(c) [No] no manufacturer or wholesaler shall sell or offer for sale to any [retail] licensee any alcoholic beverages, and no [retail] licensee shall purchase or offer to purchase from any manufacturer or wholesaler any alcoholic beverages except for payment before or upon delivery of such alcoholic beverages or on credit terms which [require that payment therefor be made not later than the same date of the month following the date of delivery. When, in the month following the date of delivery, there is no equivalent date, payment shall be made not later than the last day of the month following the date of delivery. If the payment date falls on Saturday, Sunday or a legal holiday, the payment shall become due on the first business day thereafter.] shall be fully disclosed on the delivery slip, invoice, manifest, waybill or similar document. Nothing in these regulations shall require any manufacturer or wholesaler to extend credit to any [retail] licensee.

[DELETE
PORTION]

[DELETE] [13:2-39.2 Words and phrases defined]

- [DELETE] [13:2-39.3 Publication of default list and non-delivery list]
- [DELETE] [13:2-39.4 Sale or delivery to retailer on default list or nondelivery list]
- [DELETE] [13:2-39.5 Default notice filed with Director]

[13:2-39.6) 13:2-39.2 Delivery [on] and transportation documents

(a) No manufacturer or wholesaler shall deliver or transport, directly or indirectly, any alcoholic beverage to any [retail] licensee unless such beverage is accompanied by [a bona fide authentic and] an accurate delivery slip, invoice, manifest, waybill or similar document stating the name and address of the [retail] licensee, the state assigned license number, the brand, size of container and quantity of each alcoholic beverages being delivered or transported, and the price and terms of sale, and bearing a printed or stamped legend reading as follows:

"The undersigned [retail] licensee hereby acknowledges that all of the alcoholic beverages itemized above have been ordered and were received on

.
(Date)

."
(Signature by or for [retail] licensee)

(b) Two copies of such delivery slip, invoice, manifest, waybill or similar document shall be truly dated and signed by the [retail] licensee or his agent at the time and on the date of actual delivery of any alcoholic beverage, one of which copies shall be retained for a period of [one] three [year] years from the date thereof by the manufacturer or wholesaler and the other by the purchasing [retail] licensee for a like period at [their] its respective licensed premises, available for inspection by agents of the director, unless the director shall have granted written permission to the manufacturer, wholesaler or retailer to keep [his] its copies at another designated place or in another readily retrievable form [.] ;

(c) Except that with regard to: (1) sales or transfers from manufacturers or suppliers to wholesalers or distributors, when the nature of the documentation and transaction precludes the immediate availability of all documents required in paragraphs (a) and (b), 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 paragraphs (a) and (b), 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 consistent with the sellers Marketing Manual and Current Price List pursuant to Subchapter 24.

13:2-39.3 Delinquent Retailer Credit Notices

(a) Every wholesaler or distributor of alcoholic beverages who notices another wholesaler or distributor that an individual retail licensee is delinquent in payment for deliveries shall do so in good faith and shall:

1. take all reasonable diligence to ascertain the accuracy of the outstanding indebtedness, including verification of same; and
2. notify the delinquent retailer of the contents of the delinquency notice and the identity of all licensees noticed of the same, at the same time notification is given another wholesaler or distributor, or as soon thereafter as reasonably practicable; and
3. maintain for two years a record of all wholesalers and distributors noticed, and the contents of the notice and the date thereof; and
4. upon satisfaction of the delinquency, notice all wholesalers or distributors originally noticed of the delinquency within 3 business days, of such satisfaction by the same form and method as the original notice, and maintain proof of such notification and the contents thereof for 2 years.

(b) Any noticing wholesaler or distributor who fails to comply with the provisions of this regulation shall be presumed to have injured the business of an aggrieved retailer by discrimination, pursuant to Subchapter 24 of these regulations, in terms of credit.

(c) Whenever the license of any retail licensee whose name is the subject of a delinquency notice is transferred or extended to another person, the name and address of the transferee shall be substituted by notice in the place and stead of the transferor, as of the date of license transfer, unless satisfaction of the delinquency has been made.

(d) Nothing herein is intended to preclude any action at law or equity to collect any debt or to recover for any injury to business or to preclude the creation or maintenance of credit information in a central clearing house, consistent with law.

(e) Nothing herein shall preclude a wholesaler or distributor from charging reasonable interest on delinquent accounts.

13:2-39.4 Return of Alcoholic Beverages

No wholesale licensee shall accept return of a product from a retail licensee for credit except on such terms as are either

- (1) customary to the industry; or
- (2) set forth by the wholesaler in its current price list or marketing manual.

13:2-39.5 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 pickup, 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.

SUBCHAPTER 41. TRANSITIONAL PROVISIONS

13:2-41.1 Power of The Director

The provisions of this subchapter are intended to provide the alcoholic beverage industry with reasonable time to comply with the newly adopted provisions of Chapter 13 and to allow an orderly period of transition, following the elimination of the Wholesale Price List and Minimum Consumer Resale Price Book. Nothing herein shall be construed to limit the authority of the Director to take such other action as is necessary to protect the public interest.

13:2-41.2 Retail Price Stability

(a) During the first sixty (60) calendar days following the effective date of this regulation no retail licensee shall sell or offer to sell any alcoholic beverages in original containers for off-premises consumption at a price less than eighteen percent (18%) above the retailer's cost as defined in N.J.A.C. 13:2-24.8;

(b) During the sixty-first through the one hundred twentieth calendar days following the effective date of this regulation, no retail licensee shall sell or offer to sell any alcoholic beverages in original containers for off-premises consumption at a price less than nine percent (9%) above the retailer's cost as defined in N.J.A.C. 13:2-24.8;

(c) The provisions of this regulation shall expire upon conclusion of the period set forth in paragraph

(b).

13:2-41.3 Use of State Assigned License Numbers

The provisions of N.J.A.C. 13:2-39.2 insofar as that regulation requires exclusive use of the State assigned license number on all delivery and transportation documents shall become effective ninety (90) days following the effective date of these regulations. All other provisions of N.J.A.C. 13:2-39.2 are effective immediately.

13:2-41.4 Sales and Credit

For purposes of the provisions of this chapter governing sales of alcoholic beverages to retail licensees the following provisions shall apply:

(a) Where the order is placed before the effective date of these regulations and delivery occurs after the effective date, terms of sale shall be deemed to require payment within 30 days in accordance with the custom of the industry;

(b) Where the order is placed and alcoholic beverages are delivered prior to the effective date of these regulations, but payment in full is not received as of the effective date, the provisions of N.J.A.C. 13:2-24.4 and N.J.A.C. 13:2-39.3 shall govern;

(c) Beginning 90 days after the effective date of these regulations, no licensee privileged to sell at wholesale may sell, offer to sell or deliver any alcoholic beverage to any retail licensee who is delinquent in payment for transactions occurring prior to the effective date of these regulations unless the licensee selling at wholesale obtains the prior approval of the Director by the filing of a petition setting forth good cause therefor. The petition shall also include the terms and conditions of the delinquent transaction and all the terms for satisfaction thereof. In considering the petition, the Director must determine that the terms for satisfaction are, under the circumstances, commercially reasonable and that such proposed terms do not otherwise violate the provisions of Subchapter 24 of these regulations.

13:2-41.5 Emergency Collection of Sales and Use Tax on Receipts from Sale of Alcoholic Beverages

- (a) Pursuant to N.J.A.C. 13:2-33.3 and the provisions of this Subchapter, it is found and declared that an emergency exists with respect to the collection and payment by licensees of Sales and Use Taxes on receipts from the sale of alcoholic beverages.
- (b) Accordingly; (1) the Minimum Consumer Resale Price List last previously filed with the Division and effective is continued in effect and (2) said continuance is solely for the purposes of determining the Minimum Consumer Resale Price for the collection of Sales and Use Tax pursuant to N.J.S. 54:27B 2(a)

3. "Current Price List" (CPL) - N.J.A.C. 13:2-24.6(c)

The following guidelines are set forth to assist the wholesale trade in complying with the provisions of N.J.A.C. 13:2-24.6(c) when independently developing and filing "Current Price Lists" (CPL) with the Division.

A. Format

:CPL will be submitted in duplicate (one for permanent Division filing, one copy to be available as a public record).

:CPL will be submitted in original, copied or reduced form on 8½ x 11 inch paper with a left hand margin space available for binder placement.

"The first page of each CPL will contain the name, address, telephone number and license number(s) of the filer. Each page will be numbered with indication of the total pages (eg page 2 of 6). The last page will contain the printed or typed name and title of the company officer responsible for the CPL submission and be signed by that person.

B. Confidentiality

:The duplicate copies of the CPL shall be submitted in a sealed envelope with an enclosed dated, signed letter of transmittal. A copy of the transmittal letter is to be attached to the exterior of the sealed envelope containing the CPL.

C. Method of Transmittal

:The sealed CPL may be hand delivered to the Division by the filing date (See, N.J.A.C. 13:2-24.6(c)(2)) or transmitted by "registered" or "certified" mail, postmarked no later than a date prior to which the filing is due. If mailed, the sealed CPL shall be placed within another envelope addressed to: Current Price List - (month), c/o Division of Alcoholic Beverage Control, Newark International Plaza, U.S. Rts. 1 & 9 (Southbound), Newark, New Jersey 07114.

D. Contents

:CPL shall contain all terms of sale offered to the retail trade relating to the products available. Such terms shall be the same for each day of the month for which the CPL is effective. The terms shall relate to individual sale transactions; therefore, cumulative discounts are not permitted, except for keg malt alcoholic beverages (due to the perishable nature of the latter products).

:The use of the term "free goods" or "free merchandise" is disapproved. A wholesaler may not sell below "cost" nor provide free merchandise, except for authorized samples. N.J.A.C. 13:2-24.8. Thus, the suggestion that one case is "free" upon the purchase of products upon specific terms is a misleading reference to a quantity discount contrary to N.J.A.C. 13:2-24.11(a)(1).

:Unless justified by the credit history or risk of a particular individual account, all sales of alcoholic beverages are made to retailers upon 30 days credit. Any policy with respect to discounts for prompt payment or service charges for delinquent payment is to be made individually by each CPL filer.

:Some questions trade sellers may wish to consider in independently developing CPL follow: Does the CPL reflect the company's policy with respect to the return of non-conforming goods? Are prices quoted F.O.B. or inclusive of delivery costs statewide? At what point in time will orders cease to be taken under the terms of a given CPL?

4. Notice of Informational Hearing

Joseph H. Lerner, Director Division of Alcoholic Beverage Control in the Department of Law and Public Safety, pursuant to the authority of N.J.S.A. 33:1-1 et seq. has directed that public informational hearings be conducted on Tuesday, April 22, 1980 concerning comments, suggestions, and factual presentations to delete, modify or otherwise amend Division Regulations concerning the following:

Discrimination in Sales to Wholesalers
N.J.A.C. 13:2-18.1 et seq.

Anti-competitive Retail Trade Practices
N.J.A.C. 13:2-24.1 et seq.

Practices Unduly Designed to Increase Personal Consumption
N.J.A.C. 13:2-24.10

Retail Cooperative Advertising, Joint Advertising with
Non-alcoholic Beverage Products, and Institutional
Advertising
N.J.A.C. 13:2-24.11

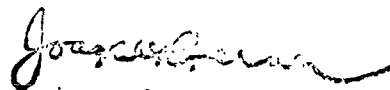
Retail Cooperative Purchasing on other than a Cash Basis
N.J.A.C. 13:2-26(a)(6)

Labeling and Standards of Fill
N.J.A.C. 13:2-27.1 et seq.

Sales in Original Containers for Off-premises Consumption
N.J.A.C. 13:2-35.1 et seq. and 38.1 et seq.

The informational hearings will be conducted at 10:00 a.m. in the Division's fourth floor offices at Newark International Plaza, U.S. Rts. 1 & 9 (Southbound), Newark, New Jersey. If necessary, the Director may continue the hearings after April 22 to another day.

Interested persons are urged to submit written documentation and positions with respect to the regulations referenced above to the Director by Friday, April 18, 1980.



Joseph H. Lerner
Director