

**STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

**Summary of Current Price List Filing for 2018-2019 License Term**

Pursuant to N.J.S.A. 33:1-39 and -93, the Division of Alcoholic Beverage Control (“ABC”) promulgated regulations governing New Jersey’s requirements governing the “maintenance and publication of invoice prices, discounts, rebates, free goods, allowances and other inducements” in the sale of beverage alcohol to retailers. The price posting system requires each wholesaler to file its own Current Price List (“CPL”) with ABC by the 15<sup>th</sup> of the month (or the first workday thereafter if the 15<sup>th</sup> falls on a weekend or holiday) preceding the month during which the CPL’s terms, conditions and price schedule will be effective. Notice to Wholesalers, A.B.C. Bull. 2460, Item 8 (June 2, 1993); N.J.A.C. 13:2-24.6(a)4. These filings help prevent horizontal price fixing, because no wholesaler may examine its competitors’ CPLs until after it has submitted its own CPL and all CPLs have become public records, two workdays after the filing date. N.J.A.C. 13:2-24.6(a)7. Once filed (i.e., posted), the prices contained in a wholesaler’s CPL cannot be changed until the next monthly filing date except by Order of the Director. N.J.A.C. 13:2-24.6(a)5. Every wholesaler must hold to the price schedules in its respective CPL during the month for which it is effective. N.J.A.C. 13:2-24.6(a)6. ABC’s function is to oversee the filing and publication of wholesale price lists and to enforce adherence to them. Heir v. Degnan, 82 N.J. 109, 115 (1980). ABC has enforced the filing deadline since at least 1983. Notice to Wholesalers, supra. The price posting rules foster trade stability by simplifying and enhancing enforcement of the anti-discrimination regulations while ensuring accurate price information is available to all retail licensees. See e.g., Petition for Rulemaking Regarding the Retail Incentive Program Pursuant to N.J.A.C. 1:30-4.1, published at [www.nj.gov/oag/abc/downloads/02\\_Petition-for-Rulemaking-Retail-Incentive-Program.pdf](http://www.nj.gov/oag/abc/downloads/02_Petition-for-Rulemaking-Retail-Incentive-Program.pdf).

As part of ABC’s active supervision of the price posting requirements, this Notice summarizes CPL filings during the 2018-2019 license term. It includes timely and late filed CPLs, amendments, and the number of non-filers. It also includes the number of Special Rulings issued by the Director and Administrative Approvals granted to wholesale licensees.

During the 2018-2019 license term, New Jersey wholesalers filed 4,942 CPLs. Wholesalers that do not exercise the wholesale privilege of selling to New Jersey retail licensees are not required to file CPLs; these account for 438 CPL filings that otherwise would have been filed. The following is a breakdown of these filings:

**CPL SUBMISSION REPORT FOR 2018-2019 LICENSE TERM**

Month/Year	Wholesalers Filing CPLs	Late CPLs	Amended CPLs	Wholesalers Not Required to File	Special Rulings	Administrative Approvals (within 48 HRs)
Jul-18	399	12	16	30	19	7
Aug-18	404	4	8	22	4	2
Sep-18	405	11	12	41	10	5
Oct-18	412	7	4	34	9	5
Nov-18	412	11	5	45	7	10
Dec-18	413	9	7	42	4	9
Jan-19	413	22	10	29	10	8
Feb-19	413	29	11	25	7	17
Mar-19	414	19	15	53	10	11
Apr-19	413	14	7	40	4	8
May-19	417	23	9	38	10	9
Jun-19	427	21	15	39	10	19
<b>TOTALS</b>	<b>4,942</b>	<b>182</b>	<b>119</b>	<b>438</b>	<b>104</b>	<b>110</b>

**Monthly Averages**

CPLs Filed	Late CPLs	Amended CPLs	Wholesalers Not Required to File	Special Rulings	Administrative Approvals
412	15	10	37	9	10

**Monthly Percentages**

CPLs Filed	Late CPLs	Amended CPLs	Wholesalers Not Required to File	Special Rulings	Administrative Approvals
412	4%	2%	9%	2%	2%

**Administrative Approvals**

ABC issues administrative approvals under the following circumstances:

- The wholesaler mailed its CPL sufficiently before the filing date so that it could reasonably expect timely delivery but, for reasons beyond the licensee's control, it was received by ABC less than 48 hours after the CPL filing deadline;
- The wholesaler seeks to correct a bona fide clerical error, which is administrative in nature, such as pricing information under the wrong column heading or on the wrong

line due to computer glitches noticed within 48 hours after CPL filing, updating Brand Registration numbers on new products or adding new products; or

- Other circumstances warranting administrative approval.

### **Special Rulings**

When a wholesaler that normally files a CPL has not done so by the filing date, ABC sends a notification to the wholesaler that its CPL is late. ABC generally issues warning letters to late-filing wholesalers, but continual late filing could subject the licensee to formal disciplinary action, pursuant to N.J.S.A. 33:1-31.

The licensee is required to submit a petition and a certification requesting the Director to accept its untimely CPL. Unless the Director issues the Special Ruling, the late-filing wholesaler may not sell beverage alcohol to any retail licensee in the state. Special Rulings are granted by the Director pursuant to N.J.S.A. 33:1-39, N.J.A.C. 13:2-9.1, -24.6(a)(5); and Notice to All New Jersey Licensed Wholesalers Concerning Current Price List Filing Requirements (March 4, 2013) published at [www.nj.gov/oag/abc/downloads/Notice-NJ-Licensed-Wholesalers%20\\_CPL.pdf](http://www.nj.gov/oag/abc/downloads/Notice-NJ-Licensed-Wholesalers%20_CPL.pdf). The Director may issue a Special Ruling when:


- A wholesaler needs to make corrections or changes to its CPL outside the 48-hour CPL filing deadline for good cause shown, which frequently includes the acquisition of new products. Petitions for Special Rulings must include a certification by an executive officer of the company and must represent:
  - o that the amendment is being submitted in good faith;
  - o that it is being submitted to rectify a bona fide clerical error or because it was caused by circumstances beyond the wholesaler's control;
  - o that if it is granted, it will not give the wholesaler a competitive advantage;
  - o that the request is not being made for other business reasons;
  - o provide supporting evidence for the foregoing; and
  - o the number of prior amendment petitions submitted by that wholesaler during the calendar year; or
- Other circumstances warranting a special ruling.

### **Electronic Current Price List ("e-CPL") Submissions**

During the 2018-2019 License Term, ABC continued its efforts to implement electronic CPL filing. The purpose of this endeavor is to ensure that all retail licensees have access to every wholesaler's full CPL so that they can make better purchasing decisions and to eliminate "blind

price postings.” Thus far, ABC has contracted with a vendor to modify the existing POSSE online licensing system to accept electronic CPLs. Many wholesalers are participating in the development of the uniform electronic CPL templates. As of this date, 160 different wholesalers have filed electronic CPLs, and more than 25% of all CPL-filing wholesalers do so electronically on a monthly basis. The remaining wholesalers file hardcopy CPLs. ABC anticipates making additional modifications to the CPL template before it is finalized and electronic filing becomes mandatory. Subsequently, CPLs will be available online to retailers. ABC anticipates full implementation of electronic CPL filing during calendar year 2020.

Date: 10/31/2019

  
James B. Graziano  
Acting Director