

LAW AND PUBLIC SAFETY

OFFICE OF THE ATTORNEY GENERAL

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Notice of Receipt of Petition for Rulemaking

Retail Incentive Program (“RIP”) Regulation, N.J.A.C. 13:2-24.1, et seq.

Petitioner: Kevin Marc Schatz, Senior Deputy Attorney General, Chief of the Division of Alcoholic Beverage Control’s Enforcement Bureau

Take notice that on June 6, 2019, the Division of Alcoholic Beverage Control (the “Division”) received a petition for rulemaking from the above-referenced Petitioner. Petitioner requests rulemaking as a result of his on-going investigation regarding the Retail Incentive Program (“RIP”) Regulation, N.J.A.C. 13:2-24.1, et seq., that will define parameters, namely a maximum dollar amount of RIPs a wholesaler, including its affiliates, may pay to a licensee, including its affiliates, in any year, to ensure compliance and to make enforcement practical, effective and efficient. Petitioner alleges that the pattern of institutionalized abuses of the RIP regulation is so egregious that immediate action is required while the Division continues its investigation. Alternatively, Petitioner seeks the elimination of RIPs if rulemaking cannot eliminate discrimination and re-establish regulatory compliance.

Petitioner indicates that the problem or purpose that is the subject of the request is that the State’s two largest wine and spirits wholesalers, in conjunction with certain large retailers who are their largest RIP customers, have manipulated and violated the RIP process by falsifying records, offering retailers interest-free financing and extended credit terms, allowing premature RIP payments, and engaging in a practice in which the wholesaler pays more than one RIP per purchase transaction as permissible under the regulation, known as “RIP Padding.” Petitioner states that these practices subsidize retailer profits and constitute discrimination in violation of N.J.S.A. 33:1-

3.1b(10), -89 and -90, and other pertinent regulatory requirements related to credit and recordkeeping. N.J.A.C. 13:2-24.4; N.J.A.C. 13:2-24.1(e)3; N.J.A.C. 13:2-23.32. Petitioner states that these discriminatory practices place small retailers at a competitive disadvantage that will lead to trade instability contrary to N.J.S.A. 33:1-3.1b(7). Petitioner sets forth consequences of such trade instability: 1) small retailers will be forced to leave the marketplace; 2) small retailers may risk prohibited sales to underage and intoxicated persons to maintain their business; 3) consumers will have less access to retail stores and their specialized products; 4) large retailers will have even greater leverage over wholesalers; and 5) large retailers will continue to advocate for repeal of the two-license limitation to fill the void that their discriminatory conduct has caused.

This notice and the full text of the petition filed in this matter are available on the Division's website at <https://www.nj.gov/oag/abc/index.html>.

In accordance with the provisions of N.J.A.C. 1:30-4.2, the Division will subsequently mail to the petitioner and file with the Office of Administrative Law a notice of action on the petition.