

**ATTENTION: NEW 12.39 FILING PROCEDURE IN POSSE**

**GOVERNING BODY INSTRUCTIONS**

**RENEWAL OF INACTIVE LICENSES PURSUANT TO N.J.S.A. 33:1-12.39**

**2021-2022 LICENSE TERM**

The Division of Alcoholic Beverage Control (“Division”) is preparing for the renewal of retail licenses for the 2021-2022 license term. Any license which has been “inactive” (not open and operating) for two full license terms – **since or before June 30<sup>th</sup> 2019 SHALL NOT BE RENEWED UNLESS** the Director issues a Special Ruling allowing the issuing authority to consider renewal pursuant to N.J.S.A. 33:1-12.39 (“12.39 Special Ruling”). **Be advised that the issuing authority has no authority to renew an inactive license until a 12.39 Special Ruling is received from the Director.**

**BE ADVISED THIS IS A NEW FILING PROCEDURE.** In order for the Division to process a request for a 12.39 Special Ruling to authorize renewal of an inactive license, licensees holding a license that has been inactive for more than two license terms are **required** to submit a "Verified Petition" to the Division via the POSSE Online Licensing System (“POSSE”). If the licensee is unable to submit the "Verified Petition" via POSSE, the licensee **must** email the "Verified Petition Form" in PDF format to the Director and pay the required fee(s) via POSSE. The Verified Petition Form can be found on our website at: <https://www.njoag.gov/about/divisions-and-offices/division-of-alcoholic-beverage-control-home/counsel-to-the-director/>. The Verified Petition Form is a form template certification completed and emailed to the Division by a licensee with direct personal knowledge concerning the required facts or by an “authorized representative” (e.g., lawyer or accountant) and is signed and certified to by the licensee.

**No Special Ruling will be granted without a completed Verified Petition Form and payment of filing fee(s) for each license term for which 12.39 relief is sought. NO PAPER PETITIONS AND/OR FEES WILL BE ACCEPTED.**

The licenses located in your municipality that have been inactive for more than two full license terms will be noted on POSSE. (When you see a renewal on your dashboard, you will have to click on that renewal job to see the warning.) These licenses require a 12.39 Special Ruling prior to being renewed by the municipal issuing authority for the 2021-2022 license term. Renewal can only be granted upon receipt of a 12.39 Special Ruling by the Director, a timely filed renewal application, fees (both municipal and State), and Tax Clearance Certificate. **PLEASE NOTE** that licensees who previously received multi-term relief (i.e., a Special Ruling granting relief for the 2020-2021 and 2021-2022 license terms), are **not** required to file a Verified Petition Form for the 2021-2022 license term. However, they must file a renewal application for the 2021-2022 license term. These licenses may be considered for renewal according to the relief granted

in the last Special Ruling issued. If your records reflect information that is different than the information listed in POSSE, please contact the Division to correct any discrepancies.

The Director determines whether to issue a 12.39 Special Ruling after reviewing the Verified Petition that the licensee submits to this Division. **Once the licensee submits the Verified Petition via Posse, the local issuing authority will be notified. If the licensee cannot submit the Verified Petition on POSSE, the licensees are required to provide a copy of their Verified Petition Form to the local issuing authority. This procedure is so that the local issuing authority can provide comments to the Division. Due to the high volume of petitions received by the Division and in order to expedite processing, if you wish to be heard with regard to a petition from a licensee, please contact Counsel to the Director's Office of the Division at (609) 376-9760 IMMEDIATELY upon your receipt of the filing.** Please note the Verified Petition Form must not be attached to renewal applications when sent to our Licensing Bureau. Renewal Applications are processed by the Division's Licensing Bureau, while Verified Petition Forms are processed by the Counsel to the Director.

The Director has the authority to grant 12.39 relief for more than one license term at a time. Upon submission of a Verified Petition Form and a non-refundable filing fee of \$100 per license term, the Director may consider requests for up to **two terms only** (2021-2022 and 2022-2023) of relief based upon appropriate evidential submissions and good cause. Therefore, qualifying licensees are permitted to submit, and the Director will consider, petitions that request relief for the 2021-2022 and 2022-2023 license terms pursuant to N.J.S.A. 33:1-12.39. If a licensee is requesting relief for **prior** terms (e.g., 2019-2020, 2020-2021 etc.), this two-term limitation will not apply.

The Special Ruling will authorize your governing body to consider renewal of the inactive license for the 2021-2022 term, and any future renewal periods stated in the Ruling. Be advised that the local issuing authority may not renew the license for any future license terms at this time, even if the 12.39 Special Ruling grants relief for future license terms. For example, if a 12.39 Special Ruling grants relief for the 2021-2022 and 2022-2023 license terms, the issuing authority may consider the license for renewal for the 2021-2022 license term now, and consider the license for renewal for the 2022-2023 license term next year upon receipt of a timely filed, properly completed renewal application, fees, and Tax Clearance Certificate.

**Please note the following instructions with respect to the renewal procedure for the licenses on the attached list:**

1. **DO NOT REJECT** a license renewal application and renewal fee for an **inactive license** submitted on or before July 30, 2021 because a 12.39 Special Ruling has not yet been issued. See N.J.S.A. 33:1-12.18. **All timely filed applications (applications received by**

**the issuing authority on or before July 30, 2021 and fees should be processed** in the same manner in which you process all license renewal applications and fees.

2. If a licensee files a renewal application and fees for the 2020-2021 license term between **October 31, 2020<sup>1</sup>** and July 30, 2021, you must accept the renewal application and fees. However, a license **may not** be renewed by your governing body prior to receiving a Special Ruling pursuant to N.J.S.A. 33:1-12.18 (“12.18 relief”) from the Division. A copy of the instructional letter which outlines the procedure to petition for relief pursuant to N.J.S.A. 33:1-12.18 is included on the Division’s website: <https://www.njoag.gov/about/divisions-and-offices/division-of-alcoholic-beverage-control-home/counsel-to-the-director/>.
3. **DO NOT** approve a Resolution renewing an inactive license which requires a 12.39 Special Ruling until the licensee has received a 12.39 Special Ruling authorizing consideration for renewal.
4. **If a licensee requires a 12.39 Special Ruling, ADVISE the licensee to file a Verified Petition with the Division on POSSE.** Advise licensees of the \$100 filing fee per license term requested required to accompany the Verified Petition. **If the licensee cannot submit the Verified Petition on POSSE, the Verified Petition Form and an instructional letter for licensees concerning the petition process pursuant to N.J.S.A. 33:1-12.39 is available on the Division’s website:** <https://www.njoag.gov/about/divisions-and-offices/division-of-alcoholic-beverage-control-home/counsel-to-the-director/>.
5. If a licensee received a two year **“fire/casualty”** ruling last year pursuant to N.J.S.A. 33:1-12.39 which authorized renewal for the 2020-2021 and 2021-2022 license terms, be sure to check that the licensee filing for renewal for the 2021-2022 license term is the same licensee that renewed last year. If the license has been transferred in the last year to someone other than the licensee who actually suffered the fire/casualty loss, then the new licensee must petition the Division pursuant to N.J.S.A. 33:1-12.39 before your local governing body can renew the license.

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<sup>1</sup> Pursuant to Administrative Order 2020-02, due to the effect of the COVID 19 pandemic on licensees, the Director extended the 2019-2020 license term to September 30, 2020. In accordance with N.J.S.A. 33:1-12.13, licensees could timely renew their licenses until October 30, 2020 without needing to petition for 12.18 relief.

See <https://www.nj.gov/oag/abc/downloads/Order-extending-2019-20-municipal-and-state-liquor-licenses-and-permits-to-Sept-30-2020.pdf>

6. SPECIAL CONDITIONS

If a license was subject to a Special Condition requiring activation by June 30, 2021, imposed by a prior Special Ruling, by a Consent Order signed by the licensee and this Division, or imposed by a Final Conclusion and Order by the Director, **DO** give licensees their renewal application and inform them to contact this Division regarding the status of their license. However, make certain that the licensees know that unless they petition the Director, request that the Special Condition be vacated, and receive a written Special Ruling, their license will presumptively lapse and cease to exist for failure to activate as required by the prior Special Ruling. (Should the Division determine NOT to grant authorization, you will be so informed and advised to pass a Resolution which reflects that the license has lapsed for failure to activate as required by the Special Ruling, a copy of which must be submitted to the Division's Licensing Bureau).

7. ADVISE THE DIVISION of any licenses which have been inactive for two or more full license terms that are not indicated on POSSE, due to:

- 1) Licensee's failure to list the correct inactive date on license application; or
- 2) The Division's failure to capture inactive date stated on license application; or
- 3) The license's short "activation" periods in which it attempts to avoid the requirements of N.J.S.A. 33:1-12.39. Unless a license is operated with the ability and intent to remain active in a regular and continuing fashion, it has not been activated and should be listed as inactive; or
- 4) Any other information you may have regarding the inactive status of the license.

8. ADVISE all licensees who hold an inactive license that they are required by law to receive a Tax Clearance Certificate from the Division of Taxation prior to being renewed. Questions regarding a clearance certificate should be directed to their case worker or by visiting the nearest Taxation Regional Office to their business.

ADVISE THE DIVISION if a license has become ACTIVE. **If a license has become active, and is open and operating**, please EMAIL the following to the attention of the Licensing Bureau: A copy of the amendment to the renewal application (pages 1, 2, and 11) completed, signed, and certified to by the licensee. Question 2.6A should be checked "YES". Also, advise as to the date the license became active. However, advise a licensee that if its license is a "pocket license" (a license not sited at a premises) and it wishes to activate its license at a premises during any of the license terms referenced

above, it must file a full 12-page application transferring the license from "pocket" status to the intended premises. Licensees should contact their local issuing authority to comply with all requirements regarding the transfer.

If you have any questions regarding the **procedure for filing Verified Petitions** for inactive licenses, please contact Counsel to the Director's office at (609) 376-9760.

If you have any questions regarding the **inactive status** of licenses as listed on POSSE, you may contact your Agency Service Representative at (609) 984-2830.