

LAW AND PUBLIC SAFETY

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Notice of Action on Petition for Rulemaking

Regulation of Wholesaler Credit

N.J.A.C. 13:2-24.4

Petitioner: Michael I. Halfacre, Esq., Executive Director, Beer Wholesalers of New Jersey and President and CEO of Credit Compliance Corporation.

Take notice that the Division of Alcoholic Beverage Control (Division) has determined to grant the petition for rulemaking described below, which was filed by Michael I. Halfacre, Esq., Executive Director, Beer Wholesalers of New Jersey and President and CEO of Credit Compliance Corporation.

The Petition

The petitioner requests that the Division engage in rulemaking regarding the regulation of wholesaler credit, N.J.A.C. 13:2-24.4. Specifically, petitioner requests rulemaking to permit wholesalers and Credit Compliance Corporation to serve notices of obligation via electronic transmission (email) upon defaulting retailers through the existing Credit Compliance system. N.J.A.C. 13:2-24.4(c) currently allows a wholesaler to transmit a written or electronic notice of delinquency to a delinquent retailer on the third business day after the notice of obligation is sent by the wholesaler. Petitioner states that Credit Compliance Corporation currently sends notices of delinquency by email, which has led to increased compliance with the rule. Petitioner states that the email system is more efficient as it provides retailers with “real time” notices of obligation. Petitioner further states that because the vast majority of communications between wholesalers

and retailers are through email or in person, it is reasonable that notices of obligation also be permitted to be sent in this manner.

The petition was accepted by the Division on June 13, 2019. A notice acknowledging receipt of the petition was published in the New Jersey Register on August 5, 2019, at 51 N.J.R. 1296(b). A notice of action indicating the need for further deliberations by the Division was published in the New Jersey Register on September 3, 2019, at 51 N.J.R. 1439(a).

The Division's Response to the Petition

The Division has further reviewed the materials submitted by petitioner, has conducted research on past and present practices, and has engaged in informal discussions with industry members concerning the credit regulation. Based on the foregoing, the Division has determined that it will grant the petition and engage in rulemaking to include the addition of email communication as an option for wholesalers, Credit Compliance Corporation, and credit information agencies to serve notices of obligation upon defaulting retailers. Additional reasons supporting the Division's determination include: 1) email communication is an accepted, reliable, cost-effective, and often-preferred method of communication; and 2) email communication is currently permitted in the issuance of the notice of delinquency.

In order to maintain an orderly marketplace and balance in the industry, this addition of electronic communication as an optional form of service for the notice of obligation will not alter any time frames upon which payment must be made and received as set forth at N.J.A.C. 13:2-24.4. For example, service by electronic communication of the notice of obligation will be deemed complete on the second business day following the date of electronic service. This is consistent with the current rule that deems service complete on the second business day after the wholesaler mails or personally serves the notice of obligation upon the defaulting retailer. But for the addition

of the option of emailing the notice of obligation, the intent and practice of the rule will remain the same. This option of email service will provide wholesalers, Credit Compliance Corporation, and credit information agencies with a more streamlined and modernized process that takes advantage of the efficiency and cost-saving nature of today's technology.

In addition to including the option of email service for the notice of obligation, the rulemaking will include an addition to N.J.A.C. 13:2-24.4(g). N.J.A.C. 13:2-24.4(g) provides the Director with the discretion to relax the provisions of the credit rule, provided one of the enumerated instances is satisfied. The Division intends to add an all-inclusive subpart to this section that would allow the Director to relax the rule for instances not currently contemplated under the rule.

In accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Office of Administrative Law's implementing rules at N.J.A.C. 1:30-4.2, the Division must initiate this rulemaking within 90 days of granting the petition, unless additional time is needed. Once the Division publishes the notice of proposal as described above, the Division will provide an opportunity for public comment. See N.J.S.A. 52:14B-4.

A copy of this public notice is being mailed to the petitioner as required pursuant to N.J.A.C. 1:30-4.2(d) and will be posted on the Division's website.