

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

**AN 2022-02
ADVISORY NOTICE TO INDUSTRY EXTENDING AN 2021-04
REGARDING BACK-ORDERED PRODUCTS**

Due to the COVID-19 pandemic, wholesalers in the alcoholic beverage industry have experienced supply chain issues that have affected their ability to complete and deliver orders of particular products within the month when these products were ordered. Different wholesalers dealt with their back-order issues differently, especially in the areas of credit and retailer incentive programs (“RIPs”). The industry raised these concerns to the Division of Alcoholic Beverage Control (the “Division”) during the pandemic, and sought relief in order to maintain stability in the alcoholic beverage marketplace.

On November 24, 2020, the Division issued Advisory Notice 2020-11, which set forth a uniform approach available to all wholesalers affected by supply chain problems. Essentially, AN 2020-11 allowed wholesalers that were unable to fulfill an order with a RIP to honor that RIP if the delivery of the back-ordered goods was completed within 30 days of an initial invoice (even if the delivery occurred in a different month from the initial invoice). Similarly, AN 2020-11 permitted wholesalers to honor the price posted when an initial order was placed, again, even if delivery occurred in a different month from the initial invoice. On February 28, 2021, based on the Division’s determination that the supply chain issues continued unabated, the Division extended AN 2020-11 until September 30, 2021, with one significant amendment. See Advisory Notice 2021-04.

Based on a request from the New Jersey Wine and Spirits Wholesaler’s Association (“NJWSWA”), the Division amended AN 2021-04 to allow wholesalers 60 days to complete

their orders containing back-ordered goods, rather than 30 days. AN 2021-04 also allowed wholesalers to mitigate any issues associated with back-ordered goods by offering retailers substitute goods within the same brand family; by honoring small quantity RIPs, if applicable, based on products previously delivered; and by allowing retailers to cancel the entire transaction, provided no sales of the previously delivered product were made. As a last resort, a wholesaler unable to satisfy the delivery of a back-ordered product within 60 days was permitted to petition the Director for relief.

As noted above, AN 2021-04 expired on September 30, 2021. The Division has since learned from a major New Jersey wholesaler that supply chain issues continue to plague the industry. As such, although the Division expects problems with back-ordered products to resolve as the State emerges from the effects of the pandemic, the Division has determined that it is in the best interest of the alcoholic beverage industry to continue temporarily the relief set forth in AN 2021-04 until it concludes that such relief is no longer needed to address the current situation.

Accordingly, the Division will permit all wholesalers to avail themselves of the temporary provisions for back-ordered products set forth at length in AN 2021-04. As noted in AN 2021-04, if a wholesaler provides any relief to a retailer that is authorized by this advisory, it must be provided to all retailers on a non-discriminatory basis.

Further, any wholesaler that avails itself of the provisions authorized by this advisory shall submit a report to the Division in a searchable spreadsheet format (such as Excel) by no later than December 31, 2022, and every six months thereafter, for as long as this AN is in effect. The report shall include, at a minimum: name and size of product on back order; initial invoice date; how much product was initially delivered; how much product is on back order; price of

product posted in CPL at time of initial order; RIP associated with product at time of initial order; date of delivery of remaining product; date of RIP payment to retailer and amount; price of product and RIP on CPL in effect at time of delivery; whether retailer accepted substitute product within same brand family; whether retailer cancelled entire transaction; whether wholesaler honored small case RIP and cancelled remaining order; and whether wholesaler petitioned for relief if it could not deliver back-ordered product within 60 days of the initial order, and outcome of petition. The Division will evaluate this information in order to determine whether it is appropriate to continue the relief set forth herein.

If the Division receives a request from an industry member seeking to avail itself of the relief set forth herein, the Division will look to ensure that the beneficial aspects of competition and trade stability are maintained, and that there is no discrimination in the sale of alcoholic beverages to retail licensees. See N.J.S.A. 33:1-3.1(b)(6), (b)(7) and (b)(10).

The provisions being implemented in this Advisory Notice are based on representations made by members of the alcoholic beverage industry. Should any of these representations be found to be false or inaccurate, the Division reserves its rights to modify or rescind this Advisory Notice and/or take appropriate enforcement action.



**JAMES B. GRAZIANO
DIRECTOR**

DATED: June 28, 2022