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

IN THE MATTER OF THE APPLICATION TO PERMIT THE RELAXATION OF N.J.A.C. 13:2-27.2 WHICH PROHIBITS THE SALE OF MALT ALCOHOLIC BEVERAGES IN CONTAINERS MARKED FOR DEPOSIT SIERRA NEVADA BREWING COMPANY	))))))))))	SR 2021-09 SPECIAL RULING GRANTING RELAXATION OF N.J.A.C. 13:2-27.2

Sarah Santana, on behalf of Sierra Nevada Brewing Company

BY THE DIRECTOR:

On July 29, 2021, the Petitioner, Sierra Nevada Brewing Company ("Petitioner"), filed a petition requesting relaxation of N.J.A.C. 13:2-27.2(a), which prohibits the sale of malt alcoholic beverages in containers marked for deposit from another state. This regulation is intended to ensure that malt alcoholic beverages are obtained from an authorized source, tax revenues are paid, and the likelihood of transshipment (e.g., obtaining malt alcoholic beverages from an unauthorized source) of large quantities of malt alcoholic beverages is prevented. The practice of transshipping results in, among other things, consumers having to purchase products at higher prices to account for the retailer's increased cost to purchase deposit marked containers. 27 N.J.R. 2051(a), 2060-2061 (1995). This practice has the potential to place retailers that do not sell products in deposit marked containers at a competitive disadvantage and creates instability within the marketplace.

N.J.A.C. 13:2-9.1 provides that the rules of the Division of Alcoholic Beverage Control (the "Division") may be relaxed by the Director upon a showing of undue hardship, economic or otherwise, on a licensee, that the waiver of the rule would not unduly burden any affected parties, and that the waiver is consistent with the underlying purposes of Title 33 and their implementing regulations.

The Division has reviewed the submission from the Petitioner and has considered all of the facts and circumstances related to this matter. The Petitioner requests a relaxation of N.J.A.C. 13:2-27.2(a) to allow for the shipment of approximately 2,846 barrels of deposit marked containers for sixteen brands identified in Schedule A to its petition for a one-year period. See July 26, 2021 Petition, Schedule A (attached hereto). Petitioner states that these sixteen brands account for 18.6% of consumer requested brands in New Jersey and account for .47% of Petitioner's overall production. Because Petitioner's total of shipments for all of its products of malt alcoholic beverages exceeds 3,000 barrels annually, Petitioner requires relaxation of the regulation.

The Petitioner states that this waiver is requested due to the financial hardship incurred by Petitioner to produce New Jersey specific labels and costs for downtime and labor in material changeovers for these small production brands. Petitioner states that its costs for downtime and changeover of equipment and labor is $1,403.00. Additionally and more substantially, Petitioner states that its costs for packaging and shipping for the requested brands is $217,767.00. Absent this waiver, Petitioner would be unable to provide its brand to New Jersey wholesalers for their distribution, which would make the product unavailable for retailers and consumers.

Petitioner asserts that, if their request is granted, their standard business operations would proceed in the normal course. Petitioner's product would still be distributed through New Jersey's three-tier system, be fully compliant with taxes owed, be brand registered, contain the same federal and State approvals as the typical New Jersey-packaged products, and contain the same malt alcoholic beverage.

The Division has reviewed the Petitioner's submission and finds that the Petitioner has established good cause in accordance with the requirements of N.J.A.C. 13:2-9.1 to warrant relaxation of the provisions of N.J.A.C. 13:2-27.2(a) for a one year period from the date of this Special Ruling. Petitioner will likely suffer financial loss if it is not able to sell its products in the New Jersey marketplace, and this unavailability of products could have a negative impact on the brand. Wholesalers may also suffer an economic and reputational hardship, if they are not able to fill the purchase orders of their retail customers. And, New Jersey retailers and consumers may suffer hardship if Petitioner's products are not available for sale in New Jersey. In addition, relaxation of N.J.A.C. 13:2-27.2(a) is not likely to adversely affect competition in the marketplace or negatively impact the purposes of the regulation, which is to ensure that alcoholic beverages come from a legitimate source because, based on the Petitioner's representations, the products will be distributed by New Jersey licensed wholesalers. The Division will entertain petitions for relaxation of N.J.A.C. 13:2-27.2 by any affected party that is required to have New Jersey specific labels on its products.

Lastly, the relaxation is consistent with the underlying purposes of Title 33 to maintain an orderly marketplace as the product will be distributed through New Jersey's three tier system, be fully tax paid, be brand registered, and contain the same federal and State approvals as the typical New Jersey packaging.

The Division notes that it is reviewing N.J.A.C. 13:2-27.2 to reassess its applicability in light of current industry practices aimed at preventing transshipping of malt alcoholic beverages and may modify or repeal this regulation in the future if the regulation is no longer meeting its stated purpose.

Accordingly, for the reasons set forth herein, the Division will grant the relief requested and will authorize Petitioner to distribute those sixteen products identified in Schedule A to the petition to New Jersey wholesalers with a label marked for deposit in another state for the limited time period of one year from the date of this Special Ruling. Please note that the approval granted herein is conditional and based upon the representations set forth in the Petitioner's petition and subsequent submissions. Should the actual facts differ from the representations made by the Petitioner, the Division reserves the right to rescind or modify this relaxation.

JAMES B. GRAZIANO
DIRECTOR

DATED: August 12, 2021
JBG/JM