

**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 )  
)  
)  
)  
COMPAÑIA CERVECERA DE )  
PUERTO RICO, INC. )

SR 2022-02  
SPECIAL RULING GRANTING  
RELAXATION OF N.J.A.C. 13:2-27.2

Maria F. Archevald., on behalf of Compañia Cervecera de Puerto Rico, Inc.

BY THE DIRECTOR:

On December 2, 2021, the Petitioner, Compañia Cervecera de Puerto Rico, Inc. (“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 create 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 or waived by the Director upon a showing of undue hardship, economic or otherwise, on a licensee; the waiver will not unduly burden any affected parties; and the waiver is consistent with the underlying purposes of Title 33 and the 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 70,000 cases of deposit-marked containers of Medalla Light (10 oz can), Medalla Light (12 oz. bottle), Medallito Light (7 oz. bottle) to Petitioner’s New Jersey distribution network from December 31, 2021 to December 31, 2022.

Pursuant to N.J.A.C. 13:2-27.2(b), the prohibition on deposit-marked containers does not apply if the total of all shipments from the brewery of malt alcoholic beverages for the past full year or part calendar year in New Jersey did not exceed 3,000 barrels of 31 fluid gallons capacity


or their container equivalent. The Petitioner states that the waiver is requested because the company realized in November 2021 that it had accidentally shipped more than the container equivalent of 3,000 barrels in 2021. Accordingly, the Petitioner also requests relaxation of N.J.A.C. 13:2-27.2(a) retroactive to 2021 to address this unintentional error.

The Petitioner states that without the requested waiver, it would be financially unfeasible and operationally impossible for the company to prepare labels without the deposit mark. According to the Petitioner, the estimated cost of compliance would be \$115,000. The Petitioner asserts that, if the request for relaxation is granted, its products will be brand-registered and distributed through New Jersey's three-tier system; be fully compliant with taxes owed; will contain the same federal and State approvals as typical New Jersey packaged products; and will 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 the requested time period from December 31, 2021 to December 31, 2022. Petitioner will likely suffer financial loss if it is not able to sell its products in the New Jersey marketplace, and this unavailability could have a negative impact on the brand. Wholesalers may also suffer hardship, both economically and reputationally, if they are not able to fill the purchase orders of their retail customers. And, New Jersey retailers and consumers may suffer hardship if the products are not available for sale in New Jersey. In addition, relaxation of N.J.A.C. 13:2-27.2(a) does not unduly burden any affected party, 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. 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, 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 requested relief and authorize the Petitioner to distribute its products to New Jersey wholesalers with a label marked for deposit in another state for the time period January 1, 2022 through December 31, 2022 (and retroactive to 2021). Please note that the approval granted herein is conditional and based upon the representations set forth in the Petitioner's petition and supplemental emails. Should the actual facts differ from the representations made by the Petitioner, the Division reserves the right to rescind this relaxation.

  
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JAMES B. GRAZIANO  
DIRECTOR

DATED: January 28, 2022