

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

IN THE MATTER OF THE)
APPLICATION TO RELAX)
N.J.A.C. 13:2-20.1 TO ALLOW)
TRANSPORTATION OF ALCOHOLIC)
BEVERAGES WITHOUT TRANSIT)
INSIGNIA OR TRANSPORTATION)
LICENSE INSIGNIA)
_____)

SR 2023-12
SPECIAL RULING GRANTING
RELAXATION OF N.J.A.C. 13:2-20.1

Jeffrey A. Warsh, Esq., Attorney for Gallo Wine Sales of New Jersey, Inc.

BY THE DIRECTOR:

On December 13, 2023, Gallo Wine Sales of New Jersey, Inc. (Gallo Wines Sales), a plenary wholesale licensee (3400-23-033-004), experienced a computer-related system malfunction, impacting its ability to pick alcoholic beverage product and load its vehicles from its operation in Elizabeth, New Jersey. According to Gallo Wines Sales, the system malfunction has resulted in an inability to fill and load orders efficiently onto its existing fleet of vehicles for delivery to its customers. Alternative approaches, such as making deliveries from solicitors' permitted vehicles, have proven unsuccessful. As a consequence, Gallo Wine Sales has been unable to service approximately 500 accounts and deliver approximately 6,000 cases of product to its customers. Two days after this ongoing system malfunction, Gallo Wine Sales submitted a petition to the Division of Alcoholic Beverage Control (Division) requesting relaxation of N.J.A.C. 13:2-20.1 so it can rent up to six cargo vans and use them to transport product to its retail customers in New Jersey, without transit insignias. If the relief sought is granted, it would be valid through December 23, 2023, or until normal business operations resume.

Pursuant to N.J.A.C. 13:2-20.1, a licensee cannot legally transport alcoholic beverages in any vehicle unless it is owned, leased or contracted for by the licensee, and the licensee has procured a transit insignia (or transportation license insignia, limited transportation permit or emergency trip permit, if applicable) from the Division. Once a transit insignia or transportation license insignia is received, it must be directly affixed to the exterior of the vehicle. N.J.A.C. 13:2-20.8. In order to obtain a transit insignia, the licensee must log in to POSSE, the Division's online licensing system, and electronically apply for the insignia and pay the required \$50.00 fee. However, all of these regulatory requirements may be relaxed or waived upon a showing of undue hardship on a licensee, provided such waiver is consistent with the underlying purposes of Title 33 and corresponding regulations and does not unduly burden any affected parties. N.J.A.C. 13:2-9.1.

In support of its petition, Gallo Wine Sales asserts that it will suffer economic hardship if relief is not granted. While it has tried to use alternative means to deliver its products to its customers (by way of properly permitted solicitors' vehicles), these alternative means have not been able to adequately address the problem and Gallo Wines Sales will continue to suffer hardship if it cannot deliver ordered product. Gallo Wine Sales also asserts that relaxing the regulation would not unduly burden other parties—on the contrary, the requested relief would benefit retailers and consumers seeking its high-demand, exclusive products.

The Division has reviewed the request by Gallo Wine Sales for relaxation of N.J.A.C. 13:2-20.1. Based on this review, the Division is satisfied that Gallo Wine Sales will suffer economic hardship if it is unable to service its accounts and timely deliver previously-ordered products during the holiday season, in particular during the critical peak period between now and December 23rd. The Division does not believe that granting relief will unduly burden any affected

parties. In addition, granting relaxation on a temporary basis under these exigent circumstances would not undermine the purposes of Title 33 or the corresponding regulations, which is to, among other things, maintain a stable and well-functioning alcoholic beverage market.

Accordingly, it is on this 18th day of December, 2023,

ORDERED that the request by Gallo Wine Sales to relax N.J.A.C. 13:2-20.1 is GRANTED; and it is further

ORDERED that Gallo Wine Sales is authorized to transport alcoholic beverage products in leased cargo vans (up to six) without transit insignia until December 23, 2023, or until normal operations can resume without need for the cargo vans, whichever date is earlier; and it is further

ORDERED that Gallo Wine Sales maintain exclusive possession, control and operation of the leased cargo vans in accordance with N.J.A.C. 13:2-20.5(3); and it is further

ORDERED that the approval granted herein is based upon the specific facts alleged in the petition and, therefore, is subject to further review and modification should the factual circumstances warrant.


JAMES B. GRAZIANO
DIRECTOR

JBG/RL