

LAW AND PUBLIC SAFETY

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Refund of Fees, Qualifications of Officers and Members, Rehabilitation Employment Permit; Duration; Types; Fees, Petition; Contents, Grounds for Relief, Penalty Schedule, Definition of Violation, Successive Violations, Application; Fees, Possession of Container Mislabeled as to Fill Prohibited; Exception, Prohibition Against Offering Substitute Beverages; Exception, Regulation of Wholesaler Credit, Required Records, Required Filings and Required Time for Filings, Effect of the Filing of a Verified Petition, and Payment of all Fees for Special Permits by Director

Proposed Amendments: N.J.A.C. 13:2-4.8, 8.6, 14.7, 15.2, 18.1, 19.11, 20.6, 23.15, 23.19, 24.4, 24.6, 42.1, and 42.4

Proposed New Rule: N.J.A.C. 13:2-5.7

Authorized By: Michael I. Halfacre, Director, Division of Alcoholic Beverage Control.

Authority: N.J.S.A. 33:1-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2015-062.

Submit written comments by July 31, 2015, to:

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The agency proposal follows:

Summary

The Division of Alcoholic Beverage Control (the Division) proposes to amend rules at N.J.A.C. 13:2, which governs licensing for the sale and distribution of alcoholic beverages and otherwise regulates the sale and distribution of alcoholic beverages. The proposed amendments and new rule will conform fees to the statutory amounts, clarify language, correct citations, and increase certain permit and other fees. The proposed amendments will prohibit and impose penalties for “marrying” alcoholic beverages and serving substituted brands. Amendments would include the statutory 30-day grace period for applications for new and renewal applications when a licensee has failed to timely renew the license and while the licensee’s request for relief is pending before the Director of the Division. These and other amendments are detailed below.

N.J.A.C. 13:2-4.8(a)

The Division proposes to correct a cross-reference to another rule in this section, which provides for refunds of fees when an application for a new license or renewal is denied, from N.J.A.C. 13:2-11 to N.J.A.C. 13:2-2.11.

N.J.A.C. 13:2-5.7

The Department proposes to add a new rule that would make fees associated with special permits issued under N.J.A.C. 13:2-5 non-refundable, unless waived by the Director under the general relaxation rule. This is the only type of permit fee that is non-refundable. In the Division’s experience, an applicant for a special permit is more likely to withdraw the application and request a refund, possibly because the permit is only for a single event. However, the Division must still spend the time and resources required to review the permit and the non-refundable fee will cover those costs.

N.J.A.C. 13:2-8.6(a)

N.J.A.C. 13:2-8.6(a) prohibits issuance of a permit under certain circumstances. Where the rule says “No club license shall be used ...” the Division proposes to change the word “used” to “issued.”

N.J.A.C. 13:2-14.7(c)

The Division proposes to amend N.J.A.C. 13:2-14.7(c) to conform the fee for a rehabilitation permit to the statutory fee of \$100.00 in N.J.S.A. 33:1-26. The Division has been assessing the statutory fee, although the fee in the current rule is \$125.00.

N.J.A.C. 13:2-15.2

An individual who has been convicted of a crime involving moral turpitude may petition the Director to remove this statutory disqualification from holding a license or permit. The Division proposes to amend N.J.A.C. 13:2-15.2 to conform the fee for a petition to remove disqualification from holding a license or permit to the statutory fee of \$100.00 in N.J.S.A. 33:1-31.2. The Division has been assessing the statutory fee, although the fee in the current rule is \$125.00.

N.J.A.C. 13:2-18.1(b)

N.J.A.C. 13:2-18 provides a form of action and remedy for wholesalers who claim discriminatory termination by importers, blenders, distillers, rectifiers, and wineries. The Division proposes to amend the introductory language of N.J.A.C. 13:2-18.1(b) to expressly identify “importers, blenders, distillers, rectifiers, and wineries” as the persons or entities subject to a claim of discrimination by a wholesaler.

N.J.A.C. 13:2-18.1(b)1 through 10 codifies the defenses available to defend against a claim of discrimination by a wholesaler. One of the defenses is a material breach of an agreement by the wholesaler. The Division proposes to amend N.J.A.C. 13:2-18.1(b)10 to clarify that an agreement may be established either by a writing or by a course of dealing between the wholesaler and the refusing seller. Consistent with the well-established interpretation of the rule by the Division, a writing is one way to establish a material breach under this paragraph, but a writing is not required when the breach is based on a course of dealing. The phrase “in writing” will be relocated to precede “or established by a course of dealing.”

N.J.A.C. 13:2-19.11(i)

The Division proposes to amend the Penalty Schedule in N.J.A.C. 13:2-23.19.11(i) to add penalties for practices to be prohibited under three proposed amendments: N.J.A.C. 13:2-23.15(b), which would prohibit marrying bottles of alcohol, 23.19(b), which would prohibit sale of substituted brands of alcohol, and 24.6(a)4, making failure to timely file the monthly Current Price List (CPL) a violation subject to a penalty.

N.J.A.C. 13:2-20.6(a)

The Division proposes to amend the fee for transit insignias to conform to the statutory fee of \$50.00 in N.J.S.A. 33:1-28. The Division has been assessing the \$75.00 fee in the current rule. A transit insignia is a decal provided by the Division to licensees that authorizes them to transport alcoholic beverages in their own vehicles.

N.J.A.C. 13:2-23.15

The Division proposes to add new N.J.A.C. 13:2-23.15(b) to prohibit marrying bottles of alcohol. “Marrying” is an industry practice of pouring the contents of a larger bottle of alcohol into a smaller bottle, or the consolidation of different bottles into one. As set forth in a Notice to Licensees from March 24, 1959 (Bulletin 1270, page 7), all refilling of bottles, even with the same brand, is unlawful as it constitutes bottling without a license. Division investigators found instances of this practice in restaurants in enforcement actions over the past year and the intent of this amendment is to give clear notice that the practice is prohibited.

N.J.A.C. 13:2-23.19

The Division proposes to add new N.J.A.C. 13:2-23.19(b), which would prohibit the serving of substitute brands of alcohol to consumers without their consent. Division investigators found instances of this practice, as well as marrying, in enforcement actions over the past year,

and for the same reasons, the amendment is needed to give clear notice that retailers may not substitute brands.

N.J.A.C. 13:2-24.4(g)1

N.J.A.C. 13:2-24.4 regulates practices of wholesalers who sell on credit to retail licensees, including the procedure to be followed when a retail licensee defaults and the consequences of the retail licensee's default. The primary objective of this section is to establish industry stability and protect the alcoholic beverage tax base. Under certain circumstances, a wholesaler may stop issuing credit and require cash on delivery. A retail licensee seeking relaxation of the cash on delivery requirement must meet one of three conditions in N.J.A.C. 13:2-24.4(g). N.J.A.C. 13:2-24.4(g)1 allows relaxation where the licensee and creditor-wholesalers have executed among themselves a written repayment plan. The proposed amendment would require that the repayment plan be "fully satisfied," consistent with the Director's past application of this condition.

N.J.A.C. 13:2-24.6(a)5

The Division proposes to correct a citation in N.J.A.C. 13:2-24.6(a)5. One of the requirements of N.J.A.C. 13:2-24.6 is that licensees or registrants who sell alcoholic beverages to retail licensees maintain and file with the Division a Current Price List (CPL) each month. An amendment to the price posting to correct an error other than a bona fide clerical error can only be made by petition to and upon approval by the Director under the relaxation rule at N.J.A.C. 13:2-9.1. The current rule cites N.J.A.C. 13:2-19 instead of N.J.A.C. 13:2-9.1 and the proposed amendment would correct that cross-reference.

N.J.A.C. 13:2-42.1

When a licensee fails to timely renew a license, the licensee must follow the procedure in this section to obtain a new license. The Division proposes to add the statutory 30-day grace period in N.J.S.A. 33:1-12.13 to certain deadlines in this rule. A licensee who fails to file a timely renewal application with the municipality must do two things: (1) file an application for a new license with the municipality and (2) file a Verified Petition with the Director requesting a special ruling allowing the municipality to consider the application. All license terms end on June 30. N.J.S.A. 33:1-12.18 adds a grace period of 30 days to apply for renewal of the license, extending the date to July 30.

Under N.J.A.C. 13:2-42.1, the application for a new license must be filed within the year ending the license term - this is the year following the lapse of the license. The license term would end on June 30 of that following year, but the grace period extends the time to file the new application to July 30. The proposed amendment to N.J.A.C. 13:2-42.1(a)1 would change the current date for filing the new application with the municipality from June 30 to July 30. To illustrate the filing deadlines, a renewal application for the 2014-2015 license term would have to be filed no later than July 30, 2014. If the application were not filed by that date, the licensee would have until July 30, 2015, to file the application for a new license.

However, the filing deadline in N.J.A.C. 13:2-42.1(a)2 for the Verified Petition will remain June 30 of the year ending the license period. The Verified Petition is a "request for relief" under N.J.S.A. 33:1-12.18.b, not an application for a new or renewal permit, so the 30-day grace period in N.J.A.C. 33:1-12.13 does not apply to the deadline for filing the Verified Petition. In the example above, the Verified Petition would have to be filed by June 30, 2015.

N.J.A.C. 13:2-42.4

N.J.A.C. 13:2-42.4 requires a licensee to continue to apply to the municipality for renewal in subsequent years while a Verified Petition is pending. The Division proposes to change the date to file the renewal application from June 30 to July 30, adding the statutory grace period for renewal applications.

Since the Division is providing a 60-day comment period for this notice of proposal, this proposal is not subject to the rulemaking calendar requirement set forth in N.J.A.C. 1:30-3.1 and 3.2. N.J.A.C. 1:30-3.3(a)5 provides an exception to the rulemaking calendar requirement if an agency provides a 60-day comment period.

Social Impact

As explained in the Summary above, the proposed amendments to N.J.A.C. 13:2-4.8(a), 8.6(a), 18.1(b)10, 24.4(g)1, and 24.6(a)5, will correct citations, change a word to conform to the meaning of the rule, or make clear that a payment plan must be fully satisfied. These rules do not affect existing Division practice and interpretation and will have no appreciable social impact.

Proposed new N.J.A.C. 13:2-5.7 will make all special permit filing fees non-refundable, to encourage only serious applicants to apply. The rule only applies to special permits, which are often for a single event or limited number of events and the sale or distribution of alcoholic beverages is secondary to the primary activity of the applicant. The proposed rule will not have a significant social impact on applicants and would have a positive impact on the Division by reducing the number of applications, as well as covering the costs of reviewing applications that may later be withdrawn.

The proposed amendments to N.J.A.C. 13:2-14.7(c) and 15.2 will conform the fees to the statutory amounts. Because the Division has been collecting the statutory fees, there will be no social impact.

The proposed amendment to N.J.A.C. 13:2-20.6 will lower the transit insignia fee to conform with the statutory amount. The Division has been charging the fee as set forth in the rule. Thus, the proposed amendment will have a positive social impact on the regulated industry by reducing costs.

The proposed amendments to N.J.A.C. 13:2-42.1 and 42.4 will provide licensees who fail to timely renew their licenses more time to submit an application for a new permit when they seek relief pursuant to N.J.S.A. 33:1-12.18. Therefore, the proposed amendments will have a positive social impact on licensees who do not timely renew.

The proposed amendments to N.J.A.C. 13:2-19.11(i), 23.15, and 23.19 will prohibit marrying bottles of alcohol and substituting brands, practices that are harmful to consumers, and add penalties to enforce these prohibitions. These amendments will protect consumers and ensure a fair competitive environment. Thus, the proposed amendments will have a positive social impact on both the regulated community and the public.

Economic Impact

As explained in the Summary above, the proposed amendments to N.J.A.C. 13:2-4.8(a), 8.6(a), 18.1(b)10, 24.4(g)1 and 24.6(a)5, will correct citations, change a word to conform to the meaning of the rule, or make clear that a payment plan must be fully satisfied. These rules do not affect existing Division practice and interpretation and will have no economic impact.

The proposed amendments to N.J.A.C. 13:2-42.1 and 42.4 will provide licensees more time to submit the petition for relief pursuant to N.J.S.A. 33:1-12.18. These proposed amendments are not expected to have an economic impact on the regulated community or the public.

Proposed new N.J.A.C. 13:2-5.7 will make filing fees for special permit applications non-refundable. In 2012, the Division returned approximately \$12,427 in fees for special permits to applicants. A significant number of special permit applications are being filed for events that do not take place. Making the fees non-refundable is expected to reduce the cost to the Division of reviewing permits that will later be withdrawn and obviate the need to return funds. Applicants can avoid the loss of the fee by considering more carefully whether they will need the permit. The increase in the fee is expected to have a minimal negative economic effect on those who apply for special permits and a positive economic effect on the Division.

As discussed in the Summary above, the proposed amendments to N.J.A.C. 13:2-14.7(c) and 15.2 will conform fees to the statutory amounts, which the Division has been collecting. The proposed amendments will not result in any loss of revenue to the Division and there will be no economic impact on those applying for the required approvals.

The proposed amendment to N.J.A.C. 13:2-20.6 will also conform the transit insignia fee to the statutory amount. During the 2011-2012 period, which expired on August 31, 2012, the Division issued approximately 3,522 transit insignias. The \$25.00 reduction would result in a loss of revenue to the Division of approximately \$88,050 based on that number

of permits. This amendment will have a positive economic impact on the regulated community and a negative impact on the Division.

The proposed amendments to N.J.A.C. 13:2-23.15 and 23.19 will prohibit the marrying of bottles of alcohol and the offering of substitute brands of alcohol to consumers without their consent, respectively. These rules could have some negative economic impact on retailers who substitute cheaper brands without the consumer's knowledge. On the other hand, consumers would be paying a fair price for the brand they expected to be served and the amendments will foster fair competition. Overall, this amendment is expected to have a positive economic impact.

Penalties will be imposed for the two new prohibited activities under N.J.A.C. 13:2-19.11(i). Both prohibited actions by licensees have been previously charged under N.J.A.C. 13:2-19.11(i), and the additions to the penalty schedule for these proposed amendments will expressly identify them as violations. Therefore, the law enforcement officials who review activities at licensed premises in their communities will continue to do so without an increase in law enforcement costs. Furthermore, because these violations are currently being charged, the proposed additions to the penalty schedule will have a neutral economic impact on the regulated community.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments and new rule are governed by N.J.S.A. 33:1-1 et seq., and are not subject to any Federal requirements or standards.

Jobs Impact

The Division does not anticipate that the proposed amendments or new rule will result in the creation or loss of jobs in the State.

Agriculture Industry Impact

The proposed amendments and new rule will have no impact on the agriculture industry in the State of New Jersey.

Regulatory Flexibility Statement

Pursuant to the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a "small business" means any business resident in this State that employs fewer than 100 full-time employees; is independently owned and operated; and is not dominant in its field. A percentage of the retailers in New Jersey's alcoholic beverage industry could be considered "small businesses" within the meaning of the Regulatory Flexibility Act.

A regulatory flexibility analysis is not required because this proposed amendments and new rule do not impose any additional reporting, recordkeeping, or other compliance requirements on small business.

Housing Affordability Impact Analysis

The proposed amendments and new rule will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the proposed amendments and new rule concern the regulation of the sale, manufacture, or distribution of alcoholic beverage products and have no bearing on housing issues.

Smart Growth Development Impact Analysis

The proposed amendments and new rule will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan because the proposed amendments and new rule concern the regulation of the sale, manufacture, or distribution of alcoholic beverage products.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 4. ISSUANCE, RENEWAL, OR TRANSFER OF MUNICIPAL RETAIL LICENSES (OTHER THAN CLUB LICENSES) BY THE DIRECTOR

13:2-4.8 Refund of fees

(a) If the application for license issuance is denied for any reason whatsoever or withdrawn, a statutory refund of 90 percent of the fee deposited with the municipality shall be made by the municipality to the applicant. The remaining 10 percent shall be deemed an investigation and

processing fee and shall be retained by the municipality. The \$200.00 State fee required to accompany the application shall be retained as a processing fee by the Director. If an application for renewal of license is denied, refund of fees shall be in accordance with N.J.A.C. 13:2-[11]2.11.

(b) (No change.)

SUBCHAPTER 5. ISSUANCE OF SPECIAL PERMITS BY DIRECTOR

13:2-5.7 Fees for Special Permits are non-refundable

All filing fees associated with Special Permits issued pursuant to this subchapter are non-refundable, unless otherwise waived by the Director pursuant to N.J.A.C. 13:2-9.1.

SUBCHAPTER 8. CLUB LICENSES

13:2-8.6 Qualifications of officers and members

(a) No club license shall be [used] **issued**, nor renewal granted, to any corporation, association, or organization in which an officer or member of the governing body has been convicted of a disqualifying offense pursuant to Title 33 unless the statutory disqualification resulting from such conviction has been removed by order of the Director. Application for removal of the disqualification may be made by verified petition to the Director when the unlawful situation is corrected.

(b) (No change.)

SUBCHAPTER 14. EMPLOYMENT BY LICENSEES OF A PERSON FAILING TO QUALIFY AS A LICENSEE

13:2-14.7 Rehabilitation employment permit; duration; types; fees

(a)-(b) (No change.)

(c) The fee for either type of rehabilitation employment permit shall be [\$125.00] **\$100.00** per year, payable on the date of application.

SUBCHAPTER 15. REMOVAL OF STATUTORY DISQUALIFICATION

13:2-15.2 Petition; contents

The petition for removal of disqualification shall be in verified form accompanied by payment of a filing fee of [\$125.00] **\$100.00**. The petitioner shall be required to submit to fingerprinting and provide four recent color passport photographs (two inches by two inches) with said application, as well as any fingerprinting processing fees attendant thereto.

SUBCHAPTER 18. PETITION PROCEEDINGS; DISCRIMINATION AGAINST WHOLESALERS

13:2-18.1 Grounds for relief

(a) (No change.)

(b) For purposes of (a) above, **the refusal by importers, blenders, distillers, rectifiers, and wineries to sell [based upon any of the following shall be deemed not to be discrimination] to duly licensed wholesalers of alcoholic beverages who are authorized by such importers, blenders, distillers, rectifiers, and wineries shall not be deemed to be discrimination, if such refusal is based upon the following:**

1.-9. (No change.)

10. The material breach[,], by such wholesaler[,], of any material term or condition of sale, credit, or scope of authorization agreed upon, **in writing**, or established by course of dealing between the wholesaler and the refusing seller[,], in writing]; provided that where either by virtue of customary practice in the industry or past dealings between parties, such breach would not be deemed a reasonable basis for fear of material economic loss from the transaction or transactions involved.

(c) (No change.)

SUBCHAPTER 19. DISCIPLINARY PROCEEDINGS

13:2-19.11 Penalty schedule, definition of violation, successive violations

- (a)-(h) (No change.)¹
- (i) Penalty Schedule¹

<u>Statute, Regulation or Bulletin Item</u>	<u>Code</u>	<u>Description</u>	<u>First Violation²</u>	<u>Second Violation²</u>	<u>Third Violation²</u>	<u>Fourth Violation²</u>
...						
N.J.A.C. 13:2-23.19(b)	BOT4	Substitution of Brands	15	30	45	Revocation
N.J.A.C. 13:2-23.15(b)	BOT5	Marrying of Bottles of Alcohol	5	10	15	
...						
N.J.A.C. 13:2-24.6(a)4	CPL4	Failure to timely file "Current Price List"	30	60	90	

¹ (No change.)

² (No change.)

SUBCHAPTER 20. TRANSPORTATION OF ALCOHOLIC BEVERAGES BY LICENSEES; INSIGNIA

13:2-20.6 Application; fees

(a) Application for transit insignia shall be filed with the Director upon a prescribed form accompanied by the full fee of [\$75.00] **\$50.00** for each insignia payable to the order of the Division of Alcoholic Beverage Control.

- (b) (No change.)

SUBCHAPTER 23. CONDUCT OF LICENSEES AND PERMITTEES AND USE OF LICENSED PREMISES

13:2-23.15 Possession of container mislabeled as to fill prohibited; exception

(a) No licensee shall knowingly display, sell, or deliver any alcoholic beverage in an original container having a content of fill less than that stated on the container or label thereof, subject to such tolerance as permitted by Federal law and regulation; and no licensee shall possess such a container except for the sole purpose of return for credit or replacement consistent with N.J.A.C. 13:2-23.11 and 39.1.

(b) No licensee shall knowingly display, sell, or deliver any alcoholic beverage in an original container that has been married with another bottle of the same brand. "Marrying" is the industry practice that generally consists of pouring the contents of a larger bottle of alcohol, into a smaller bottle of the same alcohol.

13:2-23.19 Prohibition against offering substitute beverages; exception

(a) No licensee privileged to sell alcoholic beverages for consumption on the licensed premises shall serve or allow, permit, or suffer the service of any alcoholic beverage other than ordered or substitute a nonalcoholic beverage when an alcoholic beverage has been ordered, unless agreed to by the customer.

(b) No licensee privileged to sell alcoholic beverages for consumption on the licensed premises shall serve or allow, permit, or suffer the service of any alcoholic brand other than ordered or substitute a different brand when a certain brand of alcoholic beverage has been ordered, unless agreed to by the customer.

SUBCHAPTER 24. TRADE MEMBER DISCRIMINATION, MARKETING, AND ADVERTISING

13:2-24.4 Regulation of wholesaler credit

- (a)-(f) (No change.)

(g) The provisions of this section may be relaxed in the discretion of the Director, upon written petition by a retail licensee with notice to all creditor-wholesalers, in such instances where:

1. The licensee and creditor-wholesalers have executed among themselves a **fully satisfied** written repayment plan.
- 2.-3. (No change.)
- (h) (No change.)

13:2-24.6 Required records

(a) Every licensee or registrant privileged and intending to sell alcoholic beverages to retailers in this State shall maintain upon its licensed premises for a period of three years the following records:

- 1.-4. (No change.)

5. The prices contained [therein] **in the Current Price List** and any retail incentive program offered shall be filed independently by each individual filer, and no amendments or changes (except upon approval of the Director to correct bona fide clerical errors) shall be made therein prior to filing of the next monthly price list. Requests for additional amendments may be considered pursuant to N.J.A.C. 13:2-[19]9.1;

- 6.-7. (No change.)

SUBCHAPTER 42. PETITIONS FOR RELIEF TO THE DIRECTOR, PURSUANT TO N.J.S.A. 33:1-12.18

13:2-42.1 Required filings and required time for filings

(a) A licensee who fails to file a renewal application with the municipal issuing authority by July 30 of the year beginning the license term for which renewal is sought may request that the Director issue a Special Ruling to permit the municipal issuing authority to consider an application for a new license by:

1. Submitting an application for a new license and the appropriate fees to the municipal issuing authority by [June] **July** 30 of the year ending the license term; and
2. (No change.)

13:2-42.4 Effect of the filing of a Verified Petition

The filing of a Verified Petition for relief pursuant to N.J.S.A. 33:1-12.18 for a particular license term does not eliminate the requirement that the licensee continue to apply for renewal of the license for subsequent license terms by [June] **July** 30 of each year, while the Verified Petition is pending.

(a)

**DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF EXAMINERS OF MASTER
PLUMBERS**

Experience Requirements

Proposed Amendment: N.J.A.C. 13:32-2.2

Authorized By: New Jersey Board of Examiners of Master Plumbers, Rosemarie Baccile, Acting Executive Director.

Authority: N.J.S.A. 45:14C-7.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2015-057.