

LAW AND PUBLIC SAFETY

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Division of Alcoholic Beverage Control Rules

Proposed Readoption with Amendments: N.J.A.C. 13:2

Proposed Repeals: N.J.A.C. 13:2-10.7 and 13:2-40

Authorized By:

Jerry Fischer, 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 2005-309

Submit written comments by November 5, 2005 to:

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 13:2, which sets forth the rules of the Division of Alcoholic Beverage Control, is scheduled to expire on January 20, 2006. The rules proposed for re-adoption, with amendments, and repeals will continue the standards required by law for the regulation of the alcoholic beverage industry by the Division of Alcoholic Beverage Control.

The rules were reviewed and analyzed by the Division staff and were found to be necessary, reasonable and proper for the purposes for which they were originally promulgated. Each subchapter is addressed separately in the Summary, the Impact Statements, and the Regulatory Flexibility Analysis which follow.

Subchapter 1: The objective of this subchapter, proposed with amendments, is to identify and establish the filing and advertisement requirements for State license applicants. The subchapter establishes a structured and uniform system in accordance with pertinent statutory provisions. The subchapter establishes a framework for the issuance of State licenses and the following represents a summary of the specific sections.

N.J.A.C. 13:2-1.1 advises license applicants that applications for a

license must be filed on forms prescribed by the Director of the Division of Alcoholic Beverage Control.

An amendment is proposed for N.J.A.C. 13:2-1.2 to reflect the Division's recognition of limited liability companies authorized in the State of New Jersey. This section sets forth the information required in the Notice of Application for a license held by corporations, partnerships, or other types of legal entities. This section also provides guidance for situations when the building which will be the licensed premises has not yet been constructed. Subsection (c) provides a definition of the term "legal entity" for the chapter.

N.J.A.C. 13:2-1.3 identifies the form for the application advertisement which includes information about the applicant, and mailing address and where written objections should be sent. An applicant for a State license is required to provide the Division with an affidavit stating that a copy of the notice has been served personally or by ordinary mail on the clerk of the municipality in which the applicant intends to conduct retail sales. The amendment proposed in this section is made to correspond to the changes in N.J.A.C. 13:2-1.2 with regard to the recognition of limited liability companies.

N.J.A.C. 13:2-1.4 mandates that applicants for a State license provide proof of publication of the notice of application after the second publication

has occurred. The filed proof must have a copy of the dated advertisements attached.

N.J.A.C. 13:2-1.5 sets forth that applicants for renewal of annual State licenses are not required to advertise a notice of application, since the Director will have such renewal notices advertised Statewide.

N.J.A.C. 13:2-1.6 provides that the Director shall provide for a hearing if timely signed, written objections are received with respect to the issuance, transfer or renewal of a State license.

N.J.A.C. 13:2-1.7 provides the requirement that any changes in facts contained in an existing filed application for a State issued license requires an amendment to the license application to be filed with the Director within 10 days of the occurrence of the change. N.J.A.C. 13:2-1.7(b) provides that any change in the entity that holds the license requires an amendment to the license application.

N.J.A.C. 13:2-1.8 sets out the requirements and form to be used to advertise a change in the ownership of a legal entity which holds a liquor license.

Subchapter 2: The objective of this subchapter, which addresses the filing and advertisement of applications for municipal licenses, is to establish a uniform method to be used by all municipalities to comply with

pertinent law. This subchapter is proposed for readoption with proposed amendments.

N.J.A.C. 13:2-2.1 advises license applicants that a specific form must be filed with the issuing authority and appropriate fees must be paid. A proposed amendment reflects the Division's recognition of limited liability companies that are authorized in the State of New Jersey. This section sets forth the information required in the Notice of Application for a license held by limited liability companies, corporations, partnerships, or other types of legal entities.

N.J.A.C. 13:2-2.2 sets forth the form for the notice of application, with proposed amendments to reflect the proposed amendments in N.J.A.C. 13:2-2.1.

N.J.A.C. 13:2-2.3 defines the issuing authority so applicants and objectors are aware of the process of decisions regarding the license and where to object, with proposed amendments to reflect the recognition of limited liability companies in N.J.A.C. 13:2-2.1.

N.J.A.C. 13:2-2.4 provides instruction so that an applicant strictly follows statutory language in identifying the kind of license in the application.

N.J.A.C. 13:2-2.5 notifies applicants where and how to publish their notices of application. This section sets out the Division's long-standing policy regarding the timing and spacing of publication.

N.J.A.C. 13:2-2.6 reflects that the publication and notice requirements for the annual renewal of municipal licenses, other than seasonal licenses, shall be performed by the Director.

N.J.A.C. 13:2-2.7 ensures that persons filing a written objection to a license application are given an opportunity to have a hearing on the objection.

N.J.A.C. 13:2-2.8 sets forth the timetable for when a hearing should be held.

N.J.A.C. 13:2-2.9 provides that no formal hearing is required if no written objections are received, unless the issuing authority determines that a hearing is appropriate. This section also requires that the issuing authority make specific findings and include in any resolution approving an application that (a) the application is complete, (b) the applicant is qualified for licensure under existing law and regulations, and (c) the sources of funds to purchase the license and business have been disclosed and reviewed.

N.J.A.C. 13:2-2.10 sets forth the time limits when a decision must be made by the issuing authority. The section also provides that if no action is

taken on an application for renewal of a license prior to the expiration of its term, the applicant may apply to the Director for the issuance of a temporary permit until the application has been acted upon.

N.J.A.C. 13:2-2.11 confirms the provisions of N.J.S.A. 33:1-25 concerning refunds of a portion of license fees when an application is denied and confirms non-refundability of the State filing fee.

N.J.A.C. 13:2-2.12 confirms the provisions of N.J.S.A. 33:1-16 concerning pro-rating of annual license fees from the date of issuance. This section clarifies that the pro-rating provisions do not apply to licenses issued pursuant to N.J.S.A. 33:1-12.18.

N.J.A.C. 13:2-2.13 allows a municipality, if it imposes a special condition that the transfer shall not be effective until five business days have elapsed, to adopt a resolution approving the transfer after the second publication of the notice of application.

N.J.A.C. 13:2-2.14 confirms provisions contained in N.J.S.A. 33:1-34 requiring notification within 10 days after the occurrence of any change in the facts set forth in the last filed license application. This change must be filed with the municipal issuing authority.

N.J.A.C. 13:2-2.15 sets forth the requirement and form for publication for a notice of change in stockholders of a corporate licensee, with a

proposed amendment to reflect the proposed amendment in N.J.A.C. 13:2-2.1 recognizing limited liability companies and to recognize that ABC Board secretaries are to receive notice in municipalities with a board, whereas municipal clerks are to receive notice in municipalities without an ABC Board.

N.J.A.C. 13:2-2.16 provides that notice of corporate stockholding changes shall be published once in a newspaper printed in the English language in the municipality or county in which the licensed premises is located with proof of publication provided to the issuing authority within 10 days of publication.

Subchapter 3: The intent and purpose of this subchapter is to establish structured, uniform procedures for recordkeeping regarding the issuance of municipal retail licenses. Other than the deletions of the reservations of N.J.A.C. 13:2-3.8, 3.9 and 3.10, this subchapter is proposed without amendment.

N.J.A.C. 13:2-3.1 provides that the Director shall establish the form and content of all license certificates and make certificates for licenses available to the municipal issuing authorities.

N.J.A.C. 13:2-3.2 requires that municipalities maintain full and complete records concerning all retail licenses located in their communities.

N.J.A.C. 13:2-3.3 remains in a reserved status.

N.J.A.C. 13:2-3.4 establishes a signature requirement on each license certificate of either the name of the municipality or its municipal board, whichever is the issuing authority. It also requires that the certificate bear the signature of the designated municipal officer or agent of the governing body or board.

N.J.A.C. 13:2-3.5 requires that no license certificate be signed, issued or delivered by any person unless and until so directed by a resolution of the issuing authority. It also provides that the effective date of the issuance or transfer of any license is the date of adoption of the resolution of action by the municipal issuing authority, unless otherwise specified.

N.J.A.C. 13:2-3.6 sets forth the requirement for each municipal authority to notify the Division of license activity through a daily certification which shall include any license application filings or amendments, any fees to be remitted to the Director, and any resolutions adopted.

N.J.A.C. 13:2-3.7 sets forth Division oversight and investigative responsibility in all Atlantic City matters involving the issuance, renewal or transfer of any retail license.

Subchapter 4: The responsibility to issue, renew and transfer most retail liquor licenses is vested by law in the municipal governing body of the community where that license is located. For purpose of the Alcoholic Beverage Law, the governing body or municipal board is called the “municipal issuing authority.” The principal exception to municipal license actions is when a member of the municipal issuing authority is disqualified from acting on that license. This subchapter deals with this exception and is derived from the legislative provisions of N.J.S.A. 33:1-20. This statutory provision requires that a municipal issuing authority cannot issue any license to any member of the issuing authority who has an interest, direct or indirect, in a retail license. The application must be submitted to the Director of the Division of Alcoholic Beverage Control.

The subchapter also recognizes the situation where a municipal issuing authority is de facto prohibited from issuing a license because it is unable to reach a quorum due to a determined conflict of interest resulting from other than a member’s ownership interest in a retail license.

The provisions of this subchapter are proposed for readoption with proposed amendments correcting the State license fee from \$50.00 to \$200.00 as provided in the budget legislation passed in 2003 (P.L. 2003, c. 117).

N.J.A.C. 13:2-4.1 and 4.2 deal with a member of an issuing authority holding an interest in a license and the requirement that the Division receive the application, and act upon the issuance or transfer of such license.

Application must be made to the Director in circumstances where there is a conflict caused by a member's ownership interest in the license or because the municipal authority cannot reach a quorum to act on an application.

These sections do not apply to club licenses, but do apply to renewals.

N.J.A.C. 13:2-4.3, 4.4 and 4.5 set forth the provisions for issuance, renewal and transfer of such licenses. These sections are proposed to be amended to correct the state license fee from \$50.00 to \$200.00 as provided in the budget legislation passed in 2003 (P.L. 2003, c. 117).

N.J.A.C. 13:2-4.6 requires the issuing authority, in conflict situations, to submit a resolution that it does not object to the application and knows of no local ordinance or other reason which would prevent an application from being approved.

N.J.A.C. 13:2-4.7 contains the procedure for required advertising of the notice of such applications.

N.J.A.C. 13:2-4.8 provides for refunding 90 percent of a license fee, upon a denial of an application. The as amended \$200.00 State fee shall be retained as a processing fee by the Director.

N.J.A.C. 13:2-4.9 provides for a proration of license fees for new license, except that same does not occur with the issuance of a new license under N.J.S.A. 33:1-12.18.

N.J.A.C. 13:2-4.10 provides that the rules applicable to filing a notice of change in facts set forth in an application for a retail license and the publishing of a notice of change of corporate structure shall apply to all retail licensees holding licenses issued by the Director.

Subchapter 5: The readoption with proposed amendments of this subchapter will continue the requirements and procedures for the issuance of special permits by the Director. These permits authorize alcoholic beverage activity consistent with but not otherwise provided for by the Alcoholic Beverage Law.

N.J.A.C. 13:2-5.1 allows organizations operating solely for civic, religious, educational, charitable, fraternal, social or recreational purposes, and not for private gain, to apply for a social affair permit. The permit is essentially a one day retail license issued to the aforesaid organizations. Applicants are allowed to receive permits for more than one event per month but the total permits that may be issued to any one applicant is 12 for any 12-month calendar period. Applicants can obtain social affairs permits after they establish their eligibility by complying with the submission

requirements, paying the appropriate fee and filing an inventory report if required by the Director. This section recognizes the Director's discretion to request an inventory report in contrast to the current requirement mandating filing of such reports. This section also recognizes that permit applications may be signed either by the municipal chief of police or the chief's authorized designee. This section is proposed for amendment by eliminating the need for filing minutes of meetings and adding a requirement that the membership roster submitted contain a list of all members. The section is also proposed to be amended to provide for a 14-day, instead of seven-day, advance filing of the application for the permit.

N.J.A.C. 13:2-5.2 specifies the requirements necessary to obtain a special concessionaire permit. N.J.S.A. 33:1-42 prohibits the sale of alcoholic beverages in facilities which are located on public property or in public buildings unless permitted by the Director in accordance with rules and regulations. This regulatory section authorizes such sales, but only when conducted pursuant to a State issued permit. This permit can also authorize the sale of alcoholic beverages in original containers for off-premises consumption when the applicant received the consent of the governmental agency and establishes good cause for such sale to the satisfaction of the Director. This section is proposed for amendment to

recognize limited liability companies that are authorized in the State of New Jersey by requiring information in the notice of application, including the name of the limited liability company, and the names and addresses of all officers and members.

N.J.A.C. 13:2-5.3 provides for special permits for golf facilities. This permit authorizes permitted golf facilities to sell open containers of alcoholic beverages for immediate consumption to members, guests of members and guests of the facility. However, the holder of a special permit for a golf facility may serve alcoholic beverages during a social gathering only if such social gathering is directly related to playing golf on the golf course the same day. This permit specifically does not authorize the service of alcoholic beverages at non-golf related social gatherings, such as holiday parties, weddings, birthday parties, or family religious events. Application for this permit may be made to the Director upon the submission of the requisite fee of \$2,000 and documentation including: a letter detailing the manner of proposed operation under the permit; a plan or sketch of the premises to be used in accordance with the permit; copies of the applicant's certificate of incorporation or charter, if applicable; evidence of the filing of a copy of the application with the municipal issuing authority where the facility is located; an affidavit of publication by a newspaper of a notice of

application and any other information or documents required by the Director. The section has been proposed to be amended to require that applicants also submit a completed license application. An additional amendment to this subsection reflects the Division's recognition of limited liability companies that are authorized in the State of New Jersey.

N.J.A.C. 13:2-5.4 provides for other special permits which the Director may issue to authorize the sale of alcoholic beverages by a receiver, trustee, executor, or other court appointed person, or judgment creditors or secured parties, where the sale is authorized in accordance with the law or a court order. The fees for these permits comport with the pertinent statutory provisions authorizing a fee not less than \$10.00 nor more than \$2,000. One of the permits issued is to the seller for good cause shown and allows the temporary storage and transportation of alcoholic beverages pending sale, as well as the sale to and transportation by the purchaser. Within 10 days of the sale the permittee must file an inventory report with the Director. The section also sets out the fee amounts for certain of these permits, with amendments to the several of the fees. The permits and their respective fees are as follows: Permit for Temporary Extension to Administrator/Executor: \$50.00; Ad Interim Permit: \$ 75.00 per permit, plus \$5.00 per each day requested (this is an increase from the former amount of \$75.00 per permit);

Bulk Sale Permit: \$75.00; Close Out Permit:\$1.00 per case with a minimum price of \$20.00 (this is a change from a flat fee of \$25.00 per permit); Donation Permit: \$150.00 (this is an increase from \$50.00); Extension of Premises Permit: \$ 75.00 per day (this is a clarification that the permit is per day); Food and Pharmaceutical Permit: \$20.00 to \$40.00 (this is a change from a flat fee of \$25.00); Gratuitous Gift Permit: \$ 75.00 Gratuitous Samples Permit: \$ 50.00; Merchandising ShowPermit: In-state licensee \$75.00 and Out of state licensee \$100.00 (the section now makes a distinction between in and out of state licensees); Merchandising Show Permit for Out-of-State Importers \$100.00 (this is a decrease from \$200.00); Omnibus Permit: \$750.00; Permit to Import for Personal Consumption: \$50.00; Retailer to Retailer Sale Permit: \$ 75.00; Sacramental Wine Permit: \$50.00; Sampling/Display Permit: \$75.00; Storage in Transit Permit: \$50.00; Temporary Authorization to Operate Permit \$150.00 (this is a decrease from \$200.00); Temporary Storage Permit: \$25.00 plus \$2.00 per day(this is a change from a flat fee of \$75.00); Wine Parcel Delivery Permit: \$75.00 to \$200.00; Wine Festival Permit: \$25.00; Wine Seminar Permit: \$50.00.

N.J.A.C. 13:2-5.5 provides for the issuance of temporary permits to deal with circumstances where the sale of alcoholic beverage activity is not otherwise encompassed by a license. The statutory authority for the issuance of these permits is N.J.S.A. 33:1-74. The application is made on forms prescribed by the Director. The Director may also impose special conditions on any such permits. The fee ranges from \$10.00 to \$2,000.

Subchapter 6: This subchapter establishes a framework for the extension of a license to a fiduciary in cases of death, bankruptcy, receivership, incompetency or for any other reasons in which the operation of the licensed business devolves by operation of law upon another person. Other than the deletion of the reservation of N.J.A.C. 13:2-6.5, this subchapter is proposed for readoption without amendment.

N.J.A.C. 13:2-6.1 identifies when an extension of license is required, how to petition for the extension and when to amend the current license application to reflect the change in status.

N.J.A.C. 13:2-6.2 notes the circumstances when a special permit is required from the Division to continue operation of a business, while the application is pending, to extend the license to a person to be appointed as a fiduciary.

N.J.A.C. 13:2-6.3 provides for the proofs which are required to be submitted along with the petition.

N.J.A.C. 13:2-6.4 contains the form of the endorsement that will be placed on a license certificate signifying the extension to a person other than the named licensee.

Subchapter 7: The basic procedures, fees and requirements to transfer liquor licenses are set forth in N.J.S.A. 33:1-16, which incorporates by reference certain provisions of N.J.S.A. 33:1-25. The purpose and intent of the readoption with proposed amendments of this subchapter is to continue the uniform and comprehensive procedure for license transfer as required by the above statutes.

N.J.A.C. 13:2-7.1 notes that a license can be transferred and that such transfer can be either person-to-person or place-to-place.

N.J.A.C. 13:2-7.2 provides that an application for transfer of a license to other premises must be filed with the Director or other issuing authority. If the proposed transfer is to a building not yet constructed, the plans of the proposed building shall accompany the application. This section requires the licensee to file a place-to-place transfer application when it is proposed that the licensed premises will be expanded. This section provides that in circumstances where there is a voluntary or involuntary delicensure or

abandonment of the entire licensed premises, a licensee must report that action to the issuing authority as a change in facts in accordance with N.J.A.C. 13:2-1.7 and 2.14.

N.J.A.C. 13:2-7.3 provides that an application for transfer of a license to another person or other persons and other premises must be filed with the Director or other issuing authority.

N.J.A.C. 13:2-7.4 sets forth the form of notice that must be published to advise the public that a transfer is sought. The information paragraph provides notice in the case of a proposed expansion or contraction of the premises. The section is proposed to be amended to reflect the Division's recognition of limited liability companies that are authorized in the State of New Jersey. This section has also been amended to indicate that if an applicant is a limited liability company, the application must include the name of the company and the names and addresses of all officers and members. An additional proposed amendment recognizes that ABC Board secretaries are to receive notice in municipalities with a board, whereas municipal clerks are to receive notice in municipalities without an ABC Board.

N.J.A.C. 13:2-7.5, 7.6 and 7.7 identify the provisions concerning objections to applications and that hearings must be held on same. N.J.A.C.

13:2-7.7 notes that the issuing authority's investigation should include fingerprinting, a criminal background check and review of an applicant's financial documentation as part of a thorough investigation. The issuing authority is also required to certify that the written consent to transfer the license has been executed by the transferee.

N.J.A.C. 13:2-7.8, 7.9 and 7.10 provide that transfer applications must be filed on application forms prescribed by the Director, for all place-to-place transfers, person-to-person transfers and combined transfers of both person and place.

N.J.A.C. 13:2-7.11 and 7.12 set forth the fee of \$200.00 for each application for the transfer to other premises, another person or a combined transfer.

N.J.A.C. 13:2-7.13 allows a municipality to adopt a resolution approving the transfer after the second publication of notice of application, as long as it imposes a special condition that the transfer shall not be effective until five business days have elapsed.

N.J.A.C. 13:2-7.14 identifies the endorsement that must be made on the license certificate to reflect the approved transfer.

N.J.A.C. 13:2-7.15 notes the requirements for local issuing authorities to promptly certify license information to the Director.

The reservation of N.J.A.C. 13:2-7.16 through 7.24 is deleted.

Subchapter 8: The provisions of N.J.S.A. 33:1-12 establish a club license which entitles the holder, subject to rules and regulations, to sell any alcoholic beverage, but only for immediate consumption on the licensed premises, to bona fide club members and their bona fide guests. The laws further sets forth the fee for the license, the option of the local governing body not to issue any club license and defines the type of not for profit corporations, associations and organizations which can qualify for a club license. The law also provides that the Director shall establish the conditions under which such club licenses must operate. Subchapter 8 establishes such rules and conditions.

This subchapter is proposed for readoption without amendment.

N.J.A.C. 13:2-8.1 through 8.5 define club, club member and guests and sets forth eligibility requirements and exceptions for a club or proposed club licensed premises. N.J.A.C. 13:2-8.1 clarifies that a club must not only consist of 60 or more persons who are of legal drinking age but also be controlled by the club members.

N.J.A.C. 13:2-8.6 provides that no club license shall be used nor renewal granted to any corporation, association or organization in which an officer or a member has been convicted of a disqualifying offense unless the

disqualification has been removed by order of the Director. This section specifically requires that the renewal of a club license shall not be approved unless the issuing authority makes certain findings and reduces those findings to a resolution, as is now required for initial applications. N.J.A.C. 13:2-8.6 provides that the officers and directors of a club certify that they have read and understand their legal responsibilities pertaining to their operation of a club license.

N.J.A.C. 13:2-8.7 requires a list containing the names and addresses of all club members and the club charter to be submitted with the initial and renewal applications.

N.J.A.C. 13:2-8.8, 8.9 and 8.10 reiterate statutory provisions governing to which persons alcoholic beverages can be sold, prohibiting sales for off-premises consumption and prohibiting sales during hours not authorized by municipal regulations or referendum. An exception is recognized for events conducted on the club's licensed premises pursuant to a social affair permit issued by the Division. Where events are held pursuant to a social affair permit, the Division requires the club to keep a record of pertinent information concerning all such events.

N.J.A.C. 13:2-8.11 addresses the limited nature of the club license. A club licensee is prohibited from selling, serving or delivering alcoholic

beverages or suffering such activity, to any person attending an event conducted by a permittee other than the club licensee, unless such persons are bona fide members or guests.

N.J.A.C. 13:2-8.12 remains in a reserved status.

N.J.A.C. 13:2-8.13 prohibits a club licensee from advertising or allowing the advertising, to non-club members, of the availability of alcoholic beverages at the club, unless it concerns an event held pursuant to a lawful issued special permit. Social affair permits authorize the sale of alcoholic beverage at the club's licensed premises to members of the public. Advertisements of such affairs must contain the social affair permit number.

N.J.A.C. 13:2-8.14 sets forth that a club licensee is subject to disciplinary proceedings for violation of all relevant statutory and regulatory provisions applicable to retail licenses.

Subchapter 9: This subchapter was previously reserved, but it is now the subchapter which sets out the rules of general application for the chapter. Most of these rules were previously set out in N.J.A.C. 13:1-1.9.

N.J.A.C. 13:2-9.1 provides that the rules of this chapter may be relaxed by the Director upon a showing of undue hardship, economic or otherwise and that the waiver of the rule would not unduly burden any

affected parties and is consistent with the underlying purposes of Title 33 and the implementing regulations.

N.J.A.C. 13:2-9.2 specifies the requirements for qualification as an alcoholic beverage licensee. These include: (1) being at least 18 years of age; (2) not being convicted of a crime involving moral turpitude, unless this disqualification is removed pursuant to an Order by the Director; (3) not being a law enforcement officer whose duties include enforcing the Alcoholic Beverage Control Act; (4) not having an interest in any manufacturer or wholesaler of alcoholic beverages and not being employed as a solicitor under this Act; (5) not having an interest in any alcoholic beverage license or permit which has been revoked within the past two years; (6) not having an interest in more than two retail licenses unless covered by an exception; and (7) being a corporation, partnership or other legal entity in good standing, if not an individual.

N.J.A.C. 13:2-9.3 requires that each alcoholic beverage licensee must have and maintain a continuing possessory interest and control over the licensed premises.

N.J.A.C. 13:2-9.4 provides that the refusal of an applicant for an alcoholic beverage license to submit to fingerprinting when so required by the Director or the local issuing authority, shall constitute a withdrawal of

that application. Similarly, this rule provides that if an applicant for an alcoholic beverage license refuses to submit full disclosure in a financial investigation, that refusal shall also constitute a withdrawal of the application.

N.J.A.C. 13:2-9.5 continues without change the provision for the increased fee for the 2003-2004 license term based on the 2003 budget legislation (P.L. 2003, c. 117).

Subchapter 10: This subchapter contains the regulatory provisions concerning plenary wineries. It is proposed for readoption with the proposed repeal of the section regarding intra-State shipping. This subchapter sets forth rules governing the application process for plenary winery and wine blending licenses. It also contains rules regarding retail privileges and restrictions of plenary winery licenses, including allowing two additional retail sales outlets in addition to the retail sales outlet authorized on their winery premises. Additionally, this subchapter describes how at least two plenary and/or farm wineries can join together to establish jointly controlled and operated retail sales outlets, one to a county, which are in addition to their own sales outlets.

N.J.A.C. 13:2-10.1 sets forth that all applicants for plenary wine licenses shall comply with the application, advertising and hearing

provisions of this subchapter. Additionally, applicants are required to file a statement of intent including the number of acres engaged in cultivating grapes; the type of products to be produced and the intent to utilize other premises for retail sales.

N.J.A.C. 13:2-10.2 requires that whenever the holder of a plenary or farm winery license is granted the privilege of selling wine products at retail, the license certificate shall be appropriately endorsed by the Director, setting forth the retail privileges conferred thereunder.

N.J.A.C. 13:2-10.3 requires that wine sold at retail must be appropriately labeled, including a label approved pursuant to the provisions of the Federal Alcoholic Administration Act.

N.J.A.C. 13:2-10.4 requires that retail sales at a farm winery or outlet shall not occur during any hours where the retail sale of alcoholic beverages is prohibited in the municipality where such sale would occur.

N.J.A.C. 13:2-10.5 requires that all applicants for a wine blending license shall comply with the application, advertising and hearing provisions of the chapter.

N.J.A.C. 13:2-10.6 provides for a minimum of two winery licensees to join together to establish one jointly controlled sales outlet in each county. These jointly controlled retail outlets can sell any wine produced by a New

Jersey farm or plenary winery, and are not limited to selling only the licensee's own wines. Additionally, all retail sales outlets are authorized to sell wines for consumption on as well as off the licensed premises.

N.J.A.C. 13:2-10.7 regarding parcel delivery service is repealed in accordance with the legislation eliminating direct shipping for New Jersey wineries, P.L. 2004, c. 102.

The reservation of N.J.A.C. 13:2-10.8 is deleted.

Subchapter 11 remains in a reserved status.

Subchapter 12: The readoption of this subchapter without amendment will continue the authority provided to the Director under N.J.S.A. 33:1-75 to issue special permits for the manufacture of wine for personal consumption with a limit of not more than 200 gallons per year. This subchapter allows the home manufacture of malt alcoholic beverages, as well as to reflect the ability to manufacture such beverages for "household" as well as personal consumption and also "use" consistent with laws. Additionally, the subchapter permits the manufacture of these alcoholic beverages by a permittee on non-commercial premises.

N.J.A.C. 13:2-12.1 confirms the statutory provisions regarding home manufacture of wine and allows the home brewing of malt alcoholic beverages. The permit fee is \$15.00

N.J.A.C. 13:2-12.2 remains in a reserved status.

N.J.A.C. 13:2-12.3 confirms that a permit will not be issued to a premises that is already licensed for the retailing, wholesaling, or manufacturing of alcoholic beverages. It sets forth the definition of a non-commercial premises must follow in order to offer space, equipment, ingredients, bottling supplies and expertise to permittees in the production of their malt alcoholic beverages or wines.

N.J.A.C. 13:2-12.4 sets forth that no permit shall be issued to any person under the legal age.

N.J.A.C. 13:2-12.5 provides that no permit shall be issued to a person convicted of an offense involving unlawful alcoholic beverage activity unless the Director issues a waiver of this prohibition.

N.J.A.C. 13:2-12.6 clarifies that no more than one malt alcoholic beverage and one wine permit shall be issued to any individual during any calendar year.

N.J.A.C. 13:2-12.7 provides that a permit is not transferable.

N.J.A.C. 13:2-12.8 provides for the revocation of the permit upon violation of any of its provisions.

Subchapter 13 remains in a reserved status.

Subchapter 14: This subchapter regulates the issuance of permits to persons who are disqualified from working on a licensed premises, under the provisions of N.J.S.A. 33:1-26, either by being under the required age or by reason of a conviction of a crime of moral turpitude.

The rules in the first part of the subchapter (N.J.A.C. 13:2-14.1, 14.2, 14.3 and 14.4) set forth provisions by which a person under 18 years of age may obtain a permit to work on a licensed premises when employed in various positions other than selling or manufacturing alcoholic beverages, as well as when employed in temporary or seasonal employment. N.J.A.C. 13:2-14.2(a) also recognizes that licenses operated in conjunction with a bona fide hotel or public restaurant are not required to have minors (who do not sell, serve or solicit the sale of alcoholic beverages) obtain permits, by the exception provided in N.J.S.A. 33:1-26.

N.J.A.C. 13:2-14.5, 14.6, 14.7, 14.8 and 14.9 concern the process by which a person who is criminally disqualified can obtain a Rehabilitation Employment Permit to work on a licensed premises. The permit process, the fees required and the type of permits are all addressed by these sections which also provide the standards under which a permit may be canceled or terminated. The standards under which a Temporary Work Letter may be issued is set forth. If the applicant demonstrates to the Director's

satisfaction, behavior of a law-abiding nature and not having engaged or participated in any conduct detrimental to the integrity of the alcoholic beverage industry or the public interest, the permit may be issued. An amendment is proposed to N.J.A.C. 13:2-14.6 to clarify that final determinations are in the discretion of the Director. An amendment is proposed for N.J.A.C. 13:2-14.7 to correct the fee from \$150.00 to \$125.00 per year and to correct grammar. A technical amendment to correct grammar is proposed for N.J.A.C. 13:2-14.9.

N.J.A.C. 13:2-14.10 provides for the nontransferability of permits and requires that applicants submit photographs and fingerprints. An amendment is proposed to subsection (c) to require four passport-type photographs instead of one.

N.J.A.C. 13:2-14.11, 14.12 and 14.13 discuss amendments of applications, prohibited conduct by permittees and the cancellation, suspension or revocation of an employment permit.

Subchapter 15: This subchapter implements N.J.S.A. 33:1-25 which, in pertinent part, prohibits the acquisition of an interest in a liquor license by a person who has been convicted of a crime involving moral turpitude. The subchapter codifies the procedures for the removal of

disqualification upon application to the Director in accordance with N.J.S.A. 33:1-31.2.

N.J.A.C. 13:2-15.1 sets forth the time and factors that are considered by the Director in determining whether the statutory disqualification should be removed. At least five years must elapse from the date of conviction or release from incarceration, whichever is later, for an applicant to be eligible.

N.J.A.C. 13:2-15.2 sets forth the requirement of the petition for removal and is amended to include the submission of four, instead of one, colored passport photographs as well as submitting to fingerprinting. The filing fee is proposed to be amended from \$100.00 to \$125.00.

N.J.A.C. 13:2-15.3 provides for a hearing if there is a possibility that the application will be denied. Two character witnesses and the petitioner are required to testify at the hearing before the Director or the Office of Administrative Law.

N.J.A.C. 13:2-15.4 provides the standards the Director utilizes in determining whether or not to remove the disqualification. The standards include the passage of a minimum five year time period from the date of conviction or release from incarceration, whichever is later, the conduct of the petitioner since that period of time and whether the public interest will be adversely affected by the petitioner's association with the alcoholic beverage

industry. This section also confirms that the Director has the authority to prohibit, in proper instances, the re-application of a person whose disqualification removal was denied, for an additional period of up to five years. The Director may order an applicant, who has been denied removal of a disqualification, to not re-apply for a period of up to five years from the date of final administrative or judicial action, whichever is later. The Director shall set the period of time during which a disqualified person may not re-apply and specify the reasons in the Order denying the disqualification removal.

Subchapter 16: This subchapter, proposed without amendment, sets forth the rules setting forth the eligibility, issuance process and required conduct of persons holding solicitor's permits. The subchapter confirms the long-standing legislative principle that all persons offering for sale or soliciting orders for alcoholic beverages must be holders of solicitor's permits.

N.J.A.C. 13:2-16.1 provides that no individual may sell or solicit an order for the purchase of alcoholic beverages unless he or she possesses a solicitor's permit. An individual licensee or member of a partnership are exempt from the provision if the license is held in the name of the individual or partnership, since they are authorized to sell under provisions of law.

N.J.A.C. 13:2-16.2 authorizes a holder of a solicitor's permit to offer and solicit the sale of alcoholic beverages on behalf of the holder's employer.

N.J.A.C. 13:2-16.3 establishes that the permit will only be issued to bona fide employees of Class A or Class B licensees with the exception that no permit will be issued to employees of a bonded warehouse bottling license. A bonded warehouse bottling licensee, although listed as a Class A license, is not eligible for the issuance of solicitor permits since its statutory privilege does not provide for the sale of alcoholic beverages to retail licensees or other wholesale licensees

N.J.A.C. 13:2-16.4 prohibits the issuance of solicitor's permits to any person entrusted with the enforcement of laws concerning alcoholic beverages. It does provide, however, for the issuance of a permit to a member of a governing body but with the prohibition that such person can not solicit any order or sell any alcoholic beverages to licensees in the person's municipality.

N.J.A.C. 13:2-16.5 contains the fees for each type of solicitor's permit and notes that a separate fee must also be paid for each licensee designated in the permit.

N.J.A.C. 13:2-16.6 sets forth the requirements for the application for the permit, including required photographs and fingerprints. The rule requires a form, prescribed by the Director, to be completed with a passport type color photograph accompanying the application. The applicant must also submit to fingerprinting and pay any necessary fees for the processing of the fingerprints. This section requires applicants for issuance or renewal of a solicitor's permit to attest that they have read and understand their responsibilities under applicable law and that they will not violate such law. It provides that the Director shall prescribe the form of the affidavit and it shall require the applicant to specifically attest to the awareness of the restrictions of the Tied House Law (N.J.S.A. 33:1-43), the Retail Cooperative Purchase Regulation (N.J.A.C. 13:2-26) and the limitations placed upon sales activities by the Trade Member Discrimination, Marketing and Advertising Regulation (N.J.A.C. 13:2-24).

N.J.A.C. 13:2-16.7 identifies the term of the permit and specifically notes that the permit shall expire on May 31 following issuance.

N.J.A.C. 13:2-16.8 confirms that solicitor's permits are not transferable to employer or employee.

N.J.A.C. 13:2-16.9 requires a solicitor to notify the Division in writing of all changes in fact to the filed permit application within 10 days of a change.

N.J.A.C. 13:2-16.10 requires that the solicitor's employer must file a notice with the Director upon termination of any solicitor's employment for which a permit was issued and further requires that the permittee must surrender the permit within 10 days, for cancellation.

N.J.A.C. 13:2-16.11 provides certain restrictions on permittees. The restrictions include prohibition from engaging in any activity or sale not allowed by law as well as prohibiting engaging in promotions that are not contained in the employer's Marketing Manual or Current Price List for the period and time in which the solicitation occurs. This section also provides that as of February 16, 1999, no holder of a solicitor's permit shall offer for sale or solicit any order to any retail licensee in which an immediate family member of the solicitor, as defined in subsection (d), has any direct or indirect financial interest or participates in the operation of the retail license.

N.J.A.C. 13:2-16.12 prohibits the holder of a solicitor's permit from having any interest, direct or indirect, or being employed or connected in any business capacity with a retail licensee.

N.J.A.C. 13:2-16.13 confirms that a solicitor consents to a search without a search warrant, by authorized persons, of any vehicle owned or driven by the solicitor.

N.J.A.C. 13:2-16.14 prohibits a manufacturer or wholesaler from allowing anyone to solicit sales on their behalf unless the person holds a solicitor's permit.

N.J.A.C. 13:2-16.15 establishes that all contracts between employers and their solicitors must be in writing and must be maintained by the employer for a period for three years and shall be made available for inspection by persons authorized to enforce the Alcoholic Beverage Control Act.

N.J.A.C. 13:2-16.16 requires the filing of an annual compensation statement setting forth the monies paid by the employer to the solicitor. The filing date for the statement is May 31 and the rule sets forth that all compensation must be itemized and included, in addition to salary, commission and expenses, any prizes, awards or bonuses paid during the calendar year.

N.J.A.C. 13:2-16.17 provides that if a solicitor holds more than one solicitor's permit, and one of such permits is suspended or revoked, all of that solicitor's permits shall be suspended or revoked unless the solicitor

demonstrates good cause why the permits should not be suspended or revoked.

Subchapter 17: Other than the deletion of the reservation of N.J.A.C. 13:2-17.13, 17.14 and 17.15, this subchapter is proposed for readoption without amendment. It sets forth the rules governing the filing of various appeals with the Director. The appeals to the Director are in accordance with pertinent statutory provisions of Title 33 and involve the following: issuance, renewal or extension of retail licenses, N.J.S.A. 33:1-22; the transfer of retail licenses, N.J.S.A. 33:1-26; disciplinary proceedings and the imposition of disciplinary sanctions against retail licensees, N.J.S.A. 33:1-31; the limitation on the number of retail licenses or hours of sale, N.J.S.A. 33:1-40; and the review and adjudication of other matters which may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages, N.J.S.A. 33:1-39.

The appeals in the subchapter can be filed by the applicants for licenses, licensees, and any other person appealing from actions taken by a local issuing authority concerning retail liquor licenses.

N.J.A.C. 13:2-17.1 provides that an appeal is commenced by filing a notice and petition of appeal with the Director accompanied by a filing fee. The fee for the filing is \$100.00 in accordance with law.

N.J.A.C. 13:2-17.2 notes the requirements of service of papers on all appropriate parties.

N.J.A.C. 13:2-17.3 confirms statutory provisions of a 30-day time limit for the filing of an appeal either from the date or notice of the issuance, extension or transfer action taken on a license, depending upon the status of the appellant.

N.J.A.C. 13:2-17.4 provides that respondents to an appeal must file an answer with the Director within 10 days of receipt of the notice and petition of appeal.

N.J.A.C. 13:2-17.5 sets forth the pertinent provisions of law requiring hearings on matters determined to be contested cases. The hearing may be held by the Director or referred to the Office of Administrative Law.

N.J.A.C. 13:2-17.6 sets forth the standards for the burden of proof applicable in all appeals that are heard as de novo hearings. The appellant has the burden of establishing that the action of the issuing authority was erroneous.

N.J.A.C. 13:2-17.7 provides for the issuance of subpoenas for hearings by either the Director or the Administrative Law Judge.

N.J.A.C. 13:2-17.8 confirms the provisions of N.J.S.A. 33:1-31 which provide that the filing of an appeal from a disciplinary sanction imposed by

the local issuing authority automatically stays the sanction unless otherwise ordered by the Director. All other appeals do not result in the issuance of a stay unless otherwise ordered by the Director.

N.J.A.C. 13:2-17.9 codifies the provisions of N.J.S.A. 33:1-22 authorizing the Director to temporarily extend the privileges of the license which has been denied renewal and is pending appeal. The extension order expires at the end of the license term it was issued in by the Director, even if the appeal has not been adjudicated. A new appeal must be filed for the next license term.

N.J.A.C. 13:2-17-10 provides that any transfer, extension or renewal of a license involved in a pending appeal will be subject to the ultimate outcome of the appeal.

N.J.A.C. 13:2-17.11 acknowledges that the Uniform Administrative Procedure Rules of Practice (N.J.A.C. 1.1) shall govern the conduct of the contested case.

N.J.A.C. 13:2-17.12 provides that if a Director's decision revokes a license or affirms a municipal decision to revoke or deny renewal of a license, and the Director's decision has not been stayed pending appeal to the Appellate Division, the licensee is not required to file renewal applications and appropriate fees for each subsequent license term while the

appeal is pending. If the licensee prevails, then the licensee shall be required to file renewal applications and pay the appropriate fees for each term during which the appeal is pending, within 60 days.

Subchapter 18: This subchapter confirms and implements the statutory provisions of N.J.S.A. 33:1-93.6 thru 93.10 and the administrative policy of the Division. The proposed readoption of this subchapter will continue the policy that no importer, blender, distiller, rectifier or winery can discriminate in the sale of any nationally advertised brand of alcoholic beverages, other than malt alcoholic beverages, to duly licensed New Jersey wholesalers authorized to sell the nationally advertised brand in New Jersey. The rules set forth a procedure to initiate a claim of discrimination and clarifies the interim and final enforcement powers of the Director.

N.J.A.C. 13:2-18.1 sets forth the legal basis for a claim for relief. This section is proposed to be amended to provide that the material breach, by a wholesaler of any material term or condition of sale or credit or scope of authorization agreed upon or established in writing between the wholesaler and refusing seller shall not be deemed discrimination. The addition of “scope of authorization” to this section codifies the Supreme Court’s decision in R&R Marketing v. Brown-Forman Corp., 307 N.J. Super. 474 (App. Div. 1998) rev’d, 158 N.J. 170 (1999). In R&R

Marketing, the Supreme Court directed the Division to promulgate regulations clarifying the Anti-Discrimination statute, N.J.S.A. 33:1-93.6. This proposed amendment is intended to respond to that Supreme Court directive.

N.J.A.C. 13:2-18.2 and 18.3 provide guidance in the filing, serving and answering of petitions and provides that a filing fee of \$100.00 is required by law and must accompany the petition which must identify the subject matter and the brand registration number for each of the products involved in the proceedings.

N.J.A.C. 13:2-18.4 sets forth the interlocutory relief that petitioner may apply for and confirms the authority of the Director to grant such relief if a substantial question of law or fact has been raised and petitioner will probably suffer substantial and irreparable injury without the granting of the relief. Ad interim relief can include an Order which requires, among other things, that the respondent sell designated product(s) to the petitioner upon terms as specified by the Director.

N.J.A.C. 13:2-18.5 mandates compliance with Director's order by licensees or non-licensees and provides for penalties if there is non-compliance.

N.J.A.C. 13:2-18.6, 18.7 and 18.8 identify the procedures regarding the Director's jurisdiction, the requirement for a public hearing of matters brought under this subchapter, as well as providing that the hearing shall be conducted consistent with the provisions of the Administrative Procedure Act.

Subchapter 19: This subchapter, proposed for readoption without amendment, sets forth the provisions governing the administrative disciplinary proceedings instituted for violation of Alcoholic Beverage Law and/or the rules of the Division

N.J.A.C. 13:2-19.1 provides that a disciplinary proceeding shall be commenced by the service of a Notice of Charges upon the licensee and allows service in person, by certified mail, return receipt requested, and ordinary mail.

N.J.A.C. 13:2-19.2 sets forth the contents of the Notice of Charges. The Notice of Charges shall include: (1) a list of the charges against the licensee; (2) the penalty for each separate violation as set forth in the Penalty Schedule (N.J.A.C. 13:2-19.11(i)); (3) notice that the licensee has 30 days from the date of service to enter a plea of guilty, not guilty or non vult ("no contest") to the charges; and (4) advice of the licensee's right to

representation. The rule also indicates that if a licensee fails to enter a timely plea, it shall be deemed to have pled non vult to the charges.

N.J.A.C. 13:2-19.3 sets out the pleading procedure for disciplinary matters. Within 30 days of service of the Notice of Charges, the licensee shall enter a plea of guilty, not guilty or non vult to the charges. Prior to the end of this 30 day period, the Director may, for good cause shown, grant up to an additional 30 days for the licensee to enter a plea. If the licensee enters a plea of guilty or non vult, the charges shall be deemed sustained, but the licensee shall have the opportunity to petition the Director to demonstrate mitigating circumstances or request permission to make a monetary offer in compromise in lieu of all or part of the penalty. If a licensee enters a plea of not guilty, the proceedings shall be considered a contested case and shall either be filed with the Office of Administrative Law or retained for a hearing conducted by the Director. Failure of a licensee to enter any plea shall be deemed a plea of non vult. Upon certification of service, the Director may, at the Director's sole discretion, impose the penalty stated in the Notice of Charges or take any other appropriate action, without further notice. If a matter is returned to the Division from the Office of Administrative Law due to the licensee's failure to appear at a scheduled proceeding, the licensee shall be deemed to have withdrawn any plea

previously entered and a plea of non vult shall be substituted. If no explanation for such non-appearance is received within 14 days of the return of the case from the Office of Administrative Law, the Director may, in the Director's sole discretion, impose upon the licensee the penalty stated in the Notice of Charges or take any other appropriate action, without further notice.

N.J.A.C. 13:2-19.4 provides for an emergent hearing if an alleged action of a licensee presents a danger which is an immediate threat to the public health, safety or welfare and is contrary to the interest of the community. The Order for Emergent Hearing shall contain all of the information required for a Notice of Charges and shall notify the licensee of the time and location of the hearing. If the purpose of the emergent hearing is to address the imposition of special conditions upon the license, those conditions shall be set forth in the Order. The hearing date shall be no less than five days from the date of service of the Order. While five days notice is required by this rule before the hearing is held, the Director may impose immediate special conditions to be in effect until the hearing date in the Order for Emergent Hearing if, in the Director's sole discretion, such conditions are necessary to protect the public health, safety and welfare. This procedure allows the Division to ensure that imminent threats to the

public are quickly addressed. If the licensee fails to appear in response to the Order for Emergent Hearing: (1) if the Order regards a penalty, the nonappearance shall be considered a plea of non vult to the charges and the Director may impose the charges without further notice; (2) if the Order regards special condition(s), the failure to appear shall be deemed to indicate no objection to the special condition(s) and the Director may impose them without further notice.

N.J.A.C. 13:2-19.5 provides that a disciplinary proceeding will not be barred nor will a pending proceeding be terminated because of the expiration, transfer, surrender, renewal or extension of a license or permit.

N.J.A.C. 13:2-19.6 provides that a disciplinary proceeding can be instituted for violations occurring during a license term, prior to a transfer or extension of a license, or during a period when the license was held by a predecessor of the current licensee.

N.J.A.C. 13:2-19.7 provides that a pending disciplinary proceeding shall continue to completion and that a suspension, cancellation or revocation will be effective without any further proceedings even if the license was transferred, extended or renewed during the disciplinary proceedings.

N.J.A.C. 13:2-19.8 provides that a licensed premises subject to a pending disciplinary hearing can be declared ineligible for licensure even though the license or permit is surrendered or another license was issued to another person for the same premises.

N.J.A.C. 13:2-19.9 mandates that when a license is suspended, the suspension shall continue in full force and effect notwithstanding any transfer or extension of the license during the period of suspension.

N.J.A.C. 13:2-19.10 provides that a pending disciplinary proceeding shall continue to completion and that a suspension, cancellation or revocation will be effective without any further proceedings even if the license was transferred, extended or renewed during the disciplinary proceedings. This section restates, clarifies and implements the intent of the provisions of N.J.S.A. 33:1-31.

N.J.A.C. 13:2-19.11 sets out the penalties for violations of the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq., and/or the rules or Orders of the Director which are promulgated thereunder. The penalty schedule lists the most common violations and is not intended to be an exhaustive list. This section also contains definitions of “violation”(each breach of duty or responsibility imposed by law upon the licensee), “concurrent violations” (violations that occur within the same 24-hour

period), and “successive violations” (violations that occur outside of the same 24-hour period). The penalty for successive violations will generally be calculated based upon the number of violations occurring within a two year period from the date of the first violation. The penalty for a second, third and/or fourth violation shall only be imposed if the licensee has been notified in writing of the prior violation(s), before the additional violation is charged, except in the case of an undercover operation. In that case, a second, third and/or fourth violation may be imposed without written notice to the licensee.

N.J.A.C. 13:2-19.12 describes offers in compromise of suspension. These offers may be for all or part of a suspension and can be monetary, pursuant to N.J.S.A. 33:1-31, or involve deferring some of the days of the suspension. If a licensee proposes that the Director accept a monetary offer in compromise, the licensee shall submit any documentation that the Director requests, including, but not limited to, income tax returns or other financial reports. The section also provides that the Director will not consider an offer in compromise in any case being prosecuted by the Division after an Initial Decision issued by the Office of Administrative Law, except in exceptional circumstances. However, if the license is transferred and the subsequent licensee had no interest in the license at the

time of the violations in question, the licensee may apply to the Director for relaxation of this regulation.

N.J.A.C. 13:2-19.13 provides that the penalties set forth in the penalty schedule may be increased or decreased based upon a finding by the Director of aggravating or mitigating circumstances. The factors listed in the rule are provided as examples and are not all inclusive. Some of the factors the Director may consider to decrease a penalty are: previous history of compliance, good faith efforts to prevent a violation and extraordinary cooperation in the investigation demonstrating that the licensee is acting responsibly. Some of the factors the Director may consider to increase a penalty are: prior warnings, violations, compliance problems, efforts to conceal violations, youthfulness of underage customers, and whether the activity that gave rise to the violation resulted in death or substantial injury. If death or serious injury occurred as a result of the incident that gave rise to the violation, the Director may revoke the license, even if it is a first violation. The Director shall state in writing the specific reasons for determining the penalty imposed.

N.J.A.C. 13:2-19.14 provides that the Director may, in the Director's sole discretion, issue a warning letter advising a licensee of violation(s) or

issue a fine letter, indicating that the Director will accept a monetary payment in lieu of prosecution.

N.J.A.C. 13:2-19.15 states that the Director will review the reasonableness of the penalties imposed by local issuing authorities in accordance with the penalty schedule and other factors set forth in the record before the Director.

N.J.A.C. 13:2-19.16 provides that these rules shall apply to violations occurring on or after December 3, 2001 and that the penalty schedule set forth in these rules shall supersede any other inconsistent penalty schedules.

Subchapter 20: This subchapter implements pertinent law prohibiting the commercial transportation of alcoholic beverages into, out of, or within the State unless the vehicle transporting is properly licensed by the Division. N.J.S.A. 33:1-2 and 28. It is noted that most State issued licenses that authorize the production or wholesaling of alcoholic beverages in this State also carry the privilege of transporting these products pursuant to regulations. Retail consumption and retail distribution licensees also exercise this privilege.

N.J.A.C. 13:2-20.1 states the requirement that the transportation of alcoholic beverages into, out of, within the State must be done in a vehicle that is leased, owned or contracted for by a New Jersey licensee that has

been issued a transit insignia or transportation insignia. An amendment is proposed to eliminate the special transit insignia which has not been issued for several years.

N.J.A.C. 13:2-20.2 sets forth the invoice requirements applicable to the delivery of alcoholic beverage to retail licensees. This section sets forth the criteria that a licensee must demonstrate that it made an emergency delivery in a vehicle which was not properly permitted, and thereby present a successful affirmative defense to a charge alleging violation of N.J.A.C. 13:2-20.1.

N.J.A.C. 13:2-20.3 sets forth the document requirements for transportation and deliveries made by State licensees. The current subsection (b) regarding parcel delivery service is proposed to be deleted in accordance with the legislation eliminating direct shipping for New Jersey wineries, P.L. 2004, c.. 102. The remaining subsection has been proposed to be recodified to reflect this change.

N.J.A.C. 13:2-20.4 sets forth the documents and information required to accompany the delivery of alcoholic beverages into, out of, or within the State.

N.J.A.C. 13:2-20.5 notes the various standards for the issuance of insignia for vehicles that are authorized to transport alcoholic beverages.

N.J.A.C. 13:2-20.6 identifies the application process and fees required to obtain a transit insignia, or a transportation license insignia. This section requires that a parcel delivery service must be licensed by the Director. It also provides that a copy of an original invoice must be retained for one year at the premises of the licensee and made available for inspection to persons authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act. It requires that an invoice must be attached to every package and must contain the purchaser's name, address, destination and the quantity of wine being shipped and place of purchase.

N.J.A.C. 13:2-20.7 sets forth the term, renewal requirements and expiration date for the issuance of these various insignia.

N.J.A.C. 13:2-20.8 identifies the location to affix transit insignia and transportation license insignia to commercial or passenger vehicles.

N.J.A.C. 13:2-20.9 provides various restrictions that are applicable to vehicles that bear insignia, such as requiring a replacement of an insignia that has become defaced or damaged.

N.J.A.C. 13:2-20.10 confirms that a licensee consents to the inspection and search of the transporting vehicle without warrant by persons authorized to enforce the Alcoholic Beverage Control Act.

N.J.A.C. 13:2-20.11 sets forth the duty of personnel delivering alcoholic beverages to consumers to determine that the party signing the delivery receipt is of legal age to purchase and consume alcoholic beverages. It further provides that failure to carry out this duty may be the basis for a suspension or revocation of the employer's license. An amendment is proposed to eliminate the special transit insignia which has not been issued for several years.

The reservation of N.J.A.C. 13:2-20.12 is deleted.

Subchapter 21: The proposed readoption of this subchapter will continue the regulation of the transportation of alcoholic beverages, for commercial purposes and personal use, into, through or out of the State. Transportation for a commercial purpose is regulated in accordance with pertinent law; this subchapter sets forth available licenses or permits to identify and authorize the entity or person transporting alcoholic beverages into or out of New Jersey. The permits in this subchapter authorize transportation of alcoholic beverages in a limited manner (as to time or scope) and such permits are generally acquired by persons not regularly involved in the alcoholic beverage business.

N.J.A.C. 13:2-21.1 states the general principle that transportation of alcoholic beverages into or out of New Jersey is prohibited unless an

appropriate license or permit has been issued under this subchapter or Subchapter 20.

N.J.A.C. 13:2-21.2 sets forth the limits, in accordance with N.J.S.A. 33:1-2, for the transportation of alcoholic beverages for personal use in an individual's own vehicle into the State from a point outside New Jersey. The fee for a permit to import alcoholic beverages from outside the State for personal consumption has been increased from \$25.00 to \$50.00 in accordance with N.J.S.A. 33:1-2.

N.J.A.C. 13:2-21.3 concerns transportation through the State and identifies the invoice requirements needed to verify interstate transportation.

N.J.A.C. 13:2-21.4 identifies the Limited Transportation Permit issued by the Director to authorize non-intrastate commercial transportation. The application process, the permit requirements, permit term, and cost for insignia are set forth. The cost for this permit has been proposed to be amended from \$750.00 to \$500.00 to correctly reflect the statutory fee.

N.J.A.C. 13:2-21.5 sets forth the procedures, fees and requirement for the issuance of Emergency Trip Permits by either the Division or its authorized agents. These permits authorize a single transportation either into or out of the State and are generally acquired by those who do not regularly transport alcoholic beverages. An Emergency Trip Permit for a single

shipment may not extend beyond the duration of the trip, or for 24 hours from the issuance of the permit, whichever period is longer.

N.J.A.C. 13:2-21.6 confirms the prohibition against unlicensed transportation and that violations of this subchapter may result in seizure and forfeiture of vehicles in accordance with N.J.S.A. 33:1-66.

N.J.A.C. 13:2-21.7 contains provisions requiring a permit holder's consent to search, by authorized persons without warrant, of vehicles utilized in furtherance of the permit.

The reservation of N.J.A.C. 13:2-21.8 is deleted.

Subchapter 22: The proposed readoption of this subchapter, without amendment, is made in accordance with N.J.S.A. 33:1-12.40 through 12.48, which established an initial and continuing education program for holders of plenary retail distribution license and limited retail distribution licenses issued pursuant to N.J.S.A. 33:1-12.

This subchapter authorizes the Division to implement the legislative intent that retail alcoholic beverage distribution licensees be required to periodically demonstrate a knowledge and understanding of the regulations, laws, and public policies of the State impacting on the alcoholic beverage industry.

N.J.A.C. 13:2-22.1 establishes the requirement for plenary and limited retail distribution license holders to successfully complete an educational training program as set forth in this subchapter.

N.J.A.C. 13:2-22.2(a) provides that all current holders of plenary and limited retail distribution licenses must attend and successfully complete an initial educational training program within nine months of the acquisition of same. Subsection (b) defines a license holder as any person or entity who acquires a new license, an approved person-to-person transfer of a license, or a change occurs of 33 1/3 percent or more of the stock of a corporate license. Subsection (c) requires that all holders of the subject licenses who have successfully completed the initial educational training program must have appropriate individuals attend and complete any supplemental continuing educational training programs if same is determined necessary by the Director.

N.J.A.C. 13:2-22.3 sets forth which individuals must attend the training program. The sole proprietor of an individually owned license must attend, at least one partner for a license held by a partnership must attend, and a corporate officer or stockholder who owns 25 percent or more of the corporate stock who is actively engaged in the operation of the business must attend. A manager, designated on the license application, is also

required to attend and a licensee can register other employees, on a space available basis, who are not mandated to attend by law. This section requires where an owner, partner or holder of 25 percent of the corporate stock is not actively involved in the operation or control of the business, then a manager must be disclosed on the license application and such manager must attend the training. The section provides that where a licensee holds more than one license subject to the requirements of this subchapter, at least one person for each license must attend and complete the training.

N.J.A.C. 13:2-22.4 provides that the training programs shall be made available to licensees at least once every three months, subject to need, in the north, central and south geographic areas in this State; as well as at least once annually on a Statewide basis.

N.J.A.C. 13:2-22.5 reflects the statutory authorization granting discretion to the Director to contract with a non-profit educational organization to administer all or part of the educational training program.

N.J.A.C. 13:2-22.6 provides general oversight by the Director in the establishment and annual revision of the course content and approval of instructors. This section identifies the course content, which includes but is not limited to, an explanation of the provisions of Alcoholic Beverage Control Act, the Division's regulations, municipal law and regulations,

disciplinary and adjudicated procedures and other policies and legal requirements relating to the alcoholic beverage industry. The curriculum for any supplemental training program, should such a program be required, shall include, but is not limited to, changes in the law, regulations, or market conditions.

N.J.A.C. 13:2-22.7(a) provides for the payment by each attendee of a registration fee in the amount not less than \$50.00 nor more than \$150.00. Subsection (b) further provides for the schedule of fees to be published in the Division's Alcoholic Beverage Control Bulletin. Subsection (c) provides that if a non-profit educational organization is contracted with by the Director the organization shall accept the full fee and forward 20 percent of the fee to the Director within seven business days for deposit in the State Treasury. The balance of the fee can be retained by the educational organization to reimburse it for costs. Subsection (d) requires the educational organization to maintain true and accurate books of account concerning all aspects of the operation which records shall be made available for inspection by the Director upon demand. An annual report is also required and the Director may require the posting of a performance bond.

N.J.A.C. 13:2-22.8 provides for a Certificate of Education Training to be issued to a licensee upon successful completion of the training program. Subsection (b) notes the procedure where-by a licensee can apply to the Director for deferment of the training requirement. The Director can issue an Order of Deferment extending the time for training after review of the deferment request accompanied by a non-refundable processing fee of \$25.00. An Order of Deferment cannot exceed six months.

N.J.A.C. 13:2-22.9 lists the sanctions that will be imposed for a non-excused failure to attendance or failure to successfully complete the required training program. The sanctions range from a \$250.00 penalty in lieu of formal disciplinary proceedings for a first failure to the institution of formal disciplinary proceedings for a fourth consecutive failure to attend or successful complete the required training program. The institution of disciplinary proceedings can lead to an indefinite suspension of the license, with leave granted to the licensee to lift the suspension upon payment of \$2,000 and proof of satisfactory completion of the education training program. Suspension or revocation is provided for any licensee who makes false or misleading representations in a petition for deferment.

Subchapter 23: This subchapter is proposed for readoption with amendments. The subchapter will continue the regulatory scheme which

governs the conduct of a licensed business by a licensee or permittee and the activities which occur upon the licensed premises. This subchapter implements the public policy objectives expressed by the Legislature, such as alcoholic beverage activity should be strictly regulated to foster moderation and responsibility in the use and consumption of alcoholic beverages; consumers should be protected against fraud and the industry should be protected against infiltration by known criminals; the protection of the collection of taxes; and the providing of a framework which recognizes the beneficial aspects of competition. N.J.S.A. 33:1-3.1.

The Director is authorized to make rules and regulations necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages. The pertinent provisions of N.J.S.A. 33:1-39 provide for the regulation of such subjects as hours of sale, racketeering, gambling, practices unduly designed to increase consumption of alcoholic beverages and other subjects which are necessary in the fair and comprehensive administration of the law. N.J.S.A. 33:1-39. This subchapter articulates those rules governing a licensee or the conduct of the licensed business, the practice or policy derivative of a statutory provision or public policies established or reinforced by the Division.

N.J.A.C. 13:2-23.1 prohibits a licensee from serving alcoholic beverages to persons under the legal age or to persons who are actually or apparently intoxicated.

N.J.A.C. 13:2-23.2 allows a municipality to prohibit, by ordinance, the retail sale of alcoholic beverages or the consumption of same on a licensed premises, during elections.

N.J.A.C. 13:2-23.3 requires licensed premises to be closed during public emergency or investigation of a crime.

N.J.A.C. 13:2-23.4 prohibits the house-to-house and telephone solicitations of alcoholic beverages.

N.J.A.C. 13:2-23.5 prohibits unlawful activity involving narcotics, other unlawful drugs, and the presence of persons of ill repute such as prostitutes or criminals in or upon the licensed premises, and also prohibits the licensed premises from being accessible to any illegal activity or enterprise.

N.J.A.C. 13:2-23.6 prohibits lewd and immoral activity, brawls and nuisances on or about the licensed premises. A licensee's responsibility under this subsection includes the conduct of the licensee, its employees and patrons, if such conduct is contrary to the public health, safety and welfare.

N.J.A.C. 13:2-23.7 prohibits illegal lotteries or gambling on licensed

premises. The rule includes in the prohibition any slot machine “or any other gambling device. The rule also prohibits any video device, which resembles a game of cards, dice, roulette, or any other game of chance or crane device, which device has not been approved by the Director. In approving a device, the Director must be satisfied that the specific device is an entertainment device and not a gambling device. In reaching this determination, the Director shall consider all factors relating to the operation of the device, including, but not limited to, whether the device can easily be used for or adapted to gambling. A licensee wishing to place such a device on a licensed premises shall request written confirmation from the Director, prior to placement, that the specific device has been previously approved or, if the specific device has not been previously approved, shall request that the Director make such a determination. The approval letter shall be kept on the licensed premises at all times or the device may be deemed to be unapproved. Paragraph (a)7 prohibits any raffle, drawing, lottery or contest, etc., the prize for which is an alcoholic beverage, without the appropriate permit. Subsection (c) provides that all licensees which have approved video games on their licensed premises shall notify the Division within 48 hours of the placement thereof.

N.J.A.C. 13:2-23.8 governs the hours of sale concerning the change of hours from Eastern Standard time to Eastern Daylight Savings time.

N.J.A.C. 13:2-23.9 prohibits the manufacture, transport and sale of adulterated alcoholic beverages. Upon the discovery of a violation, if the violative container is either sealed or equipped with a pouring spout with a screen designed to prevent contamination, the licensee shall be directed to empty the container. Compliance with the directive shall result in no administrative charges for this violation.

N.J.A.C. 13:2-23.10 prohibits the receipt of alcoholic beverages transported in violation of law.

N.J.A.C. 13:2-23.11 prohibits open containers on distribution licensed premises. An exception is permitted for open bottles returned by a customer as defective pending return to the manufacturer or wholesaler.

N.J.A.C. 13:2-23.12 prohibits the receipt of alcoholic beverages from prohibited sources.

N.J.A.C. 13:2-23.13 requires the display of the license certificate and the maintenance, on premises, of the employee's list and license application forms. A licensee can comply with the requirement of keeping the employee list if the information is contained in a computer system accessible from the licensed premises, and the information is able to be immediately produced.

The rule explicitly requires Class C licensees to maintain copies of their current license certificate, application and list of employees on the licensed premises. The rule, however, provides for an exception for retail licensed premises which obtain a Permit for Off-Premises Storage of Business Records. Additionally, the rule clarifies that a licensee shall be deemed to have complied with this requirement as to the employee list if this information is contained in a computer system, accessible from the licensed premises, and the information can be immediately produced.

N.J.A.C. 13:2-23.14 prohibits the possession on licensed premises of indecent and lewd materials.

N.J.A.C. 13:2-23.15 incorporates the Federal laws and regulations concerning contents of fill of an alcoholic beverage container.

N.J.A.C. 13:2-23.16 contains a description of various prohibited promotions. Its purpose is generally to reduce the likelihood of over-consumption of alcoholic beverages. It permits authorized consumer alcoholic beverage tasting events under described conditions and in accordance with listed restrictions under N.J.A.C. 13:2-37.1. A proposed technical amendment changes this provision from “tasting(s) or tasting dinners” to “tasting events” in accordance with the Director’s Special Ruling regarding sampling and tasting events based on recent legislation in this

area. Additionally, this section codifies Division policy regarding certain permitted promotions. Subsection (a) sets forth promotions which are longstanding exceptions to prohibition of offering unlimited availability of alcoholic beverages. The subsection makes clear longstanding exceptions which allow consumption licensees to hold New Year's Eve parties where a set price for attendance includes an open bar, as well as hosting private parties, not sponsored by the licensee, such as wedding and birthday parties and events held by social affair permittees. This section also codifies promotions which have been permitted pursuant to ABC Bulletin 2440, Item 2 and ABC Bulletin 2452, Item 4. These promotions include offers of one free drink or a coupon for one free drink as a gesture of good will in a 24 hour period, offers of a set price for a meal that includes a single drink or offers a single bottle of wine or champagne to a guest at a licensed hotel/motel as part of a specialty package. This section allows raffles, licensed pursuant to N.J.S.A. 5:8-50, to offer alcoholic beverages as a prize. Off-premise promotions are allowed which offer a purchaser something of value as well as offering mixed case discounts. The rule also provides that retail licensees that exercise the off-premise sales privilege may offer manufacturer, supplier or wholesaler on-pack or in-pack promotional gift items, entries to contests, sweepstakes or merchandise purchase offers

provided there is an alternative means of entry that is not unduly burdensome on the consumer. A proposed amendment to this section provides that no instant win coupons, tickets or the like are permitted in conjunction with an alcoholic beverage purchase.

N.J.A.C. 13:2-23.17 prohibits possession of chilled malt alcoholic beverages by holders of limited retail distribution licenses other than chilled draught malt alcoholic beverages in containers of at least 7.75 gallons.

N.J.A.C. 13:2-23.18 prohibits licensees or their employees from soliciting alcoholic beverages as a gift from patrons.

N.J.A.C. 13:2-23.19 prohibits a licensee from substituting a non-alcoholic beverage or another brand other than ordered by a customer unless agreed to by the customer.

N.J.A.C. 13:2-23.20 prohibits a licensee or its employees from being intoxicated while working on licensed premises.

N.J.A.C. 13:2-23.21 prohibits the storage of any alcoholic beverages except on licensed premises, public warehouses or pursuant to a Special Permit. It sets forth that the storage of alcoholic beverages other than that of the licensee is allowed on its premises, although same may not exceed 72 hours following delivery at the licensed premises and it must be part of the

beverages purchased, of a cooperative order, which was made by a fellow member of the cooperative.

N.J.A.C. 13:2-23.22 requires that tap markers indicate the brand of alcoholic beverage being drawn from a keg or automatic dispensing system.

N.J.A.C. 13:2-23.23 prohibits the possession of any alcoholic containers which does not bear a label descriptive of the contents or indicia of tax payment.

N.J.A.C. 13:2-23.24 prohibits a licensee from placing an order for an alcoholic beverage with any individual not properly licensed to solicit an order.

N.J.A.C. 13:2-23.25 prohibits a retail licensee from having an interest in the manufacturing or wholesaling of alcoholic beverages.

N.J.A.C. 13:2-23.26 prohibits a licensee from employing or having anyone connected with the business who refuses to submit to fingerprinting for criminal background searches by the Director or municipal issuing authority.

N.J.A.C. 13:2-23.27 sets forth the activities that are prohibited during periods of suspension.

N.J.A.C. 13:2-23.28 sets forth the “standard of liability.” As provided in the rule, unless otherwise specified, a licensee is guilty of a violation of

the Alcoholic Beverage Control Act if it allows, permits or suffers the violative act on or about its licensed premises. The rule further provides that when knowledge is required to establish a violation of the Alcoholic Beverage Control Act, knowledge is established if: (1) the licensee itself committed the violative act; (2) the licensee had actual knowledge or was on notice that the violative activity was taking place, or about to take place, on or about the licensed premises; or (3) the licensee could have discovered violative activity was taking place, or about to take place, on or about the licensed premises through reasonable inquiry and had notice of circumstances which gave rise to a duty to inquire regarding same. The fact that the licensee did not participate in the violation or that the licensee's agent, servant or employee acted contrary to instructions given by the licensee or that the violation did not occur in the licensee's presence shall constitute no defense to the charges preferred in such disciplinary proceedings. Furthermore, subsection (d) states that no licensee shall commit any act which gives rise to a violation that is chargeable against any other licensee. The licensee committing such violation may be administratively charged for same even if the other licensee is not charged. Subsection (e) clarifies that the provisions of this regulation apply to all

classes of alcoholic beverage licenses and confirms that a licensee is responsible for the acts, conduct and deeds of its employees.

N.J.A.C. 13:2-23.29 authorizes the retention of evidence and warrantless search of licensed premises by authorized Division personnel and other designated persons.

N.J.A.C. 13:2-23.30 follows the language of N.J.S.A. 33:1-35. N.J.S.A. 33:1-35 requires a licensee to, on demand, exhibit and produce to the Director or other issuing authority all records which are properly subject to the jurisdiction of the Division during an investigation. This section provides that every licensee and every person with an ownership interest therein, and every director, officer, agent and employee of every licensee shall accept service of any investigatory request, including a request for documents or testimony or subpoena issued by the Director. If service of a document cannot be made due to the refusal of the licensee or any such person identified above to accept service of same, the licensee may be considered in violation of the Alcoholic Beverage Control Act.

Additionally, subsection (d) provides that no licensee, permittee or any shareholder, partner or other person having an interest in a license or permit shall refuse to submit to fingerprinting when so required by the Director or the local issuing authority. Furthermore, subsection (e) states that no

licensee, permittee or any shareholder, partner or other person having an interest in a license or permit shall refuse to submit full disclosure in a financial investigation, including but not limited to all savings, checking, or other bank or financial accounts held by or for such person or entity individually, jointly, or in trust (for himself or another person or entity), when so required by the Director or the local issuing authority.

N.J.A.C. 13:2-23.31 prohibits a law enforcement officer from having an interest in a liquor license and regulates a law enforcement officer's employment by a licensee. The section also sets forth the procedure for employment of police officers and the restrictions applicable to their employment as established by N.J.S.A. 33:1-26.1. A technical amendment is proposed in paragraph (b)1 to show that the section refers to "law enforcement" officers. This term more accurately reflects the officers involved than "police" officers.

N.J.A.C. 13:2-23.32 requires the maintenance of books of account of receipts and expenditures in connection with the operation of the licensed business. This section provides that unless a licensee has obtained a permit for the off-premises storage of certain records, pursuant to N.J.A.C. 13:2-29.4, each licensee must keep and maintain the following documents and records on its licensed premises: (1) the current license certificate; (2) a

copy of the current license application with any amendments filed, if applicable, together with a copy of the last long-form retail licensee application filed by the licensee; (3) a fully completed up-to-date list of all persons currently working on the licensed premises (commonly known as Form E-141-A); (4) the current Federal special tax stamp, or proof of proper filing for such annual stamp; (5) copies of all delivery slips, invoices or similar documents for such transactions made within the past year; (6) records of transactions with or placements by a registered display service; (7) New Jersey Sales Tax Certificate of Authority; and (8) any other records required by this subsection. Additionally, subsection (b) requires that all licensees maintain, for a period of five years, a record of all money or any other thing of value received in the ordinary course of business or received outside the ordinary course of business, including, but not limited to, liquor sales, food sales, rebates, including payments from any Retail Incentive Program “RIPs,” and miscellaneous income. Furthermore, as set forth in subsection (c), all licensees must maintain, for a period of five years, records which show the payment of all expenses. The records shall indicate the name of the person or entity receiving such payment, the amount of the payment and the reason that the payment was made. Payment records shall include payments made for: (1) the purchase of alcoholic beverages; (2)

the purchase of food items; (3) the purchase of supplies and use of utilities; (4) the purchase or lease of equipment; (5) the payment of employees' compensation, including all required withholding; (6) the payment of all local, state and federal taxes and license fees; (7) the payments of rents, mortgages, loans and/or a reduction of an owner's equity; and (8) all other disbursements. This section also requires that all licensees must produce the above-enumerated records for inspection immediately upon request by the Director, the issuing authority or the agents or representatives thereof and any other law enforcement officer, peace officer or any other person whose powers or duties include the enforcement of the Alcoholic Beverage Control Act and officers as defined by N.J.S.A. 33:1-1(p). Furthermore, pursuant to subsection (e), all licensees must have and keep, for an unlimited period of time, permanent records of account which shall truly and accurately contain a record of all moneys invested in the licensed business, including loans, the source of all such investments and the disposition of such investments for an unlimited period of time. Such documents may be stored on or off the licensed premises and shall be produced within seven days of a request from by the Director, the issuing authority or the agents or representatives thereof and any other law enforcement officer.

N.J.A.C. 13:2-23.33 provides that dishonored checks or unpaid fees shall subject a licensee, permittee or applicant to disciplinary proceedings.

Subchapter 24: This subchapter regulates the permissible trade and marketing practices in the industry and provides appropriate regulatory control of licensees in the sale and marketing of alcoholic beverages in the State. The subchapter sets forth the requirements regarding the filing of information as part of the Current Price List; it allows manufacturers, suppliers, importers, wholesalers or distributors to make donations to bona fide charitable organizations; permits licensees to sell alcoholic beverages in combination with another alcoholic beverage products and permits retailers to offer mixed case discounts. This subchapter also regulates alcoholic beverage industry promotions known as Retail Incentive Programs (RIPs), subject to certain requirements and limitations. The subchapter limits the RIPs to monetary payments payable only by business checks issued by the wholesaler. RIPs are limited from a maximum of 50 cases to a minimum of one bottle and no single RIP shall exceed \$1000. If a proposed RIP rebate does not meet the requirements contained in the rules, it must obtain the prior approval of the Director in order to ensure that the proposal is non-discriminatory and will not have a negative impact on the industry or public.

N.J.A.C. 13:2-24.1 defines a RIP as a form of “rebate” in which a wholesaler provides a financial incentive to purchase a specific quantity of alcoholic beverages in one purchase transaction and places no other obligation on the retailer. A rebate is defined in paragraph (b)2 as an inducement or allowance to purchase a product which is not reflected on the wholesaler’s invoice at the time the sale of the subject alcoholic beverages is completed, but which is payable no less than 30 days and no more than 90 days after the payment for the product on which it is given. A rebate is not reflected in the cost of the product. While the rebate must be listed on the Current Price List (CPL), it is not considered in the sale price for purposes of determining cost pursuant to N.J.A.C. 13:2-24.8. The subsection distinguishes a rebate, such as a RIP, from a discount. Paragraph (b)1 defines a discount as an inducement or allowance to purchase a product which is reflected on the wholesaler’s invoice at the time of the sale. A discount is reflected in the cost of the product on which it is given, as it relates to the retailer’s sale price for purposes of N.J.A.C. 13:2-24.8. N.J.A.C. 13:2-24.1(c) outlines the requirements of a RIP rebate. The subsection provides that all wholesalers participating in a RIP rebate program shall provide the rebate in the form of a monetary payment, payable only by business checks issued by the wholesaler. No RIP rebate shall be

offered on a quantity in excess of 50 cases and for every RIP rebate, there shall be a corresponding small quantity RIP rebate on the same product for a quantity that is five cases or less. The minimum quantity shall be one bottle. RIP rebates may be based on a combination of various sizes and products, but no single RIP rebate shall exceed \$1,000. No limit is placed on the number of single RIPs for which a retailer may qualify. If a proposed RIP rebate does not meet these requirements, it must be pre-approved by the Director in order to ensure that the proposal is non-discriminatory and will not have a negative impact on the industry or the public. N.J.A.C. 13:2-24.1(c)1ii allows a wholesaler to exclude retail cooperatives from a rebate program, only if it meets the requirements of a RIP rebate or has received the prior approval of the Director. If a wholesaler wishes to exclude retail cooperatives from a rebate program that does not comply with subsection (c), that wholesaler shall first petition the Director for approval of its program at least 75 days in advance of the first date of the program proposed to appear on the CPL . Subsection (g) provides that upon an investigation or prosecution of any discount, rebate, allowance or advertising service, the party offering such program must make a prima facie showing to the Division that the program is consistent with this subchapter.

N.J.A.C. 13:2-24.2 prohibits a manufacturer, supplier or wholesaler from discriminating in providing to purchaser competitors any service, facilities or equipment, or in conditioning any offer upon the future purchase of any alcoholic beverages. The granting of any commission, fee or compensation, or any allowance or discount in lieu thereof is also prohibited except for the reasonable value of services rendered.

N.J.A.C. 13:2-24.3 prohibits activities of a licensee or registrant in contracting or combining in the form of a trust or otherwise, or conspiring in restraint of trade or commerce in alcoholic beverage activity.

N.J.A.C. 13:2-24.4 provides a comprehensive regulation of wholesale practices in the offering of credit to retail licensees, the procedure to be followed and the consequences of retailer default. The primary objective of this rule is to establish industry stability in this aspect of regulation and practice as well as the protection of the alcoholic beverage tax base.

N.J.A.C. 13:2-24.5 continues the requirement that any seller of alcoholic beverage in this State must maintain, for three years, a Historic Price Listing and Marketing Manual noting prices charged to wholesalers as well as marketing services, facilities, equipment, advertisements and promotions offered to wholesalers. Wholesalers must be notified by

suppliers one month in advance of the prices they will be charged for the next succeeding month.

N.J.A.C. 13:2-24.6 sets forth the requirements for licensees who intend to sell to retail licensees. These include the maintenance of a Historical Price List and Marketing Manual for three years. The notice and recordkeeping requirements of the wholesaler Current Price List is set forth and is amended to require the listing of any retail incentive program offered. In addition, the regulation requires that the following information to be included in the Price List: prices of per unit costs; the brand registration number in accordance with N.J.A.C. 13:2-33.1; and all promotional point-of-sale items, holiday combination gift, combination product packages or other retailer incentive programs. It also provides that no retailers shall accept delivery of anything from any manufacturer, supplier or wholesaler other than upon terms as set forth in the Current Price List.

N.J.A.C. 13:2-24.7 allows wholesaler and supplier licensees to obtain a special permit to make donations of alcoholic beverages to qualified industry trade organizations and to bona fide charitable organizations.

N.J.A.C. 13:2-24.8 confirms the prohibition, applicable to licensees selling at wholesale or retail, against selling any alcoholic beverage below

cost. The definition of cost is set forth and the manner of applying that definition to after acquired identical products is provided.

N.J.A.C. 13:2-24.9 concerning combination and tied sales, allows licensees to offer combination gift packages that are pre-packaged as a unit for sale. It also permits the sale of gift packages by retailers which contain alcoholic beverages in combination with other suitable objects, notwithstanding any local ordinances to the contrary.

N.J.A.C. 13:2-24.10 clarifies certain references and practices that cannot be included in any advertising material or advertisement by a manufacturer, supplier, wholesaler, retailer or registrant. The regulation also sets forth applicable requirements when alcoholic beverages are priced in an advertisement by non-identically owned licensees.

N.J.A.C. 13:2-24.11 regulates the offering of manufacturers' rebates and coupons for consumer refunds on the purchase of alcoholic beverages. This section sets forth the manner in which manufacturers distribute rebates and coupons to consumers. The rule allows for rebate forms to be distributed via an internet site. This rule also allows a retail licensee to advertise a reduction in the price along with the net sale price of an alcoholic beverage, based upon redemption of a manufacturer's rebate or coupon. An

amendment is proposed at subsection (c) to indicate that no instant win coupons or the like may be provided with an alcoholic beverage sale.

N.J.A.C. 13:2-24.12 regulates the registration procedures for persons who provide alcoholic beverage display materials or advertising promotion services to or for licensees.

Subchapter 25: This subchapter, which is proposed for readoption without amendment, regulates the warehousing and storage of inventory and the authorized purchase and distribution of same by plenary, limited and wine wholesale and state beverage distributor licensees.

N.J.A.C. 13:2-25.1 requires a plenary or wine wholesale licensee to warehouse its product in a New Jersey warehouse for at least 24 continuous hours before delivery.

N.J.A.C. 13:2-25.2 requires that a wholesale class licensee must be registered as an authorized distributor by the brand owner or acquire the product from an authorized New Jersey wholesale licensee in order to sell a product to a New Jersey retail or wholesale licensee for resale in the State.

N.J.A.C. 13:2-25.3 clarifies the privileges of a State beverage distributor license that they can only sell to retailers or consumers. It also mandates that such licensee must obtain their malt alcoholic beverages from

an authorized source and can only sell product from inventory which has been stored for at least 24 hours in their warehouse.

Subchapter 26: This subchapter authorizes cooperative purchases and transportation of alcoholic beverages by retail licensees. Various standards, limitations or obligations are set forth by these rules, addressing activities such as the number of licenses that can form a cooperative, the manner in which licensees can join or leave cooperatives, conditions required for credit sales and invoicing and the responsibility of licensees for the activity of the cooperative purchases or transportation.

N.J.A.C. 13:2-26.1(a) allows a cooperative to hire employee(s) to act in an administrative or management capacity for the cooperative's purchase, storage and transportation of alcoholic beverages, authorizes a cooperative to maintain a public warehouse for the use of its members, as well as authorizing a cooperative to maintain a bank account and to assess and charge members for costs.

N.J.A.C. 13:2-26.1 (b) requires the cooperative buying groups be registered with the Division. The registration requires information such as the identity of the members and a copy of the cooperative agreement. An amendment is proposed to provide for a \$15.00 registration fee per member.

Subchapter 27: This subchapter is proposed for readoption without amendment and sets forth the guidelines regarding the sale, distribution and marketing of alcoholic beverage products, packaged in a bottle or can marked for deposit in another state, to consumers in New Jersey.

N.J.A.C. 13:2-27.1 incorporates Federal regulations relating to labeling and standards of fill concerning all types of alcoholic beverages.

N.J.A.C. 13:2-27.2 will continue to permit the sale of malt alcoholic beverages in New Jersey which contain deposit information on their labels, of all but the more popular products and packages which can logically be said to comprise the well known and best selling brands of beer and malt ale. To ensure the continued economic viability of New Jersey's beer wholesalers and the protection of the tax base from transshipment of beer and malt ale, only brands which will be sold in relatively small quantities in New Jersey will be allowed in with deposit markings on their containers.

As a result, for malt alcoholic beverages only (other than "malt coolers" which under the rule can be sold in New Jersey with deposit marked containers), those products will continue to be prohibited for sale in New Jersey if their containers have labels marked for deposit in another State. An exception is provided so that an appropriate officer of the brand registrant of the beer or malt ale may file an application with the Division

and certify that total shipments of that product into New Jersey will not exceed 3,000 barrels or its container equivalent in the calendar year.

With respect to malt alcoholic beverages shipped in excess of the 3,000 barrel exemption (other than “malt coolers” which, under the regulation also can be sold in New Jersey with deposit marked containers), those products will continue to be prohibited for sale in New Jersey if their containers have labels marked for deposit in another state. The Director will continue to have the authority, after providing notice and an opportunity, to remove the exemption status afforded any product pursuant to this subchapter, in response to any issues or problems which have been brought to the attention of the Division.

Subchapter 28 remains in a reserved status.

Subchapter 29: This subchapter identifies records of the Division and classifies the records as being public or confidential. The proposed readoption, with amendment, of this subchapter is necessary and proper to provide notice to the public and industry members of the type of records maintained by the Division and the procedures to obtain inspection or reproduction of the records.

N.J.A.C. 13:2-29.1 identifies those records which have been classified as public records and includes such records as license and permit

applications, price and product information filings, pleadings, transcripts and orders relative to administrative hearings and other public records as defined by pertinent law.

N.J.A.C. 13:2-29.2 identifies those records which the Division considers confidential and includes such records as initial complaints alleging violation, investigative reports, tax reports, and other documents and questionnaires required to be filed with the Division for use in an investigative or disciplinary matter as authorized by the Director.

N.J.A.C. 13:2-29.3 confirms the right of every citizen of the State to inspect and copy public records at the Division's office during normal business hours and to obtain copies of such records upon payment of appropriate fees. An amendment is proposed to this section to change the fee schedule to that provided in the Open Public Records Act, N.J.S.A. 41:1A-1, et seq., as amended by P.L. 2001, c. 404. The fees are now as follows: First page to Tenth page: \$0.75 per page; Eleventh to Twentieth page: \$0.50 per page; All pages over Twenty-one (21): \$ 0.25 per page.

N.J.A.C. 13:2-29.4 allows storage of records at locations other than the licensed premises and in alternative modes (computer records) provided the information is readily retrievable. Computer systems may be used to store records required by law if such records are retrievable within the time

limits enumerated in the section. The licensee must apply to the Director for approval of alternate methods (other than the computer system as provided above) or locations for storage of any record required to be maintained by licensees. This rule regarding licensee records; storage systems and availability of records, provides that the Director may, in the sound exercise of his or her discretion, issue a permit for the off-premises storage of the records listed in N.J.A.C. 13:2-23.32(a)5, (b) and (c) that are in excess of three months old. Subsection (e) also allows a licensee to apply to the Director for a Permit for Off-Premises Storage of Business Records on a form prescribed by the Director. The permit term shall coincide with the license term. A separate permit shall be obtained for each license held by the licensee. The cost of this permit shall be \$100.00 per license for each license term. The permit must be renewed at the same time the license is renewed.

N.J.A.C. 13:2-29.5, Inspection by other governmental agencies, provides that the Division may, in its sole discretion, provide to any governmental agency for inspection any document in the Division's possession..

Subchapter 30: The proposed readoption, without amendment, of this subchapter will continue the procedure for registration of stills and distilling apparatus pursuant to N.J.S.A. 33:1-2.1.

This subchapter consists of six sections which define what items are to be registered, the form to be used in the registration process, the nature and contents of the certificate of registration, the need to seek permission from the Director before removing or selling a still or distilling apparatus and the exemption from these rules for stills and apparatus utilized in connection with a licensed distillery, rectifier or blender.

Subchapter 31: A basic principle of the New Jersey Alcoholic Beverage Control Act is that the manufacture, sale, transportation, warehousing, bottling and distribution of alcoholic beverages is illegal unless it is done in accordance with law and within the terms of a license or permit. N.J.S.A. 33:1-2. One of the sanctions provided by law for violations is the seizure and forfeiture of illicit beverages, vehicles containing same and property utilized in conjunction with the unlawful alcoholic beverage activity. N.J.S.A. 33:1-66. This subchapter provides for hearings on seized property and the consequences of forfeiture and is proposed for readoption without amendments.

N.J.A.C. 13:2-31.1 incorporates, by reference, the provisions of the Administrative Procedure Act regarding the hearing of contested administrative cases.

N.J.A.C. 13:2-31.2 sets forth three methods which can be utilized for a claimant to obtain the return of seized property prior to a final hearing (posting of cash bond equal to appraisal, surety bond in sum double the retail value or replevin action).

N.J.A.C. 13:2-31.3 implements the statutory provisions of N.J.S.A. 33:1-66, which established the standards to determine whether claims for return of seized property should be recognized or denied. The Director may return property if a claimant establishes good faith and unknowing violation of the law and a valid interest in the seized property. The sale of forfeited property shall be conducted pursuant to the provisions of N.J.S.A. 52:27B-68.

N.J.A.C. 13:2-31.4 confirms that upon a matter involving seizure and forfeiture being determined to be a contested case, the hearing will be conducted in accordance with the Uniform Administrative Procedure Rules of Practice.

Subchapter 32 remains in a reserved status.

Subchapter 33: The proposed re adoption of this subchapter will continue the regulatory provisions which govern the filing of information with the Division as to all alcoholic beverage products sold or offered for sale at wholesale or retail in the State. The information required in the brand registration filings includes the entity which either owns the product or is authorized by the owner to register the product in New Jersey. The brand registration also identifies those licensed wholesalers who are designated to offer the alcoholic beverage products for resale.

N.J.A.C. 13:2-33.1 will continue the codification of the requirements for brand registration. The rule confirms the statutory provisions of N.J.S.A. 33:1-2(c) which mandate brand registration and cite the information that is to be filed in the brand registrations. It also mandates that the brand registration is to be filed by the brand owner or authorized agent. This subsection is proposed to be amended to update the name of the Federal bureau from the Bureau of Alcohol, Tobacco and Firearms to its new title of Alcohol and Tobacco Tax and Trade Bureau (TTB).

N.J.A.C. 13:2-33.2 sets forth the filing fees, required by law, as \$23.00 for initial filings and \$10.00 for the filing of an amendment.

Subchapter 34: This subchapter is proposed for re adoption with a proposed technical amendment correcting the name of the Federal bureau

from the Bureau of Alcohol, Tobacco and Firearms to its new title of Alcohol and Tobacco Tax and Trade Bureau (TTB). The subchapter implements N.J.S.A. 33:1-10. This legislation was enacted on July 30, 1993 and created a new restricted brewery license. The law authorizes the holder to brew up to 3,000 barrels of 31 fluid gallons capacity per year. The license may be issued only to persons or entities which also have identical ownership of an active plenary retail consumption license operated in conjunction with a restaurant.

N.J.A.C. 13:2-34.1 requires an application for a restricted brewery license and sets forth the type of information that must accompany the application. The site of the restricted brewery license activity must be immediately adjacent to the retail license restaurant premises. The application requires submission of a sketch of the area in which the malt alcoholic beverages will be sold. Other required documentation includes proof of posting of a tax bond with the Division of Taxation; proof of registration as a brewer with the TTB, a proposed technical amendment updating the name of the Federal bureau from the Bureau of Alcohol, Tobacco and Firearms to its new title; compliance with all local, county and or State requirements associated with manufacturing and waste water discharge; proof of notice to local issuing authority and certification from

the local issuing authority that the applicant maintains ownership of an active plenary retail consumption license operated in conjunction with a restaurant.

N.J.A.C. 13:2-34.2 sets forth the fees for the operation of a restricted brewery license. The base license fee is \$1,250 which entitles the license to brew up to 1,000 31 fluid gallon barrels per year. There is an additional \$625.00 fee for every additional 1,000 barrels up to a 3,000 annual barrel limit in accordance with law.

N.J.A.C. 13:2-34.3 sets forth the definition of a restaurant and notes the requirement that the restricted brewery license shall be issued to persons or entities who have identical ownership of an active plenary retail consumption license operated in conjunction with an immediately adjacent restaurant.

N.J.A.C. 13:2-34.4 provides that a restricted brewery licensee may offer, without charge, no more than five ounces of a brewed malt alcoholic beverage for consumption on the licensed premises as a sampling of the product. This sampling cannot be offered to the same customer more than once for each malt beverage brewed on the premises during the hours of sale on any day. This rule also provides for sales for off-premises consumption and mandates compliance with pertinent regulations governing the display

and sale of malt alcoholic beverages for off-premises consumption. The regulation further requires containers for off-premises consumption must be sealed refillable containers with labeling approved by the Director.

N.J.A.C. 13:2-34.5 implements the enabling legislation by requiring a hearing if the governing body of a municipality in which the license will be located files a written objection with the Director.

N.J.A.C. 13:2-34.6 provides that a disciplinary hearing against a restricted brewery license shall be separate and distinct from and not adversely affect the plenary retail consumption license unless the factual basis of the violation charged involves the operation of both licenses.

Subchapter 35: This subchapter, proposed for readoption without amendment, sets forth the parameters that plenary or seasonal retail consumption licensees, without the broad package privilege, must follow in the sale of alcoholic beverages in original containers for consumption off the licensed premises.

N.J.A.C. 13:2-35.1 sets forth definitions of phrases utilized in the subchapter. Definitions of “perimeter wall” of a barroom and “outside edge” of a sales counter are set forth to clarify the provisions of this subchapter.

N.J.A.C. 13:2-35.2 provides that plenary retail consumption or seasonal retail consumption licensees which do not hold the “Broad package privilege,” are prohibited from selling or displaying for sale any alcoholic beverage in an original container for off-premises consumption except from and in the public barroom of the licensed premises.

N.J.A.C. 13:2-35.3 codifies the action of the Division in noting on the face of a renewal license certificate, for those licenses having the “Broad package privilege,” that the license bears the privilege as provided by law.

N.J.A.C. 13:2-35.4 sets forth the requirements and prohibitions for making off-premises consumption sales by retail consumption licensees without the “Broad package privilege.” This section codifies the August 4, 1999, Final Conclusion and Order in the matter of Kazwell Co., Inc., v. Municipal Board of ABC of the City of Garfield, ABC Dkt. No. 6406 (October 23, 1998). The Director held that a plenary retail consumption licensee, in accordance with N.J.A.C. 13:2-35, may display package goods in refrigerated cases along the perimeter wall of the premises as long as the cases are placed “flush and fastened” to the wall and the shelves do not exceed two feet in depth.

N.J.A.C. 13:2-35.5 restricts package good sales to the bona fide principal barroom of plenary retail consumption licenses or seasonal retail consumption licenses which do not possess the “Broad package privilege.

Subchapter 36: The proposed readoption of this rule, without amendment, confirms the Division’s policy for the procedure of considering requests to issue written advisory opinions.

N.J.A.C. 13:2-36.1(a) provides that the inquiry must identify the parties and reference a particular situation, concern Division regulations, and address issues not previously articulated by the Division or which involve substantial questions of general applicability.

N.J.A.C. 13:2-36.1(b) requires the requesting party to advise the Division if the subject matter of the inquiry is an issue pending in any Federal or State court or in any administrative adjudicatory forum. A certification from the requesting party is also required if that party is aware that the subject matter of the inquiry is pending as described in the rule, to fully identify the forum and the nature of such proceeding.

Subchapter 37. This subchapter pertains to consumer tasting events. Although no amendments to this subchapter are proposed as part of this readoption, the Division published proposed amendments to this subchapter in the New Jersey Register on September 7, 2004 in response to legislation

contained in P.L. 2003, c. 279. See 36 N.J.R. 3988(a). The Division anticipates that an adoption of the proposed amendments will be filed with the Office of Administrative Law shortly after this readoption is filed on or before July 24, 2005.

Subchapter 38: This subchapter sets forth the permissible and prohibited hours of off-premises sale of alcoholic beverages at retail. These rules also reflect the statutory provisions of N.J.S.A. 33:1-40.3, which permits malt alcoholic beverages and wine to be sold in original containers for off-premises consumption during the same hours as the sale of alcoholic beverages for consumption on the licensed premises is permitted in a municipality. It is proposed for readoption without amendments.

N.J.A.C. 13:2-38.1 provides that the sales of package goods are prohibited before 9:00 A.M. or after 10:00 P.M. except, that when on-premises consumption of alcoholic beverages is authorized in any municipality, the sale of wine and malt alcoholic beverages in original containers for off-premises consumption shall also be authorized on the same days and during the same hours. It also allows cities of the first class to establish by ordinance separate hours of sale for each type of retail license, and separate hours of sale of alcoholic beverages for on-premises and off-premises consumption by such licenses.

N.J.A.C. 13:2-38.2 allows municipalities that do not authorize the sale of alcoholic beverages for consumption on the premises, on Sundays, to authorize, by ordinance, the sale of wine and malt alcoholic beverages in original containers for off-premises consumption by retail distribution and State beverage distributor's licensees between the hours of 12:30 P.M. and 6:30 P.M. This section clarifies pertinent law that any city of the first class, which prohibits Sunday sale for consumption on the premises, shall further result in no licensee in such city being allowed to sell any alcoholic beverage at retail in its original container for consumption off the licensed premises.

Subchapter 39: This subchapter sets forth the circumstances when alcoholic beverages may be returned by a retail licensee to a manufacturer or wholesale licensee. This subchapter is proposed for readoption without amendment.

N.J.A.C. 13:2-39.1 sets forth return policies that are customary and usual to the industry and notes the reasons which are recognized in order to properly return alcoholic beverages and the records required.

N.J.A.C. 13:2-39.2 sets forth the documentation which must accompany the alcoholic beverages that have been picked up from a manufacturer or wholesaler by a retailer, or by a solicitor for delivery to a retailer.

Subchapter 40: This subchapter regarding the procedure for the issuance by county clerks of identification cards to residents of their respective counties is proposed for repeal. Legislation signed into law on September 10, 2003, terminated the authority of counties to issue identification cards for purposes of purchasing alcoholic beverages. P.L. 2003, c. 175. As the legislation explained, the purpose of elimination of the ABC County identification cards is to prevent security problems that may arise when 21 separate counties are responsible for distributing official, State-sanctioned legal identification. It will also reduce the potential for unauthorized persons to forge or fraudulently obtain official legal identification cards, limit the opportunity for abuse by underage persons and enhance domestic security. The subchapter will be in a reserved status..

Subchapter 41: This subchapter is proposed for readoption without amendment. It implements legislation (N.J.S.A. 33:1-19.7) which establishes a special plenary retail consumption license which can be issued to certain non-profit musical or theatrical corporations whose premises have a seating capacity of 1,000 persons or more. These special licenses can be issued even in municipalities which have reached or otherwise exceeded the maximum number of consumption licenses given their population.

N.J.A.C. 13:2-41.1 defines terms used in this subchapter, including “non-profit corporation,” “licensed premises” and “restaurant operator.”

N.J.A.C. 13:2-41.2 sets forth the issuance procedure for these special licenses and describes what a municipal issuing authority must do in order to obtain the Director’s authorization that a special license can be issued by the municipality.

N.J.A.C. 13:2-41.3 provides the application and qualification process of a “restaurant operator” who wishes to obtain the Director’s authorization in order to utilize the license issued to the non-profit corporation.

N.J.A.C. 13:2-41.4 contains the privileges and limitations inherent in such special licenses. Particularly, these licenses can only be utilized two hours before, during, and two hours after a performance. It also clarifies that this license only authorizes consumption on the licensed premises and does not authorize the sale of packaged goods for off-premises consumption.

N.J.A.C. 13:2-41.5 and 41.6 provide for procedures for person-to-person and place-to-place transfers as well as the procedure to follow in reporting changes in facts and corporate structure.

N.J.A.C. 13:2-41.7 provides that these special licenses can only be renewed by the qualified non-profit corporation which hold the license.

Subchapter 42. This subchapter, headed, “Petitions for Relief to the Director Pursuant to N.J.S.A. 33:1-12.18,” outlines the procedures for petitions to the Director requesting a Special Ruling, as authorized by the Alcoholic Beverage Control Act, permitting a municipal issuing authority to consider an application for a new license if the licensee failed to file a timely renewal application. N.J.S.A. 33:1-12.18 requires an application within 60 days following the expiration of the license renewal period, that is, September 28 of the year in which renewal is sought. This subchapter is in response to the Appellate Division’s opinion in Olga Plata v. Division of ABC, 360 N.J. Super. 92 (App. Div. 2003). In this case, the court held that the filing of a renewal application with the municipal issuing authority on or before September 28 of the year in which renewal is sought is sufficient to satisfy the filing requirement of N.J.S.A. 33:1-12.18. The Appellate Division further held that regulations were necessary for the Division to require an applicant to file a separate verified petition with the Division by September 28 of the year in which renewal is sought. This subchapter provides the regulatory guidance called for by the court and further clarifies existing practices with regard to requests for relief pursuant to N.J.S.A. 33:1-12.18.

N.J.A.C. 13:2-42.1 establishes the type of and time for submitting required filings pursuant to N.J.S.A. 33:1-12.18. The rule provides that 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 September 28 of the year beginning the license term; and (2) filing a Verified Petition and the statutory filing fee with the Director, with a copy of the Verified Petition sent to the municipal issuing authority, by September 28 of the year beginning the license term. The filing deadline for the Verified Petition shall not be extended under any circumstances.

N.J.A.C. 13:2-42.2 provides the required contents of a Verified Petition to the Director for relief pursuant to N.J.S.A. 33:1-12.18. The requirements include: identification of the licensee and the license number; proof that the application for a new license and the appropriate fees were submitted to the municipal issuing authority on or before September 28 of the year beginning the license term or proof that the licensee attempted to submit such an application and fees; a recitation of any efforts that were

made to renew the license by July 30 of the year beginning the license term for which renewal is sought, including, but not limited to, the specific dates and details of any such efforts; whether the licensee has previously sought relief from the Director pursuant to N.J.S.A. 33:1-12.18; the signature of a notary or other person authorized to administer oaths in the State of New Jersey; and relevant documents supporting the statements made in the affidavit(s).

N.J.A.C. 13:2-42.3 provides guidance as to the role of the municipal issuing authority when an application for a new license and the appropriate fees are submitted to it by a licensee between July 30 and September 28. However, the rule states that a municipality shall not act upon that application absent a Special Ruling from the Director granting relief pursuant to N.J.S.A. 33:1-12.18. If a licensee attempts to submit such an application and fees during this time period and the application and fees are refused by the municipal issuing authority, the licensee shall be deemed to have complied with this subsection. Additionally, this rule provides that upon receipt of a copy of a Verified Petition, the municipal issuing authority shall review the facts stated therein and provide the Division with comments, if any, that it may wish to make regarding the contents of the Verified Petition.

N.J.A.C. 13:2-42.4 establishes that the filing of a Verified Petition 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 30 of each year, while the Verified Petition is pending.

N.J.A.C. 13:2-42.5 recognizes that there is no statutory right to a hearing on a request for relief pursuant to N.J.S.A. 33:1-12.18 and clarifies that the Director may grant or deny a Special Ruling based solely on the information provided in the Verified Petition. However, if the Director determines that there is a factual dispute, the Director may either conduct a hearing or transmit the matter to the Office of Administrative Law for a hearing governed by the Administrative Procedure Act, N.J.S.A. 52:14B-1, et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

Subchapter 43. This subchapter, headed “Petitions for Relief to the Director Pursuant to N.J.S.A. 33:1-12.39,” outlines the procedures for petitions to the Director requesting a Special Ruling, as authorized by the Alcoholic Beverage Control Act, allowing a municipal issuing authority to consider a renewal application for a Class C license that has not been actively used in connection with the operation of a licensed premises for two or more full license terms.

N.J.A.C. 13:2-43.1 establishes the type of and time for submitting required filings pursuant to N.J.S.A. 33:1-12.39. The rule provides that in order to request a Special Ruling seeking relief pursuant to N.J.S.A. 33:1-12.39, the licensee shall file a Verified Petition and the statutory filing fee for each year of relief requested with the Director, with a copy of the Verified Petition sent to the municipal issuing authority.

N.J.A.C. 13:2-43.2 provides the required contents of a Verified Petition to the Director for relief pursuant to N.J.S.A. 33:1-12.39. The requirements include: complete identification of the licensee and the license number; the date on which the license became inactive and why; facts which demonstrate a willingness on the part of the licensee to activate the license; all efforts made by the licensee to activate the license; monetary expenditures incurred towards activation; the prognosis for activation; any factors outside of the licensee's control that may have thwarted efforts to activate the license; the need for any further active licenses in the community; whether the licensee has previously sought relief from the Director pursuant to N.J.S.A. 33:1-12.39; the signature of a notary or other person authorized to administer oaths in the State of New Jersey; and relevant documents supporting the statements made in the affidavit(s).

N.J.A.C. 13:2-43.3 provides guidance as to the role of the municipal issuing authority when a renewal application for a Class C license that has not been actively used in connection with the operation of a licensed premises for two or more full license terms and the appropriate fees are submitted by a licensee. However, the rule states that a municipality shall not act upon that application absent a Special Ruling from the Director granting relief pursuant to N.J.S.A. 33:1-12.39. Additionally, this rule provides that upon receipt of a copy of a Verified Petition, the municipal issuing authority shall review the facts stated therein and provide the Division with comments, if any, that it may wish to make regarding the contents of the Verified Petition. A proposed amendment to this rule clarifies that if a license is required to obtain a Special Ruling from the Director pursuant to this section, the municipal issuing authority shall not pass a resolution transferring that license until the Special Ruling is issued by the Director.

N.J.A.C. 13:2-43.4 outlines the eminent domain and casualty exception contained in N.J.S.A. 33:1-12.39. This rule provides that if a license becomes inactive as a result of eminent domain, fire or other casualty loss and the licensee submits a Verified Petition demonstrating a good faith effort to reactivate the license, in addition to the statutory two-year period

provided for by N.J.S.A. 33:1-12.39, the licensee who suffered the loss shall be granted an extension for an additional two years.

N.J.A.C. 13:2-43.5 provides that the standard of review to be applied in granting or denying a Special Ruling pursuant to N.J.S.A. 33:1-12.39 is good cause. In situations where there is a multi-term inactive license, there is a direct relationship between the length of inactivity and the prognosis for activation, as it relates to the quantum of proof necessary to establish good cause. Thus, the Director will consider evidence and/or testimony presented in all prior petitions and rulings in determining whether good cause has been established. If a licensee receives a Special Ruling that provides a date certain for activation or there will be no further renewals of the license, the licensee shall only be eligible for additional relief upon a showing of extreme justification. This rule also provides the factors to be considered if a licensee moves to reopen a Consent Order entered pursuant to this subchapter.

N.J.A.C. 13:2-43.6 recognizes that there is a statutory right to a hearing on a request for relief pursuant to N.J.S.A. 33:1-12.39. Hearings held pursuant to this subchapter will be governed by the Administrative Procedure Act, N.J.S.A. 52:14B-1, et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

N.J.A.C. 13:2-43.7 establishes that the filing of a Verified Petition pursuant to N.J.S.A. 33:1-12.39 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 30 of each year, while the Verified Petition is pending.

Subchapter 44. This subchapter provides definitions to be applied to this chapter.

N.J.A.C. 13:2-44.1 provides that unless otherwise defined in these regulations, the definitions set forth in the Alcoholic Beverage Control Act, at N.J.S.A. 33:1-1, shall govern the meaning of terms in these regulations. Definitions are also provided for: (1) "Alcoholic Beverage Control Act," which means N.J.S.A. 33:1-1, et seq., and the rules promulgated thereunder, at N.J.A.C. 13:2; (2) "employee" which means a person who performs services in connection with the operation of the licensed business. The term "employee" includes people who are included on the payroll of the licensee, persons who perform services on or about the licensed premises pursuant to a contract (independent contractor) and who are not included on the licensee's payroll, and even people who are not paid for their work or services, including, but not limited to, family members who may be temporarily operating the business while the owner is away from the

premises; and (3) "proceeding" which means any inspection or investigation conducted by the Division or any order to show cause, contested case or any other litigation in which the Division is a party related to matters involving the Alcoholic Beverage Control Act. The subchapter also indicates that the terms "license" or "permit" are used interchangeably for disciplinary purposes. Thus, the use of either of these terms shall encompass the other.

A 60-day comment period is provided for this notice of proposal and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The Division's rules are scheduled to "sunset" on January 20, 2006 and, unless readopted, will expire and be without force and effect. The failure to readopt these rules would result in a chaotic, imprecise licensing, enforcement and appeal structure and would fail to give appropriate accord to specific statutory provisions of the Alcoholic Beverage Control Law and the Administrative Procedure Act. Therefore, a positive social impact is realized by the readoption of these rules.

Subchapter 1: There are approximately 675 State licenses currently issued for the manufacture, wholesaling, storage, transportation and other

processing of alcoholic beverages. A uniform method to obtain relevant information and provide a review, hearing and decision making process is necessary for a fair and comprehensive administration of the law. Citizens of New Jersey have the opportunity to be heard and provide input to the Director to assist in a determination regarding the fitness of an applicant or whether a licensee shall be denied the ability to continue to exercise the privileges of a State issued license. The requirement that an applicant for a State license give notice to the clerk of the municipality in which the licensed business is to be located, furthers the purpose of obtaining relevant information from the public and their interested municipal officials. The requiring of an applicant to submit for fingerprinting and financial disclosure advances the public interest in ensuring that only qualified persons receive alcoholic beverage licenses.

Subchapter 2: This subchapter provides a uniform method to process, review and determine the propriety of the issuance of approximately 10,000 licenses privileged to sell alcoholic beverages at retail to citizens of the State of New Jersey and the public at large. The procedures in the subchapter allow citizens the opportunity to express concerns about license issuance, renewal or change in stockholders. This input results in a positive social impact in reinforcing a licensee's awareness that unacceptable social

conduct at licensed premises, as well as violation of pertinent law, may result in a denial of the ability to continue to exercise the privileges of a licensee.

Subchapter 3: There is clear beneficial social impact in requiring municipalities to maintain complete and accurate records of persons and entities involved in alcoholic beverage activities in the municipalities throughout the State. The Division is able to verify and cross-check data by having municipalities transmit relevant information regarding the over 10,000 municipal licensees in an orderly and timely manner.

Subchapter 4: The requirement, set forth in this subchapter, of mandating a review of an application by the Director where the municipal issuing authority is disqualified from acting because one or more of its members have a direct or indirect interest in a license is in accordance with a primary tenet of pertinent law. The “fair, impartial, stringent and comprehensive administration of this chapter,” N.J.S.A. 33:1-24 and 39, is a well-settled principle expressed by the Legislature when it adopted N.J.S.A. 33:1-20. This statutory provision provides for independent review, by the Director, to eliminate any appearance of conflict by the local issuing authority when a member of that body has an interest in a liquor license application. Regulation providing for the Division’s action when conflict of

interest situations occur in ways other than by a member having an interest in a license recognizes additional instances when an issuing authority may be unable to act upon a license application. Provisions in this subchapter also expressly state that this subchapter is applicable to renewals of conflict licenses. The extension of the provision furthers the public interest by having the Director act as occurs in N.J.S.A. 33:1-20 conflict situation rather than having a stalemate occur. The social impact of this rule is further enhanced by the ability of the citizens of the municipality to note their concerns relative to an application filed by a member of the local governing body.

Subchapter 5: Last year, over 2,900 social affair permits were issued to qualified organizations authorizing the availability of alcoholic beverages to attendees at dinners, fund raisers, carnivals, picnics and other events. Permits for these events have a positive social impact in that they assist qualified organizations in furthering their activities as part of the social fabric of a community.

The approximately 77 annual concessionaire permits that are issued by the Division also foster a positive social impact by allowing limited alcoholic beverage activity at State, county or municipal recreational facilities.

The Division issued approximately five golf facilities permits last year. The permitted golf facilities are authorized only to sell open containers of alcoholic beverages for immediate consumption to members, guests of members and guests of the facility. The holder of a special permit for a golf facility may serve alcoholic beverages during a social gathering only if such social gathering is directly related to playing golf on the golf course the same day. This permit specifically does not authorize the service of alcoholic beverages at non-golf related social gatherings, such as holiday parties, weddings, birthday parties, or family religious events.

The permits issued pursuant to court order or operation of law, which authorize the sale of alcoholic beverages, assist the legal process and ensure a sale is in accordance with the provisions of the Alcoholic Beverage Control Act. Permits issued for other emergent situations authorize the Director to impose sufficient conditions to address temporary or special circumstances.

The requirement to file inventory reports only when determined by the Director, will reduce paperwork requirements on the permittees and will allow the Division to focus its review efforts on those events which appear to require review.

Subchapter 6: Certain circumstances, such as Federal bankruptcy, State court receiverships and the sale of incompetents' estates, require that the interest a person has in a liquor license may devolve upon another person by operation of law. The petition and review procedure set forth in this subchapter ensures that the fiduciary appointed to operate or sell the liquor licensed business is qualified. The process does not require a fee, yet the issuing authority is able to review the basic qualifications of a trustee, receiver, etc. Furthermore, the identity and ability of the persons legally entitled to operate the license is known. These provisions result in a beneficial social impact by allowing for the appropriate review and decision making by the Division and local authorities.

Subchapter 7: The control of the disposition of liquor licenses and the proper qualification of persons who will exercise the interest in a license comprise the fundamental principles of alcoholic beverage regulation. This subchapter requires that the issuing authority must be advised whenever someone other than the recorded licensee seeks to exercise the license privileges. The readoption of this subchapter will continue to provide a stable procedure governing the transfer of licenses. Current rules require issuing authorities to investigate applicants for licenses and the licensed premises to ensure both are qualified, as required by law. This subchapter

provides guidance to issuing authorities in carrying out their investigative duties.

The rules notice all interested parties as to how to apply, the information required and fee to be paid, the required notice to the public and the right of all parties to hearings on issues discovered as a result of the investigation relating to the transfer of a license, either person-to-person or place-to-place, or both. The applications and notices required by this subchapter enable the issuing authority to determine whether the proposed reduction of a licensed business is in the public interest. Clearly, the public interest is served by the readoption of these rules which provide guidance for the issuing authorities and applicants for the orderly and appropriate transfer of license.

Subchapter 8: There are over 1,060 club licenses issued in the State of New Jersey at this time. The community based nature of these organizations and the benefits they offer in civic, charitable, fraternal, religious and other activities provide a positive social impact on the community. The rules proposed for readoption will enhance the ability of a bona fide club to achieve its purposes. The rules mandate that a club is controlled by its members and that at least the minimum of 60 required members are of legal drinking age. A mechanism is provided to ensure the

officers and directors of the club are made aware of their legal responsibilities and the restrictive nature of a club license.

Subchapter 9. This subchapter clarifies certain responsibilities of each licensee for operating its business within the parameters of the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq. The ability of the Director to waive a rule, as contained in N.J.A.C. 13:2-9.1, when an applicant petitions in writing and demonstrates that the rule has caused an undue hardship, that the waiver will not unduly burden any affected parties and that the waiver is consistent with the purpose of the law, reflects the inherent powers reposed in the Director of an administrative agency and allows for prompt action when the circumstances require same.

Subchapter 10: The readoption of this subchapter will have a positive social impact by continuing the oversight of both plenary and farm wineries located in New Jersey. All appropriate rules necessary for the proper supervision of the industry are proposed for readoption. The rules provide concise direction for these licensees. This, in turn, should continue to enhance wine production and the tourist industry in those areas of the State where plenary and farm wineries are established. The law permits wineries to have up to five additional retail outlets, which can be located within premises of other businesses, and the wineries can also sell for

consumption on as well as off the premises. In light of this ability wineries are required to describe how they will demarcate the licensed premises from the unlicensed premises as well as how they will control the consumption of wine.

Subchapter 12: The proposed readoption of this subchapter will continue the required licensure of individuals involved in the personal manufacture of wine and malt alcoholic beverages for personal or household use or consumption. A positive social impact is realized by requiring a permit for private citizens who choose to engage in the manufacture of wine and malt alcoholic beverages for personal or household use or consumption. Requiring permits regulates the amounts and types of alcohol personally manufactured, as well as providing a record of the people engaging in this activity. The proposed readoption will allow permittees to manufacture limited quantities in defined non-commercial premises. The licensure requirements imposed upon such non-commercial premises and the restrictions prescribed upon the owner and employees of the premises provide a positive social impact.

Subchapter 14: There is a positive social impact realized by the proposed readoption of this subchapter, which sets forth the parameters regarding the employment, or connection with the alcoholic beverage

business, by persons unable to qualify by reason of age or conviction of a crime of moral turpitude N.J.S.A. 33:1-26.

The proper regulation and oversight of minors, who are employed by or connected with a licensed business is clearly in the public interest and in accordance with policies governing employment of minors. The Division's readoption of this subchapter reflects the commitment to assure that minors are supervised and their activities appropriately restricted with respect to alcoholic beverages.

The regulation of persons criminally disqualified from employment or connection with an alcoholic beverage license also serves a positive social purpose as it allows those rehabilitated persons, after satisfying appropriate criteria, to be employed after the issuance of a permit by the Director. The holders of Limited Rehabilitation Permits can sell and serve alcoholic beverages, where appropriate.

Subchapter 15: The proposed readoption of this subchapter confirms the legislative intent of N.J.S.A. 33:1-3.1(b)(5), 25 and 26 to ensure the basic integrity of the alcoholic beverage industry, by preventing persons disqualified, by criminal convictions, from owning alcoholic beverage licensees or being employed in the industry. The regulation prevents, where appropriate, the re-application for a set period of time not to

exceed five years, by a person whose disqualification removal application was denied. These rules recognize that one of the tenets of pertinent law is that applicants must have conducted themselves in a law abiding fashion for at least five years and that their association with the alcoholic beverage industry will not be contrary to the public interest. Last year, the Division issued decisions on 25 petitions for disqualification removals. The denial of a disqualification removal implicitly contains a finding that such applicants have not satisfied those standards and for purposes of efficiency, they should be prohibited from re-applying for a determined period of time until they could arguably meet that standard. There is a positive social impact realized by the readoption of this section since the disqualification of persons unfit to hold alcoholic beverage licenses protects the public, while the provision of procedures to remove disqualifications pursuant to uniform procedures in appropriate circumstances provides necessary rehabilitation incentive to applicants who have conducted themselves in a law abiding fashion for at least five years since their disqualifying activity.

Subchapter 16: Solicitor's permits are required on a yearly basis if an individual seeks to offer for sale or solicit an order for alcoholic beverages in this State. Last year the Division issued approximately 3000 such permits. A permit is not required for retail licensees and their

employees. This subchapter serves a positive social purpose in that it allows the State to regulate a significant aspect of the industry, that is, all persons involved in the sale and solicitation of alcoholic beverages. The disclosure of financial records is a valuable tool to ensure compliance with Division trade practice, marketing, advertising and price regulations. The rule requires that all solicitors are aware of relevant provisions of law and that they agree not to violate that law in the future. A positive social impact results when the Division takes appropriate action to ensure that all persons involved in the sale and solicitation of alcoholic beverages are legally qualified to engage in this employment.

Subchapter 17: This subchapter is proposed for readoption to continue the uniform procedures in matters involving the appellate review, by the Director, of the decisions of local issuing authorities. This subchapter confirms the rights of affected persons to appeal decisions adverse to their interests, resulting in a beneficial social impact for licensees, citizens and taxpayers to exercise their rights and opportunity to have an independent review of a decision at the local level. Last year approximately 105 such appeals were filed. The procedures for appeal acknowledge and implement the statutory provisions of the Alcoholic Beverage Control Act and the Administrative Procedure Act.

Subchapter 18: The readoption of this subchapter will continue the procedure and remedies available when discrimination has occurred in the sale of any nationally advertised brand of alcoholic beverage, other than malt alcoholic beverages. These rules result in a positive social impact by enhancing the stability of the alcoholic beverage industry, the employment of members of the industry and ensuring the availability of product to consumers.

Subchapter 19: This subchapter sets forth the parameters upon which disciplinary proceedings can be brought and impact upon licensees and permittees charged with violations of pertinent law or regulation. This subchapter provides that disciplinary proceedings can involve activity which might have occurred during terms prior to renewal and can have consequences which extend beyond the final administrative adjudication as it relates to the license, the owner of the license and licensed premises. By properly sanctioning persons who were engaged in activity contrary to the alcoholic beverage law there is a positive social benefit for the industry and public at large. The knowledge that improper conduct of licensees or permittees will result in appropriate punishment is of significant interest both to the public at large and the law abiding member of the industry. All State and municipally issued liquor licenses are subject to this regulation

which also provides that appropriate sanctions cannot be avoided by changes in the license entity, location of the licensed premises, or by an extension or renewal of a license. These rules enable the Division to enforce the legislative intent expressed in the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq., to strictly regulate alcoholic beverages to protect the health, safety and welfare of the people of this State.

Subchapter 20: The regulation of the transportation of alcoholic beverages is in accordance with the provisions of Title 33 mandating the strict control of all alcoholic beverage activity in the State. The licensing of vehicles results in a positive social impact by reducing the incidents of unlawful diversion of alcoholic beverage products in the State. This control results in a safeguard against the loss of tax revenue and also authorizes the State to qualify those individuals who engage in the transportation of alcoholic beverages. Last year the Division issued over 10,000 transit insignias. The rules provide for an affirmative defense to licensees who, for emergency reasons, must make a delivery in a non-permitted vehicle. A positive social impact occurs from ensuring that alcoholic beverages are delivered to persons of legal age, and that the failure to do so will result in disciplinary action.

Subchapter 21: The regulation of the transportation of alcoholic beverages enables the Division to monitor compliance with law and regulations aimed at the maintenance of the verifiable transportation of alcoholic beverages. As with Subchapter 20, the identification of persons who do not possess an annual State issued license to transport alcohol deters the unlawful diversion of product, protecting against loss of tax revenues and allowing the law enforcement community and the Division to assess and take appropriate action when required by the New Jersey Alcoholic Beverage Control Act. For these reasons, a positive social impact is realized by the regulation of the transportation of alcoholic beverages for personal and commercial purposes into, through or out of the State, since such regulation protects the public from illegal transportation of alcoholic beverages.

Subchapter 22: The establishment of an education training program for approximately 2,000 holders of plenary and limited retail distribution licenses has a positive social impact in many areas. The subject licensees have been trained and made aware of the requirements attendant to the proper conduct of their business. By requiring licensees to successfully complete the training program, which includes information on laws,

regulations, policy and administrative determinations of the Director of the Division of Alcoholic Beverage Control, the public will be well served because the activities of licensees will more likely be in conformity with applicable law. Training regarding improper conduct such as sales to minors will not only benefit the public at large but also the law enforcement community from the enhanced ability of licensees to comply with pertinent laws and regulations regarding the sale of alcoholic beverages.

Subchapter 23: There are approximately 12,000 licensees privileged to manufacture, distribute or sell alcoholic beverages in the State of New Jersey. The need for strict, comprehensive and impartial regulation of these licensees is an articulated objective of the New Jersey Alcoholic Beverage Control Act. These rules provide a framework for all licensees to conduct their licensed business. The failure to comply with the various statutory and public policy objectives advanced by these regulations would directly impact not only the regulated industry itself but clearly upon all of the citizens of the State of New Jersey, as well as the substantial number of visitors who enter this State for business, social and recreational purposes.

The vast majority of these rules have been in existence in one form or another for over 40 years; some have been in effect since immediately after the adoption of the Alcoholic Beverage Control Act in 1933. The regulated

industry is clearly aware of these rules and the Division has constantly assessed their efficacy and importance on a day-to-day basis through citizen contact, comments from State, county and municipal law enforcement officials and elected officials, and in the day-to-day evaluation of disciplinary infractions ascertained by State inspectors assigned to such activity.

These rules seek to balance the competing objectives of the Alcoholic Beverage Control Act as set forth in N.J.S.A. 33:1-3. Where it is deemed to be ineffectual to achieve the objective sought or where the objective sought is deemed to be unnecessary due to statutory, judicial or policy changes, the regulation will be modified.

Subchapter 24: This subchapter provides a positive social impact by regulating the supplier and wholesaler distribution and marketing systems for alcoholic beverages in this State. The rules affect all retail, wholesale or producer licensees in the State as well as non-licensed foreign suppliers that do business within the State. The primary objective of this subchapter is to provide a framework of regulations which will prevent pricing and marketing practices which are discriminatory and which would result in an unstable market place. These rules permit licensees to offer promotions,

rebates and combination packages, which benefits not only the consumers but members of the industry.

Subchapter 25: The proposed readoption, without amendment, of this subchapter, which regulates the inventory and distribution of alcoholic beverage product, serves the purpose of preventing the diversion of alcoholic beverages and assures the proper collection of taxes. The positive social impact that results from these rules consists of stability of the industry, interbrand competition and protection of the alcoholic beverage tax base in accordance with N.J.S.A. 33:1-2.

Subchapter 26: The proposed readoption of this subchapter will continue the policy of the Division, in accordance with law, to improve the competitive position of retailers in relation to chain store operations. These rules allow retail licensees to join in a purchasing cooperative which enables an individual retailer to obtain favorable wholesale quantity discounts by joining with other retailers. This ability benefits the individual retailers and the consumers in the State as it provides a broader range of products at competitive prices. This subchapter has a positive social impact as cooperatives are able to hire employees to manage the cooperative and to maintain a public warehouse for storage of inventory.

Subchapter 27: The proposed readoption of this subchapter continues the required control of labeling containers of alcoholic beverages which are sold in this State. Proper labeling is vital to the public interest and has a positive social impact on society.

The readoption of N.J.A.C. 13:2-27.1 will continue the adherence to Federal requirements regarding labeling and standards of fill. The use of the Federal standards continues the uniformity of labeling and the standards of fill guidelines, since the Federal Government supervises this activity for all alcoholic beverage products produced domestically for interstate commerce as well as those that are imported. The adoption of those standards by New Jersey ensures that products sold intrastate are also in conformance with appropriate regulatory controls.

The proposed readoption, without amendment, of N.J.A.C. 13:2-27.2 will continue the position taken by this to prevent and reduce the likelihood of transshipment of large quantities of recognized major brands of beer.

The rule allows alcoholic beverage products, other than certain malt alcoholic beverages, to be sold in New Jersey in containers whose labels are marked for deposit in another state. Only malt alcoholic beverages, with the exception of malt cooler products, may not be sold in New Jersey in containers whose labels are marked for deposit in another state. In order to

continue having the New Jersey market open to small breweries and “micro brews,” an exception has been provided so that a brewer or brand registrant who does not ship in excess of 3,000 barrels of 31 fluid gallons or its container equivalent into New Jersey in the calendar year is exempted from the regulatory prohibition against deposit marked containers.

Subchapter 29: This subchapter confirms and implements the public policy of this State to make public records accessible for examination by citizens with certain exceptions for the protection of the public. Access to licensure, adjudicative and other records affords citizens the opportunity to access information in accordance with the public policy to make public record accessible. An amendment is proposed to this section to change the fee schedule to that provided in the Open Public Records Act, N.J.S.A. 41:1A-1, et seq., as amended by P.L. 2001, c. 404.

Subchapter 30: The purpose of the promulgation of this subchapter, at the period of time shortly after Prohibition, was to remove from the alcoholic beverage industry the bootleggers, racketeers and other criminal elements engaged in the illegal manufacture of alcoholic beverages. The registration of stills and distilling apparatus enables the Division to ensure that only qualified holders of manufacturing licenses would possess and operate distilling apparatus. Although there is a limited registration of stills

and few requests for sale and removal of same, the rules still provide a deterrent and an enforcement tool to ensure that the means to manufacture alcoholic beverages are exercised by only entities or persons duly qualified.

Subchapter 31: These rules proposed for readoption provide notice to persons engaging in unlawful alcoholic beverage activity that the beverages and other property utilized in connection with that activity will be seized and forfeited. The illegal activity deprives the State of lawful tax revenue, unfairly competes with properly licensed individuals and operates outside the statutory scheme to achieve the legislative objectives to prevent the social and economic consequences of alcoholic abuse and illegal activity.

Subchapter 33: The proposed readoption of this subchapter will continue the regulatory oversight, mandated by pertinent law, over the importing of alcoholic beverages into the State. The filing of brand registration information enables the Division to provide for the orderly marketing of alcoholic beverages as well as establishing a capability to assess and collect taxes imposed by the State on alcoholic beverages collected at the wholesale level. A positive social impact is realized by these filings as they identify products, stabilize the industry as appropriate and protect the tax base of an alcoholic beverage industry that has adequate brand and price competition.

Subchapter 34: The proposed readoption of these rules authorizes holders of a plenary retail consumption license, operated in conjunction with a restaurant, to brew malt alcoholic beverages on immediate adjacent licensed premises and offer the product for sale on the restaurant's premises. A positive social impact results from authorizing restricted breweries as there is a market for freshly brewed beer with unique characteristics. The rules recognize an exception created by the law which will allow the makers of the alcoholic product to also sell directly to the public. The rules ensure that the intent of the Legislature will be carried out in an efficient manner to allow the restricted brewery licensee to offer its malt alcoholic beverages to its customers with the requisite concern for the public health and safety.

Subchapter 35: The proposed readoption of these rules will continue the Division's policy, in accordance with law, to limit package good sales by consumption licensees to specific areas in the principal barroom when the license does not possess the "broad package privilege." There are currently approximately 6,000 consumption licenses without the broad package privilege. In contrast, approximately 500 current consumption licenses have the Broad package privilege.

Subchapter 36: The proposed readoption of this subchapter will continue the policy of the Division to respond to bona fide inquiries from

licensees and the public who are seeking advice as to the propriety of certain alcoholic beverage activity. The issuance of advisory opinions fosters a greater awareness of the law, regulations and policies concerning alcoholic beverage activity and it serves a positive social purpose by deterring potential unlawful conduct and by providing licensees and citizens with an opportunity to obtain information regarding practices in the alcoholic beverage industry.

Subchapter 37: This subchapter as proposed for readoption will continue to have a positive social impact as it will allow the public to attend events at premises of licensees and permittees who exercise the on-premise privilege and who will hold alcoholic beverage consumer tastings. The rules provide that the tastings must be conducted in accordance with the restrictions contained in this subchapter. These rules serve a positive social purpose by encouraging educational and instructional discussions on alcoholic beverages such as wines which focus on appreciation and moderation rather than over-consumption of alcoholic beverages.

Subchapter 38: This subchapter, proposed for readoption with amendment, clarifies the permissible and prohibited hours of sale of package goods. It serves a positive social purpose by setting forth a uniform, socially acceptable time for the sale of package goods. These rules help to limit the

off-premises consumption of alcoholic beverages. They additionally limit indiscriminate drinking on public streets during late hours or early hours of the morning.

Subchapter 39: This proposed readoption, without amendment, of this subchapter continues the manner in which alcoholic beverages are returned by retailers to suppliers. These rules do not have a significant social impact.

Subchapter 40. The proposed repeal of this subchapter regarding the procedure for the issuance by county clerks of identification cards to residents of their respective counties will have a positive social impact. Legislation signed into law on September 10, 2003, terminated the authority of counties to issue identification cards for purposes of purchasing alcoholic beverages. P.L. 2003, c. 175. As the legislation explained, the purpose of elimination of the ABC County identification cards is to prevent security problems that may arise when 21 separate counties are responsible for distributing official, State-sanctioned legal identification. It will also reduce the potential for unauthorized persons to forge or fraudulently obtain official legal identification cards, limit the opportunity for abuse by underage persons and enhance domestic security

Subchapter 41: This subchapter provides for the issuance of special consumption licenses to non-profit corporations which conduct theatrical and musical performances on premises which seat 1,000 or more persons. Because of the restrictive nature of the statutory privilege, consumption can only occur on the premises during the performances and for two hours before and two hours afterwards. Given the limited nature of the license there will be little impact on the public. This license does allow attending patrons to experience an enhanced theatrical event, however, and thus whatever impact occurs will be positive in nature.

Subchapter 42: This subchapter outlines the procedures for petitions to the Director requesting a Special Ruling, as authorized by the Alcoholic Beverage Control Act, permitting a municipal issuing authority to consider an application for a new license if the licensee failed to file a timely renewal application. This subchapter is intended to clearly explain to the regulated community the procedures and requirements for certain petitions for consideration by the Director. While N.J.S.A. 33:1-23 requires the stringent and comprehensive administration of the alcoholic beverage laws, the statute also mandates that the Director “do, perform, take and adopt all other acts, procedures and measures” to ensure that the administration of the laws is fair and impartial. This subchapter, therefore, provides direction to licensees,

while enabling the Division to enforce the legislative intent expressed in the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq., to strictly regulate alcoholic beverages to protect the health, safety and welfare of the people of this State. Therefore, a positive social impact is realized by the readoption of this subchapter.

Subchapter 43: This subchapter outlines the procedures for petitions to the Director requesting a Special Ruling, as authorized by the Alcoholic Beverage Control Act, allowing a municipal issuing authority to consider a renewal application for a Class C license that has not been actively used in connection with the operation of a licensed premises for two or more full license terms.

Like Subchapter 42, this subchapter outlines the procedures for petitions to the Director requesting a Special Ruling, as authorized by the Alcoholic Beverage Control Act. The petitions in Subchapter 43 request Special Rulings which would permit a municipal issuing authority to consider an application for renewal for a license that has been inactive for more than two license terms. This subchapter is intended to clearly explain to the regulated community the procedures and requirements for these petitions for consideration by the Director. This subchapter, therefore, provides direction to licensees, while enabling the Division to enforce the

legislative intent expressed in the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq., to strictly regulate alcoholic beverages to protect the health, safety and welfare of the people of this State. Therefore, a positive social impact is realized by the readoption this subchapter.

Subchapter 44. This subchapter provides definitions to be applied to this chapter. Setting out the definitions to be used in the chapter, including those of “employee,” “license” and “proceeding,” provides guidance to the regulated community and the public and provides a positive social impact.

Economic Impact

Subchapter 1: This subchapter contains requirements upon licensees that the Division has administered regarding notice, hearing, and the decision making process, for over 50 years. The provisions impose no substantial economic impact upon the applicants for a State license or permit (and no impact on the public at large) and are necessary and proper for the supervision of the alcoholic beverage industry. There would be costs to an applicant and the Division if a hearing is held before the Director. An applicant would incur additional costs if legal counsel is retained. The proposed amendment which adds LLCs to the list of legal entities included in the rule will have no economic impact, since LLCs are already recognized

by the Division and the proposed amendment is only a clarification, not a change in policy.

Subchapter 2: Municipal issuing authorities, the Division and the licensees have been involved with the administration of this subchapter regarding notice, hearing and the decision making concerning the issuance of a municipal license for over 50 years. The rules proposed for re adoption do not result in any substantial economic impact of the licensees. The fee of \$200.00 is that fee provided in the budget legislation passed in 2003 (P.L. 2003, c. 117). There would be costs to an applicant if a hearing is required to be held before the municipal issuing authority and applicants may incur additional costs if legal counsel is retained to present the matter.

Subchapter 3: The rules in this subchapter, which have been in effect for years, require a local issuing authority to maintain records concerning license activity and transmit that information to the State in a timely manner. The Division and the local issuing authority receive fees from licensees to off-set the expense in complying with these necessary rules which establish an accurate base of licensing information.

Subchapter 4: The rules proposed for re adoption have no significant economic impact upon license applicants and the Division. The Division utilizes existing resources and personnel to process and conduct

investigations of a limited number of applications involving members of a municipal issuing authority possessing an interest in a license in their community. There would be costs to an applicant if a hearing is held before the Director, and applicants would incur additional costs if legal counsel is retained. The proposal corrects the fees to reflect the statutory change provided in the budget legislation passed in 2003 (P.L. 2003, c. 117). These fees have been collected since the passage of the legislation, thus, this change to reflect the proper fees should have no economic impact.

Subchapter 5: The procedures set forth in this subchapter for the issuance of special permits generates revenue for the State as well as for the permit holders that conduct the events where the alcoholic beverage activity is authorized by permit.. The fees required for the permits described in this subchapter are those provided in the budget legislation passed in 2003 (P.L. 2003, c. 117). This subchapter not only creates this positive economic impact but its provisions also ensure that only qualified persons or entities obtain a particular permit with advanced notice to the public and local governing officials. Several of the fees have increased slightly, while others have decreased, producing a neutral economic effect on the industry.

Subchapter 6: This subchapter establishes a framework for the extension of a license to a fiduciary in cases of death, bankruptcy,

receivership, incompetency or for any other reasons in which the operation of the licensed business devolves by operation of law upon another person. The provisions of this subchapter provide for the continuation of the licensed entity in these enumerated situations and result in minimal economic impact upon the industry, the regulators and the public at large. The procedure required to process the extension of a license is simple and seeks to minimize any economic impact. The expense to the issuing authority in processing an extension request is minimal and there are no fees required for the formal license extension.

Subchapter 7: The Alcoholic Beverage Control Act requires fees when license transfer applications are filed with an issuing authority. A licensee must submit either 10 or 20 percent of the full annual fee in addition to a \$200.00 State fee. These non-refundable fees defray the cost attendant to the processing, investigating and decision making required to determine the propriety of a transfer of a license. There is also a positive economic impact for the industry and issuing authorities by providing an efficient and orderly procedure for the review of transfer applications.

Subchapter 8: The proposed readoption of this subchapter does have a modest economic impact upon those entities applying for, receiving and renewing club licenses. There are administrative costs with respect to

the required filing of an application and there is a license fee prescribed by statute which ranges from \$63.00 to \$188.00. N.J.S.A. 33:1-12(5). Club licensees are required to maintain books of account as well as records of events conducted on the club's licensed premises pursuant to a Social Affair permit. A club licensee, as any other retail licensee, is also subject to pertinent municipal regulations or referenda regarding the hours of sale. Club licensees must also follow other regulatory provisions applicable to other retail licenses. Absent these clear, uniform procedures for eligibility for licensure and limitations on alcoholic beverage activities, significant increased State and municipal enforcement and investigative resources would be required to ensure compliance with the provisions and intent of the Alcoholic Beverage Control Act.

Subchapter 9: . These general provisions impose no substantial economic impact upon the applicants for a State license or permit (and no impact on the public at large) and are necessary and proper for the supervision of the alcoholic beverage industry. There would be costs to an applicant and the Division if a hearing is held before the Director. An applicant would incur additional costs if a hearing is held and legal counsel is retained by applicant.

Subchapter 10: The regulatory provisions in Subchapter 10 have no intrinsic economic impact. The fees for the privileges of licensure are statutorily established. The application process is similar to that required of all other State issued license applicants. The anticipated economic benefits sought by encouraging a viable, healthy and stable wine making industry in this State also boost the State's agricultural production and increase the tourist industry in those areas of the State where wineries are established. The proposed amendment repealing the parcel delivery rules is in accordance with the legislation eliminating direct shipping for New Jersey wineries, P.L. 2004, c.. 102. This proposed repeal will not cause an economic impact since it merely reflects the statutory change already in effect since July 2004.

Subchapter 12: The proposed readoption of this subchapter will have a modest economic impact upon applicants for special permits to brew malt alcoholic beverages and wine for personal or household use or consumption. The fee of \$15.00 assists the Division in defraying the expense of processing applications and issuing permits.

The subchapter authorizes a permittee to utilize the space, equipment, ingredients, bottling supplies, advice and expertise of the proprietor of non-commercial premises for the production of the permittee's malt alcoholic

beverage or wine. This assists citizens interested in “home brewing” who do not have the expertise, equipment or space to engage in this activity.

Subchapter 14: There is a minimal economic impact upon the applicants for permits which will allow persons to be employed in the alcoholic beverage business. The \$15.00 fee for a Minor’s Permit and \$125.00 fee for a Rehabilitation Employment Permit are modest when the result is the gainful employment of minors and those persons which have been criminally disqualified from employment in the alcoholic beverage industry. It is the experience of the Division that the employers/licensees also receive a beneficial economic impact by the employment of these persons, subject to appropriate regulations.

Subchapter 15: The proposal seeks to amend the fee for petitions pursuant to this subchapter from \$100.00 to \$125.00 to help to defray the expense of processing the petitions filed annually by persons seeking removal of their disqualification from being involved in the alcoholic beverage industry. Although the fee is now \$25.00 more, a successful petition proceeding results in the person being able to have an interest in a liquor license or be employed in the industry by a licensee without need for further permits. Although the small increase may create a minimal

economic impact, it is not anticipated that such an impact will discourage the filing of these petitions.

Subchapter 16: The proposed readoption of this subchapter requires persons who wish to obtain solicitor's permits to pay a fee of either \$15.00 or \$25.00, dependent upon the type of permit. This fee does not have a significant economic impact on the industry and it results in all persons having such permits possessing the same rights and obligation which maintains a stable market place where they compete on a fair and equal basis. The Division incurs certain administrative expenses in issuing permits, investigating applicants and maintaining files but the goal of preventing unfair competition, by persons not licensed, is well served by the Division's activities.

Subchapter 17: There is a modest economic impact upon those parties appealing the decisions of local issuing authorities to the Director. The statutory filing fee of \$100.00 remitted to the general treasury of the State and the expenses of administration and adjudication of appeals, by the Division and the Office of Administrative Law, are paid for from general budgetary funds allocated to these agencies. This reasonable fee permits citizens to access the appellate administrative process without imposing an excessive, personal financial burden. The appeal procedures are

implemented to ensure the integrity of municipal liquor license determinations and the regulations afford all interested parties the opportunity to monitor alcoholic beverage activities in a community with the ability to have an independent review when deemed appropriate by an appellant.

Subchapter 18: This subchapter does not have any direct economic impact upon the Division or industry in terms of expense except for the \$100.00 fee required by statute to accompany a petition and whatever costs are incurred to conduct hearings and render decisions on petition proceedings. As the Social Impact statement notes, this subchapter does have stabilizing influences on the industry and citizens of the State without having a direct impact which can be quantified.

Subchapter 19: Disciplinary proceedings, authorized by this subchapter, and instituted against a licensee, can result in a suspension or revocation which has an obvious negative economic impact upon a licensee. However, this impact is authorized as a statutory sanction pursuant to law for those who abuse the privilege of engaging in alcoholic beverage activity in this State. The removal, either temporarily or permanently, of licensees who violate pertinent law and regulation, ultimately result in a beneficial economic impact upon the alcoholic beverage industry.

Subchapter 20: There is a minimal economic impact upon those licensees who are involved with the transportation of alcoholic beverages into, out of, or within the State by the imposition of the fees mandated by this subchapter. The various fees required to be paid by those involved with the transportation of alcoholic beverages are received by the Division and deposited in the general treasury of the State.

Subchapter 21: There is a minimal economic impact upon the applicants seeking to acquire the necessary permits for transportation of alcoholic beverages. A Limited Transportation permit costs \$500.00 and allows a permittee to transport alcoholic beverages into or out of the State for a full year. An Emergency Trip permit costs \$50.00 and allows a specific delivery into or out of the State. This permit is utilized by those transporters who do not regularly transport alcoholic beverages. The fees are deposited in the general treasury of the State and designated agents receive a surcharge when issuing an Emergency Trip permit at the agent's business operation.

Subchapter 22: There is an economic impact upon the plenary and limited retail distribution licensees (package store owners) who must pay a fee for the training program established by the Director. Subchapter 22 authorizes a fee with a range of \$50.00 to \$150.00 per attendee. A request

for a deferment of educational training requires a \$25.00 processing fee. The fee and time spent in the training program are clearly off-set by the economic savings a licensee could gain by eliminating potential penalties for future violations as the licensee is trained and becomes more familiar with the requirements of law in the operation of plenary or limited retail distribution license.

There is a direct economic impact upon the Division of expenses that include the scheduling, notice and promotional expenses, site expenses, instructional expenses and other related costs. However, the training requirements imposed upon the subject licensees can reasonably be anticipated to result in a reduction of violations and more efficient compliance, by the licensee, with pertinent statutory and regulatory provisions. A positive economic benefit should also result from training that fosters responsible and prudent alcoholic beverage activity by licensees. The training emphasis on the sale of alcoholic beverages should reduce such unlawful conduct with the resultant lessening of the negative economic consequences of underage drinking (that is, litigation, criminal justice issues, and health costs).

Subchapter 23: The provisions of Subchapter 23 do not have any intrinsic economic impact. These rules, as the subchapter heading indicates,

are intended to govern the conduct of the holder of an alcoholic beverage license and the activities which occur on the licensed premises. These rules seek to insure the integrity of the alcoholic beverage industry. The actions required to comply with these rules do not, in and of themselves, impose any financial burdens or obligations upon the regulated industry or the citizens of the State of New Jersey who avail themselves of the many services that are provided to licensees of this State in conducting their various businesses. The proposed amendment to N.J.A.C. 13:2-26.16 to prohibit instant win coupons merely codifies the Division's current policy of not approving these types of promotions and should have no additional economic impact. The economic impact upon the Division of Alcoholic Beverage Control and its Investigation Bureau, will not be changed by the readoption of these regulations. Local law enforcement officials who review activities at licensed premises in their communities will continue to do so without any enhanced economic impact because of the readoption of these rules. The readoption of these rules represents the needed control and enforcement remedy to ensure, as best as possible, a uniform and strict compliance with the standards set forth in Subchapter 23.

Subchapter 24: The rules proposed for readoption in this subchapter result in a significant economic impact on the alcoholic beverage

industry and consumers. The rules set forth the pricing and marketing practices of licensees and out-of-State suppliers. The readoption of these rules will continue the policy of the Division , in accordance with law, to ensure fair competition between licensees and competitive pricing for consumers. Positive economic benefits should result for both licensees and consumers by the ability of licensees to offer rebates, coupons and combination packages.

Subchapter 25: The restrictions set forth in this subchapter require appropriate licenses for the warehousing and distribution of certain alcoholic beverages. This fosters a competitive market place with the ability of the State to collect all lawful taxes on the sale of alcoholic beverage products. The Social Impact statement above concerning this subchapter is referenced herein with particular regard to the economic considerations resulting in benefits to the industry, consumers and the State of New Jersey.

Subchapter 26: The proposed readoption of this subchapter without amendments will continue to allow individual retail licensees to take advantage of quantity discount prices offered by wholesalers. The retailers who join a cooperative are able to realize a positive economic impact by having the ability to offer, to consumers, products and pricing competitive with that of other larger licensees in the industry. The rule allows

cooperatives to hire a manager and to maintain a warehouse which should further enable cooperative members and the public to receive positive economic benefits from this increased flexibility of operation.

Subchapter 27: The proposed continuation of Federal label and standards of fill (N.J.A.C. 13:2-27.1) and the readoption of N.J.A.C. 13:2-27.2 will result in no adverse economic impact on the alcoholic beverage industry. These rules should continue to foster the availability of new products not currently available in the New Jersey market.

N.J.A.C. 13:2-27.2 will continue to afford to those brewers of malt alcoholic beverages, who control 98 percent of the market share in New Jersey, the protection against transshipment of their major selling product. In addition, the rule allows the remaining smaller brewers, who control less than two percent of the market share, the opportunity to continue to offer their products in New Jersey. Brewers are able to sell all of their products in New Jersey in deposit marked containers if they do not sell more than 3,000 barrels per calendar year. The Director has determined that pertinent Legislation has presumptively established this rational threshold limit for the shipment of product by small breweries into this State.

Subchapter 29: The readoption of these rules is in accordance with public policy to make public records accessible and ensures that the Division

has the capability to respond to requests for inspection and copying of such records. An amendment is proposed to this section to change the fee schedule to that provided in the Open Public Records Act, N.J.S.A. 41:1A-1, et seq., as amended by P.L. 2001, c. 404. There is no significant economic impact upon the public or licensees with respect to the fees imposed for photocopying, in fact, the amended fees as proposed are slightly less than the current fee schedule. By allowing licensees to utilize computer recordkeeping there is a reduction in operational expenses.

Subchapter 30: The Division has only infrequent inquiries regarding the registration of stills or distilling apparatus and has issued no licenses. Therefore, the readoption of this subchapter will not have any economic impact upon the industry or consuming public in light of there being no activity involving stills.

Subchapter 31: This subchapter provides an appropriate sanction, by way of forfeiture, in addition to fines and imprisonment, for persons who engage in unlawful alcoholic beverage activity. A direct adverse economic impact is felt by those persons engaged in illegal activity when their property is seized and forfeited by the State. There is also a positive economic impact to the State when forfeited property is sold at auction. Additionally, a positive economic impact results when the State takes

appropriate enforcement action against activity which deprives the State of lawful tax revenue.

Subchapter 33: The requirement of brand registration filings does impose some economic limitations on licensees but the public purpose and benefits realized outweigh the legitimate consequences received by the licensees. The filing fees of \$23.00 for initial filing and \$10.00 for amendments are reasonable and impose a modest economic impact upon licensee. The brand registration filings result in a positive economic framework allowing the Division to take appropriate action and fulfill its obligation to ensure the orderly marketing of alcoholic beverages and the resultant collection of taxes imposed by the State.

Subchapter 34: This subchapter allows a restricted brewery licensee (who holds an active plenary retail consumption license operated in conjunction with an immediately adjacent restaurant) to brew and sell its malt alcoholic beverage product on the licensed premises. A beneficial economic impact should result. These rules authorize a licensee to expand its offerings to the consuming public. The fee for the restricted brewery license is provided by law and is graduated according to the quantity of malt alcoholic beverage a licensee wishes to brew in any given year.

Subchapter 35: The proposed readoption of this subchapter maintains the restrictions imposed upon consumption licensees' sales for off-premises consumption when they do not hold the "broad package privilege." If a licensee desires to sell package goods it must conform its licensed premises to satisfy the product display, shelving and barroom requirements set forth in the subchapter. The economic impact of these minimum requirements can range from a minimal expenditure to thousands of dollars.

Subchapter 36: There is no direct significant economic effect on the alcoholic beverage industry or the public by the procedure to accept and respond to requests for advisory opinions. Adverse economic consequences can be avoided when the Division advises a requesting party that to engage in actual or potential impermissible activities will result in negative consequences in the form of appropriate penalties.

Subchapter 37: The rules allowing alcoholic beverage consumer tastings and consumer tastings dinners have a positive economic impact on the alcoholic beverage industry and the public. The rules assist the alcoholic beverage industry by increasing consumer awareness of existing or newly introduced alcoholic beverages such as wines or specialty malt alcoholic

beverages as well as allowing industry members to effectively compete with their counterparts in neighboring states.

Subchapter 38: The regulation of the hours of sale of package goods may result in some minimal adverse impact upon retail licensees. However, this minimal impact is clearly offset by the public purpose of appropriate regulation of the sale of alcoholic beverages with the resultant reduction of alcoholic abuse.

Subchapter 39: This subchapter provides guidance, in accordance with industry practices, to an aspect of the alcoholic beverage business dealing with return of alcoholic beverages for credit. These rules do not have an economic impact on the industry, the regulators or the public at large.

Subchapter 40: The proposed repeal of this subchapter will have no economic impact.

Subchapter 41: This subchapter implements the provisions N.J.S.A. 33:1-19.7. The application process is substantially similar to other retail licenses, except for the certification by the issuing authority to the Director that the licensee and premises are qualified as required by law. As a result, these rules are expected to have little direct economic impact upon

any entity, except for the required filing fees paid by the qualified and licensed non-profit corporate entities.

Subchapter 42: Failure to renew an alcoholic beverage license each year as required by law results in the lapsing of the license and would have an obvious negative economic impact upon a licensee. Furthermore, failure to properly petition for required relief in the form of a Special Ruling from the Director pursuant to N.J.S.A. 33:1-12.18 could also result in the loss of a liquor license. Petitions under N.J.S.A. 33:1-12.18 must be accompanied by a non-refundable fee of \$100.00 per petition per license year. This fee has been imposed by the New Jersey Legislature and is specified in the statutes describing these petitions, N.J.S.A. 33:1-12.18.

This subchapter clarifies the procedures required by the Division in these instances. These procedural provisions impose no substantial economic impact upon the applicants for a State or municipal license or permit and have no economic impact on the public at large.

Subchapter 43: Failure to renew an inactive alcoholic beverage license each year as required by law results in the lapsing of the license and would have an obvious negative economic impact upon a licensee. Furthermore, failure to properly petition for required relief in the form of a Special Ruling from the Director pursuant to N.J.S.A. 33:1-12.39 could also

result in the loss of a liquor license. Petitions under N.J.S.A. 33:1-12.39 must be accompanied by a non-refundable fee of \$100.00 per petition per license year. This fee has been imposed by the New Jersey Legislature and is specified in the statutes describing these petitions, N.J.S.A. 33:1-12-39.

This subchapter clarifies the procedures required by the Division in these instances. These procedural provisions impose no substantial economic impact upon the applicants for a State or municipal license or permit and have no economic impact on the public at large. The proposed amendment in N.J.A.C. 13:2-43.3 on the role of the municipal issuing authority clarify existing statutory law and procedures and thus have no economic impact.

Subchapter 44: The regulatory provisions in Subchapter 44 set out definitions and have no intrinsic economic impact.

Federal Standards Statement

The Federal Alcoholic Administration Act provides guidelines with regard to the labeling of alcoholic beverages. These regulations are contained in Chapter 1, Title 27 of the Code of Federal Regulations (27 CFR chapter 1). The rules proposed for readoption, including N.J.A.C. 13:2-10.3, 33.1, and 34.1, refers to and incorporates these existing Federal standards where appropriate. The Division has reviewed the rules proposed for

readoption, and the rules proposed for repeal, and has determined that they comply with, but do not exceed, these applicable Federal standards and requirements. No other Federal standards are applicable to the subject matter of the rules proposed for readoption, or the rules proposed for repeal.

Jobs Impact

The Division does not anticipate the rules proposed for readoption, and the rules proposed for repeal, will result in the generation or loss of jobs in New Jersey.

Agriculture Industry Impact

The rules proposed for readoption, and the rules proposed for repeal, in this Chapter will have no impact on the agriculture industry in this State.

Regulatory Flexibility Analysis

Subchapter 1: The rules in this subchapter impact upon existing State license holders having a change in the structure of corporate ownership. The rules also apply to any person or entity applying for the issuance of a State license or permit to manufacture, wholesale, warehouse, transport or bottle alcoholic beverages. Approximately 80 to 90 percent of

the entities could be classified as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq. There are requirements to complete the State application with payment of statutorily established fee which ranges from \$50.00 to \$10,000. A notice of change in corporate structure must be published in appropriate newspapers. The cost for publication varies according to the fee charged by the newspaper. No professional services are necessary to complete an application although certain entities hire same as a matter of business practice. There is no distinction made for a small business licensee since this rule imposes compliance requirements that are uniform for all licensees regardless of size. This uniformity is based on the fact that all licensees affected by the rule, that is, those holding an alcoholic beverage license, regardless of business size, have the same privileges and responsibilities, based on the type of license held. Additionally, this uniformity is intended to protect the public health, safety and welfare through the strict regulation of liquor licensees as provided for in the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq. Thus, for regulatory and enforcement purposes, the compliance requirements contained in this rule are uniform, regardless of business size.

Subchapter 2: The rules in this subchapter apply to any person or entity submitting an application for the issuance of a license by a

municipality to sell alcoholic beverages at retail to consumers or club members and their bona fide guests. There are approximately 10,000 persons or entities that could be required to follow the requirement of this subchapter. The requirements imposed are considered the minimum necessary to effectuate the legal requirements necessary for application, payment of fees and advertisement. Approximately 90 percent of the affected entities would be classified as a small business under the Regulatory Flexibility Act.

This subchapter requires completion of a State prescribed form with payment of statutorily established fees ranging from \$250.00 to \$2,500 and a cost for publication of notices in newspapers. No professional services are necessary to complete the application, although affected entities may hire same as a matter of choice. No other reporting, recordkeeping or other compliance requirements are imposed.

Subchapter 3: There is no flexibility analysis required pursuant to the Regulatory Flexibility Act as the impact of this subchapter does not fall on any small business as defined therein. It is the Division and local issuing authorities that collect, process and store the information mandated by this subchapter. Such information regarding license activity is necessary and

appropriate to ensure compliance with the pertinent provisions of N.J.S.A. 33:1-1 et seq.

Subchapter 4: The rules in this subchapter apply to any person or entity which seeks to acquire an interest in a retail license when the applicant is a member of the municipal issuing authority. The rules also apply if there is a restructuring in ownership of such a license. Division records reflect that a minimal number of entities are mandated to comply with these rules in a year.

This limited number of persons or entities would be classified as small businesses under the Regulatory Flexibility Act. The requirement to complete a State application form with a statutorily mandated fee, in addition to costs for publication, are the primary costs for compliance as no professional services are necessary to complete the application etc., although some affected entities may hire same as a matter of business practice. No other reporting, recordkeeping or other compliance requirements are imposed. The requirements imposed are considered the minimum to effectuate the mandates for application, payment of fees and advertisement. There is no distinction made for a small business licensee since the rules impose compliance requirements that are uniform for all licensees regardless of size. This uniformity is based on the fact that all licensees affected by the

rules, that is, those holding an alcoholic beverage license, regardless of business size, have the same privileges and responsibilities, based on the type of license held. Additionally, this uniformity is intended to protect the public health, safety and welfare through the strict regulation of liquor licensees as provided for in the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq. Thus, for regulatory and enforcement purposes, the compliance requirements contained in these rules are uniform, regardless of business size.

Subchapter 5: This subchapter affects persons or entities applying for the issuance of social affair permits, special concessionaire permits, special permits to court appointed fiduciaries or other Special permits pursuant to N.J.S.A. 33:1-74. Approximately 80 percent of the affected entities would be defined as a small business under the Regulatory Flexibility Act. This subchapter does require completion of a State form, payment of a statutorily established fee from \$5.00 to \$1,000 and publication of notice in newspapers. No professional services are required to complete the requirements although affected entities may hire same. No other reporting, recordkeeping or other compliance requirements are imposed and there is no distinction made for a small business since the requirements imposed are considered the minimum to effectuate pertinent law and

necessary application, fee and advertising provisions, and since the rule imposes compliance requirements that are uniform for all permittees regardless of size. Additionally, this uniformity is intended to protect the public health, safety and welfare through the strict regulation of liquor licensees as provided for in the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq. Thus, for regulatory and enforcement purposes, the compliance requirements contained in these rules are uniform, regardless of business size.

Subchapter 6: This subchapter does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act. It establishes a framework for the extension of a license to a fiduciary by operation of law. The affected entities are the municipal clerks, ABC Board Secretaries at the local level and the Division in the receipt and review of the petitions filed by the various fiduciaries.

Subchapter 7: This subchapter impacts upon persons or entities seeking to acquire or relocate an existing State or municipally issued license. Person-to-person, place-to-place or combined transfers cannot take place without following the application and advertising requirements of this subchapter.

Approximately 90 percent of the affected entities would be classified as a small business as defined by the Regulatory Flexibility Act. Completion of an application form, payment of fees and submission of pertinent documents can be done without professional services although certain of the affected entities do so as a matter of choice and notarization of forms is required. No other reporting, recordkeeping or other compliance requirements are imposed. There is no distinction made for a small business licensee since the rule imposes compliance requirements that are uniform for all licensees regardless of size. This uniformity is based on the fact that all licensees affected by the rule, that is, those holding an alcoholic beverage license, regardless of business size, have the same privileges and responsibilities, based on the type of license held. Additionally, this uniformity is intended to protect the public health, safety and welfare through the strict regulation of liquor licensees as provided for in the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq. Thus, for regulatory and enforcement purposes, the compliance requirements contained in this subchapter are uniform, regardless of business size.

Subchapter 8: Approximately 80 percent of the club licensees would be classified as a small business under the Regulatory Flexibility Act. There are no fees required in this subchapter as the fee is set forth in

N.J.S.A. 33:1-12 (\$63.00 to \$188.00). No professional services are mandated although the affected entities may utilize professional services for accounting, etc. There is no distinction made for a small business licensee since the rule imposes compliance requirements that are uniform for all licensees regardless of size. This uniformity is based on the fact that all licensees affected by the rule, that is, those holding an alcoholic beverage club license, regardless of business size, have the same privileges and responsibilities, based on the type of license held. Additionally, this uniformity is intended to protect the public health, safety and welfare through the strict regulation of liquor licensees as provided for in the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq. Thus, for regulatory and enforcement purposes, the compliance requirements contained in this proposal are uniform, regardless of business size.

Subchapter 9: These general provisions are necessary and proper for the supervision of the alcoholic beverage industry. No specific reporting, recordkeeping or other compliance requirements are imposed. There is no distinction made for a small business licensee since the subchapter imposes compliance requirements that are uniform for all licensees regardless of size. This uniformity is based on the fact that all licensees affected by the subchapter, that is, those holding an alcoholic beverage license, regardless of

business size, have the same privileges and responsibilities, based on the type of license held. Additionally, this uniformity is intended to protect the public health, safety and welfare through the strict regulation of liquor licensees as provided for in the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq. Thus, for regulatory and enforcement purposes, the compliance requirements contained in this subchapter are uniform, regardless of business size.

Subchapter 10: The provisions in Subchapter 10 will apply to both plenary as well as farm wineries, wine blending licensees, and parcel delivery services. The licenses issued under this subchapter allow appropriate licensees to either manufacture and sell wine both at wholesale and retail, to blend wine with other permitted beverages. These provisions also impact on existing State license holders should there be a restructuring of the licensed corporate holder.

These wineries can generally be considered as small businesses as defined by the Regulatory Flexibility Act. An applicant for a farm winery, plenary winery or wine blending license must submit an application which includes various documents to demonstrate the ability of the applicant to comply with the pertinent provisions of law. There is a graduated filing fee for a farm winery license ranging from \$63.00 to \$375.00 depending upon

the number of gallons manufactured per year by the licensee, but the fee for a plenary winery license is set at \$938.00. Farm and plenary winery licensees must also pay fees of \$250.00, for each salesroom, for the right to sell the wine products in original packages at retail to consumers in any of up to five salesrooms each licensee may have apart from the winery premises. Additionally, two or more farm or plenary wineries can join together and, for an additional fee of \$625.00 for each salesroom, such licensees can establish one jointly operated salesroom for each county, at which they can sell any farm or plenary winery's product. A wine blending licensee must pay a fee of \$625.00.

A licensee must ensure that the container in which the wine is sold bears a label containing required information regarding the product, name, type, alcoholic content, net contents and the name and address of the licensee indicating that it is a "New Jersey Wine." Another recordkeeping requirement is that all wine products offered for resale by a plenary or farm winery licensee to another New Jersey licensee or consumers shall be brand registered. There are no other reporting, recordkeeping or capital expenditures required by this subchapter and professional services are not required for compliance. There is no distinction made for a small business licensee since the rule imposes compliance requirements that are uniform for

all licensees regardless of size. This uniformity is based on the fact that all licensees affected by the rule, that is, those holding an alcoholic beverage license, regardless of business size, have the same privileges and responsibilities, based on the type of license held. Additionally, this uniformity is intended to protect the public health, safety and welfare through the strict regulation of liquor licensees as provided for in the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq. Thus, for regulatory and enforcement purposes, the compliance requirements contained in this subchapter are uniform, regardless of business size. To lessen these requirements would frustrate the statutory and regulatory standards developed for the industry and consumers.

Subchapter 12: This subchapter, as it applies to individuals who apply for permits to manufacture wine and malt alcoholic beverages in their home, does not require a regulatory flexibility analysis as the applicants cannot commercially use the beverage produced, and therefore would not be considered a small business as defined by the Regulatory Flexibility Act. The fee for the permit is \$15.00. There are no bookkeeping or other recordkeeping requirements imposed upon the home manufacturer.

The subchapter also authorizes persons to offer space, equipment, ingredients, bottling supplies, advice and expertise on non-commercial

premises for the production of a permittee's malt alcoholic beverage or wine. It can be anticipated that the entities offering these services will be a small business as defined in the Regulatory Flexibility Act. There is a fee imposed in order to obtain the required public warehouse license. The owner of the non-commercial premises must provide written notice of the proposed operation and keep records of permittees using the facility. The records must be maintained for a period of two years. There are no other fees, reporting, recordkeeping or capital expenditures required by this subchapter. The costs of operating such facility will vary from owner to owner. There is no distinction made for a small business licensee since the rule imposes compliance requirements that are uniform for all licensees regardless of size. This uniformity is based on the fact that all licensees affected by the rule, that is, those holding an alcoholic beverage license, regardless of business size, have the same privileges and responsibilities, based on the type of license held. Additionally, this uniformity is intended to protect the public health, safety and welfare through the strict regulation of liquor licensees as provided for in the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq. Thus, for regulatory and enforcement purposes, the compliance requirements contained in this subchapter are uniform, regardless of business size.

Subchapter 14: This subchapter requires individuals who are disqualified from working for the holder of an alcoholic beverage license because of age or conviction of a crime or moral turpitude to apply for and receive a permit from the Division of Alcoholic Beverage Control. The rules in this subchapter do not apply to a small business as defined by the Regulatory Flexibility Act. However, there may be some indirect impact upon licensees who seek to employ such individuals and, therefore, it is properly noted that the requirements on the individuals are considered the minimum necessary to effectuate the pertinent provisions of N.J.S.A. 33:1-26.

Subchapter 15: This subchapter allows persons, disqualified from owning a liquor license or being employed in the industry, to seek removal of the disqualification resulting from a conviction of a crime of moral turpitude. Such persons would not be defined as a small business by the Regulatory Flexibility Act and therefore an analysis is not required.

Subchapter 16: This subchapter requires individuals who seek to sell alcoholic beverages, as employees of licensed manufacturers or wholesalers, to apply for and obtain a solicitor's permit as required by law. The provisions of Regulatory Flexibility Act do not apply to these individuals as they are not employers but prospective employees. However,

N.J.A.C. 13:2-16.15 and 16.16 require a solicitor's employer to reduce to writing the employment contract between the parties and to file annually a statement of compensation for each solicitor. These records should be available from other business data kept for tax and employment purposes. There is no distinction made for small business licensees that employ solicitors since the requirements imposed are the minimum to effectuate the requirements for disclosure and administrative control and to lessen them would frustrate the statutory intent.

Subchapter 17: This subchapter defines the procedure that must be followed when an affected party files an appeal with the Director from an action taken at the municipal level concerning a retail liquor license. In most instances the appeal is filed by a small business as defined by the Regulatory Flexibility Act. There is a filing fee of \$100.00 and other compliance requirements including the filing of appropriate documents with the Director. There are no other reporting, recordkeeping or capital expenditures required by the subchapter although many appellants retain legal counsel which results in litigation expenses. There is no distinction made for a small business licensee since the rule imposes compliance requirements that are uniform for all licensees regardless of size. This uniformity is based on the fact that all licensees affected by the rule, that is,

those holding an alcoholic beverage license, regardless of business size, have the same privileges and responsibilities, based on the type of license held. Additionally, this uniformity is intended to protect the public health, safety and welfare through the strict regulation of liquor licensees as provided for in the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq. Thus, for regulatory and enforcement purposes, the compliance requirements contained in this subchapter are uniform, regardless of business size.

Subchapter 18: This subchapter sets forth the procedure that New Jersey licensed wholesalers must follow to file a petition with the Division alleging discrimination by a supplier or manufacturer which restricts the ability of the wholesaler to continue to purchase and sell nationally advertised wines or distilled spirits. The business entity filing such petition can generally be considered to be a small business as defined by the Regulatory Flexibility Act. Requirements imposed to comply with the rule include the filing of documents and payment of a filing fee of \$100.00 mandated by law. Most business entities retain legal counsel to prosecute a discrimination proceeding which will result in litigation expenses. There are no other reporting, recordkeeping or capital expenditures required and there is no distinction made in this subchapter for a small business as the

requirements imposed are considered the minimum to effectuate pertinent law governing the procedures for hearings of this type.

Subchapter 19: This subchapter sets forth the procedural and substantive rules that apply when a licensee is subject to a State or municipal administrative disciplinary proceeding alleging a violation of law, regulation or municipal ordinance. There is no distinction made for a small business applicant or licensee since the requirements imposed are considered the minimum to effectuate the requirements of due process and to lessen the requirements would frustrate the pertinent statutory provisions. In most cases however, the persons or entities involved in disciplinary proceedings are a small business as defined by the Regulatory Flexibility Act. There are no fees, reporting, recordkeeping or other expenditures required by this subchapter unless an affected licensee determines to retain legal counsel to defend against a disciplinary charge.

Subchapter 20: This subchapter affects persons or entities involved in the commercial transportation of alcoholic beverages into, out of, or within the State that currently holds a New Jersey license that authorizes the wholesale sale of alcoholic beverages. It is estimated that approximately 80 percent of these suppliers and wholesalers would be defined as a small business by the provisions of the Regulatory Flexibility Act. There are

recordkeeping and reporting requirements which include the preparation, dissemination and retention of invoice documents for one year. The requirements for licensure and identification of vehicles used for alcoholic beverage transportation mandate payment of fees such as \$75.00 for application for a transit insignia per vehicle, \$30.00 for each transportation license insignia.

There are no other capital expenditures or compliance requirements imposed and the rules have established the minimum necessary requirements to avoid importer diversion of alcoholic beverages, avoidance of tax losses or discriminatory sales at different prices to similarly situated buyers of alcoholic beverages.

Subchapter 21: This subchapter affects persons or entities that generally do not hold a State issued license but seek authorization to transport alcoholic beverage into or out of New Jersey as part of a commercial operation or as individuals seeking to transport for personal use in amounts that exceed statutory limits. Those individuals who pay a fee of \$25.00 for a permit to authorize the interstate transportation of alcoholic beverages for personal use in excess of statutory limits would not be considered a small business as defined by the Regulatory Flexibility Act.

Those entities that acquire Limited Transportation permits pay a fee of \$500.00 per year. Emergency Trip permits require a \$25.00 fee and both permits are applied for on forms prescribed by the Director. It is estimated that 80 percent of these entities would be considered a small business as defined by the Regulatory Flexibility Act. There are no other fees, reporting, recordkeeping, compliance requirements or other capital expenditures imposed by the subchapter. There is no distinction made for small business as the requirements are the minimum necessary to comply with law and to minimize the improper diversion of alcoholic beverages and the avoidance of payment of lawful taxes.

Subchapter 22: The provisions in this subchapter impact upon the approximately 2,000 businesses that hold plenary and limited retail distribution licenses. These licensees would be considered a small business as defined by the Regulatory Flexibility Act. There are no additional reporting or recordkeeping requirements imposed by this subchapter but there is a compliance requirement in terms of successfully completing the educational training requirements of these rules. At least one person actively engaged in the operation or control of the licensed business must attend and successfully complete the requirements of the educational training program. There are no capital costs or professional expenses

associated with the rules but there is a fee for the training ranging from \$50.00 to \$150.00. A request for deferment of training requires a \$25.00 fee and there is no distinction made for small businesses in this rule as all affected licensees are small businesses and the requirements imposed are the minimum necessary to effectuate the legislative intent of N.J.S.A. 33:1-12.40 through 12.48.

The rule does not contemplate potential reporting, recordkeeping and compliance requirements upon non-profit educational institutions which the Director may elect to contract with to implement the training program. Such institutions would not be a small business as defined by the Regulatory Flexibility Act. Furthermore, the requirements of this subchapter would not be imposed upon an educational institution unless the institution entered into a contract, by its own volition, with the Director.

Subchapter 23: The rules in Subchapter 23 affect nearly 12,000 persons or entities that hold liquor licenses in the State of New Jersey. Approximately 90 percent of these entities would be considered a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. While most of the sections in this subchapter identify activity that is either prohibited or required for compliance with the law, there are provisions in N.J.A.C. 13:2-23.13, 23.22, 23.23, 23.31 and 23.32 that set forth certain

recordkeeping or reporting requirements in the area of retention of license applications and lists of employees; the maintenance of proper label or tap market designations for alcoholic beverages; the hiring of police officers as employees; and the keeping of accurate financial records concerning the operation of the licensed business.

The rules require no fees, nor are there any other significant capital outlays or professional services required for compliance, except as a licensee may choose to utilize if desired. There is no distinction made for a small business in the subchapter since the rules involved are considered the minimum necessary to ensure compliance with statutory requirements and ensure proper supervisory control by the Division of Alcoholic Beverage Control and the municipal issuing authorities that also supervise the retail licenses in their communities. To lessen the requirement would frustrate the statutory and regulatory scheme.

Subchapter 24: The rules in this subchapter affect those entities, acting as suppliers or wholesalers, which engage in the marketing and sale of alcoholic beverage of this State. The licensed entities that manufacture or wholesale beverages would be affected as well as those importers or wholesalers not licensed within the State but whose business is with New

Jersey licensees. Many of these entities would be considered a small business as defined by the Regulatory Flexibility Act.

The subchapter requires filing and recordkeeping of price information, promotional offerings, advertising expenditures, credit to retailers, rebate information and other marketing initiatives. There are no fees imposed but it can be assumed that most affected businesses utilize professional accounting services. There is no distinction made for a small business in this subchapter as the requirements imposed are the minimum necessary to effectuate pertinent law and policy to foster a fair, non-discriminatory and controlled sale and marketing of alcoholic beverages in the State. To lessen these requirements would frustrate the regulatory standards developed, in accordance with law, for the industry and consumers.

Subchapter 25: The provisions in this subchapter reflect legislative policy and concern the delivery and inventory of alcoholic beverage products in the State. There is no distinction made for a small business licensee since the requirements imposed are considered the minimum to effectuate the mandates of N.J.S.A. 33:1-2, which include the collection of taxes imposed upon alcoholic beverages and a framework for the industry that encourages the beneficial aspects of competition. The rules in this

subchapter impose no recordkeeping or reporting requirements or fees and no professional services are required for compliance with this subchapter.

Subchapter 26: The rules in this subchapter affect the approximately 900 cooperative buying groups. These cooperatives are made up of individual retail licensees of which approximately 90 percent would be considered a small business as defined by the Regulatory Flexibility Act. Cooperatives are required to register with the Division at a fee of \$10.00 per participating member and the cooperative must have a written agreement which may require professional legal services. Other expenses which might be incurred involve credit sales to a cooperative which requires assurances of payment which might be satisfied by a bond or other cash escrow. There are no other reporting or recordkeeping requirements mandated by this subchapter although a cooperative may maintain a warehouse and a bank account. There is no distinction made for a small business as the requirements imposed are considered the minimum to effectuate pertinent law and policy governing the relationship of separate licensees who join together in a cooperative.

Subchapter 27: This subchapter primarily impacts upon manufacturers, suppliers, importers, brand registrants, wholesalers and retail

licensees and permittees who sell, distribute, or market malt alcoholic beverages (other than malt cooler products) for resale in New Jersey.

Those manufacturers or brand owners can obtain an exemption for the shipment of all alcoholic beverages except malt alcoholic beverages (other than malt coolers) in deposit market containers. For malt alcoholic beverages, an exemption is based upon a request that they will not be selling or shipping in excess of 3,000 barrels or its equivalent, in a calendar year, of any particular product. This exemption impacts a large number of brewers who control less than two percent of the market share in the United States. These brewers can continue to offer their products for resale in this State without having to incur the additional expense of producing separate labels to conform to the deposit marked container prohibition. The subchapter also allows the few major producers, those controlling 98 percent of the market share, to retain the protection that has been demonstrated as being required to prevent the unauthorized transshipment of their major selling brand products.

Ninety-five percent of the affected entities would be classified as a “small business” under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Other than breweries and brand owners having to certify that exempted malt alcoholic beverage sales will not exceed 3,000 barrels in a

calendar year, there is no additional recordkeeping or other compliance requirements being imposed upon nor will there be any kinds of professional services required by any small business. No capital costs or annual costs will be incurred to comply with this subchapter. It is anticipated that additional sources of revenue are gained by licensees from new products which can continue to be shipped into this State because of these rules. Since transshipping affected the major selling brands of malt alcoholic beverages those are subject to the prohibition of being sold in deposit marked containers, little adverse economic impact is expected on small businesses in this State.

Subchapter 29: This subchapter primarily impacts upon the Division and the public by identifying those records that the Division maintains and their classification as public or confidential. An amendment is proposed to this section to change the fee schedule to that provided in the Open Public Records Act, N.J.S.A. 41:1A-1, et seq., as amended by P.L. 2001, c. 404. The subchapter does impose a recordkeeping requirement upon licensees with respect to the time period that records maintained by licensees must be kept. However, this is the only recordkeeping requirement and there is an economic advantage to a licensee by allowing the storage of records by alternative methods (computer) or at locations other than the

licensed premises. There is no impact on small business as defined by the Regulatory Flexibility Act.

Subchapter 30: This subchapter, requiring registration of stills and other distilling apparatus, would affect entities that could be considered a small business as defined by the Regulatory Flexibility Act. Although there has been virtually no activity relating to the registration of stills this subchapter is appropriate for readoption in order for any future applicants to be noticed of the requirements for registration, removal and sale of stills. The rules do require registration with the Division on an application form without imposition of a fee. There are no recordkeeping, reporting requirements or professional services needed for compliance. There is no distinction made for a small business licensee since the rule imposes compliance requirements that are uniform for all licensees regardless of size. This uniformity is based on the fact that all licensees affected by the rule, that is, those holding an alcoholic beverage license, regardless of business size, have the same privileges and responsibilities, based on the type of license held. Additionally, this uniformity is intended to protect the public health, safety and welfare through the strict regulation of liquor licensees as provided for in the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq.

Thus, for regulatory and enforcement purposes, the compliance requirements contained in this subchapter are uniform, regardless of business size.

Subchapter 31: A regulatory flexibility analysis is not required because this subchapter does not impose reporting, recordkeeping or other compliance requirements on small business as defined by the Regulatory Flexibility Act. This subchapter, providing for seizure and forfeiture of property, impacts upon persons who engage in illegal alcoholic beverage activity.

Subchapter 33: This subchapter affects all suppliers, importers, manufacturers and wholesalers that sell alcoholic beverages to licensed retailers in the State. It is estimated that approximately 80 percent of the affected businesses would be defined as a small business by the Regulatory Flexibility Act. This rule requires a \$23.00 filing fee for an original brand registration filing and a \$10.00 fee for an amended filing. The Division provides a form to effectuate the registration and there are no other recording, capital expense, recordkeeping or professional services required to comply with the regulation. There is no distinction made for a small business registrant since the requirements imposed are considered the minimum to effectuate the pertinent provision of law, N.J.S.A. 33:1-2. To lessen the requirements would frustrate the statutory standards.

Subchapter 34: These rules affect licensees holding a plenary retail consumption license operated in conjunction with an immediately adjacent restaurant. These licensees can be considered a small business as defined by the Regulatory Flexibility Act. Recordkeeping requirements are imposed upon the restricted brewery activities with respect to compliance with pertinent provisions of law regarding the brewing of the beverage, compliance with local, county and State law regarding manufacturing and waste water discharge and sale and display of the beverages for off-premises consumption. These requirements will require fiscal expenditures by the licensee and will vary from brewery to brewery. The fee of \$1,000 to \$2,000 is set by statute. Although it is anticipated that most restricted brewery licensees are small business entities there is no distinction made for small business as all requirements are considered to be reasonable and the minimum necessary to effectuate the law and provide for the health and safety of the consuming public.

Subchapter 35: The rules in this subchapter affect retail licensees that hold either plenary or seasonal retail consumption licensees without the “broad package privileges.” These rules limit the areas where these licensees can sell or display alcoholic beverages in original containers for consumption off the licensed premises. Approximately 90 percent of the

licensees affected by this subchapter would be considered a small business under the Regulatory Flexibility Act. The rules impose no fee, reporting or recordkeeping requirements. The expenses necessary to conform to the required physical configuration of the licensed premises to satisfy the product display, shelving and barroom minimum will be dependent upon the extent and nature of the changes to the licensed premises. There is no distinction made for a small business licensee since the rule imposes compliance requirements that are uniform for all licensees regardless of size. This uniformity is based on the fact that all licensees affected by the rule, that is, those holding an alcoholic beverage license, regardless of business size, have the same privileges and responsibilities, based on the type of license held. Additionally, this uniformity is intended to protect the public health, safety and welfare through the strict regulation of liquor licensees as provided for in the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq. Thus, for regulatory and enforcement purposes, the compliance requirements contained in this subchapter are uniform, regardless of business size.

Subchapter 36: These rules set forth the procedure to request an advisory opinion from the Division. Such inquiries are generally from individuals or entities who, in most cases, would be considered a small business as defined by the Regulatory Flexibility Act. There is no specific

recordkeeping, reporting or fee requirements imposed except that the request for the advisory opinion must be made in writing. There is no distinction made in this subchapter for a small business as the requirements imposed are considered the minimum to effectuate reasonable access to the Division for general guidance or clarification of regulatory policy. To lessen the minimal requirements would frustrate the purpose of this subchapter.

Subchapter 37: These rules authorize permittees or licensees who are actively exercising the on-premise consumption privilege to host consumer alcoholic beverage tastings or dinner tastings under certain guidelines. In addition, the rules allow suppliers, manufacturers or wholesalers who receive a special permit to participate in consumer tastings and tasting dinners solely to offer educational commentary on alcoholic beverages. It is anticipated that the vast majority of licensees who host these events will qualify as a small business as defined in the Regulatory Flexibility Act.

Any fees, reporting or recordkeeping will be imposed upon alcoholic beverage suppliers, manufacturers or wholesalers which many qualify as a small business under the Act. There is an annual permit fee imposed of \$100.00 for each supplier, manufacturer or wholesaler and an additional \$100.00 permit for each solicitor or duly authorized representative to

participate in consumer tastings. In addition, the supplier, manufacturer, or wholesaler are required to file request forms within ten days prior to participating in any consumer tasting event.

There are no other fees, reporting, recordkeeping or capital expenditures required by this subchapter. There is no distinction made for a small business licensee since the rule imposes compliance requirements that are uniform for all licensees regardless of size. This uniformity is based on the fact that all licensees affected by the rule, that is, those holding an alcoholic beverage license, regardless of business size, have the same privileges and responsibilities, based on the type of license held.

Additionally, this uniformity is intended to protect the public health, safety and welfare through the strict regulation of liquor licensees as provided for in the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq. Thus, for regulatory and enforcement purposes, the compliance requirements contained in this proposal are uniform, regardless of business size.

Subchapter 38: The proposed readoption of this subchapter, which regulates hours of sale of alcoholic beverages, impacts upon thousands of licensees which have the retail sales privilege. It is estimated that approximately 90 percent of these licensees would be considered a small business as defined by the Regulatory Flexibility Act. This subchapter

confirms the basic principle that the hours and days when a retail licensee can sell alcoholic beverages are regulated by State law, municipal ordinance and regulation. There are no recordkeeping, reporting or fee requirements and professional services are not needed to comply with these rules. There is no distinction made for a small business licensee since these rules impose compliance requirements that are uniform for all licensees regardless of size. This uniformity is based on the fact that all licensees affected by the rule, that is, those holding an alcoholic beverage license, regardless of business size, have the same privileges and responsibilities, based on the type of license held. Additionally, this uniformity is intended to protect the public health, safety and welfare through the strict regulation of liquor licensees as provided for in the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq. Thus, for regulatory and enforcement purposes, the compliance requirements contained in this subchapter are uniform, regardless of business size.

Subchapter 39: This subchapter concerns return of alcoholic beverages by a retailer to a wholesaler under certain circumstances which require certain recordkeeping. No fees are required, nor are there any professional services needed for compliance. The expense for record production and retention is minimal upon the holders of the manufacturer or

wholesale licenses, some of which would be considered a small business pursuant to the Regulatory Flexibility Act.

Subchapter 40: The proposed repeal of this subchapter regarding county identification cards does not require a regulatory flexibility analysis because this repeal does not impose reporting, recordkeeping or other compliance requirements on small business as defined by the Regulatory Flexibility Act.

Subchapter 41: These rules only affect the four non-profit corporations which currently conduct theatrical and musical performances on premises which have a seating capacity of 1,000 persons or more. These licensees can be considered a small business as defined by the Regulatory Flexibility Act. Similar recordkeeping requirements are imposed upon these licensees to ensure compliance with pertinent provisions of law as are imposed upon all other retail licensees. These requirements will require fiscal expenditures by the licensee and will vary depending upon the size of the facility and the restaurant and beverage activity conducted under this license. The fee of \$200.00 to \$2,000 is set by statute. Although it is anticipated that these licensees will be small business entities there is no distinction made for small business as all requirements are considered to be

reasonable and the minimum necessary to effectuate the law and provide for the health and safety of the consuming public.

Subchapter 42: The rules in this subchapter apply to any person or entity submitting a petition for relief to the Division, pursuant to N.J.S.A. 33:1-12.18, regarding a late filed application for the issuance of a license by a municipality to sell alcoholic beverages at retail to consumers or club members and their bona fide guests. There are approximately 10,000 persons or entities that could be required to follow the requirement of this subchapter. Approximately 90 percent of the affected entities would be classified as a small business under the Regulatory Flexibility Act. There is no distinction made for a small business licensee since the rule imposes compliance requirements that are uniform for all licensees regardless of size. This uniformity is based on the fact that all licensees affected by the rule, that is, those holding an alcoholic beverage license, regardless of business size, have the same privileges and responsibilities, based on the type of license held. Additionally, this uniformity is intended to protect the public health, safety and welfare through the strict regulation of liquor licensees as provided for in the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq. Thus, for regulatory and enforcement purposes, the compliance requirements contained in this subchapter are uniform, regardless of business size.

Subchapter 43: The rules in this subchapter apply to any person or entity submitting a petition for relief to the Division regarding the renewal of an inactive license by a municipality, pursuant to N.J.S.A. 33:1-12.39. Approximately 90 percent of the affected entities would be classified as a small business under the Regulatory Flexibility Act. There is no distinction made for a small business licensee since the rule imposes compliance requirements that are uniform for all licensees regardless of size. This uniformity is based on the fact that all licensees affected by the rule, that is, those holding an alcoholic beverage license, regardless of business size, have the same privileges and responsibilities, based on the type of license held. Additionally, this uniformity is intended to protect the public health, safety and welfare through the strict regulation of liquor licensees as provided for in the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq. Thus, for regulatory and enforcement purposes, the compliance requirements contained in this proposal are uniform, regardless of business size.

Subchapter 44: A regulatory flexibility analysis is not required because this subchapter does not impose reporting, recordkeeping or other compliance requirements on small business as defined by the Regulatory Flexibility Act. This subchapter provides the definitions to be utilized for the chapter.

Smart Growth Impact

The rules proposed for readoption with amendments and repeals will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:2-7 and 40.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:2.

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

SUBCHAPTER 1. FILING OF APPLICATION AND ADVERTISING NOTICE OF APPLICATION
FOR STATE LICENSE

13:2-1.2 Applications by corporations, partnerships, **limited liability companies**, and other types of legal entities; building not yet constructed

(a) If an applicant is a corporation, partnership, **limited liability company**, or other type of legal entity, insert in the Notice of Application the names and residences of all officers, directors, stockholders holding one percent or more of any of the stock of said corporation, general partners, members, and limited partners holding an interest of one percent or more. If in listing those, another corporation, partnership or other legal entity is noted, the Notice must also contain the required information concerning the officers, directors, stockholders, partners, or members of that corporation, partnership or other legal entity.

(b)-(c) (No change)

13:2-1.3 Publication of notice of application

(a) Notice of application shall be published by all applicants for State licenses, except Transportation, Public Warehouse or Warehouse Receipts licenses, in the following form:

-NOTICE-

ALCOHOLIC BEVERAGE LICENSE

Take notice that _____

(Name of Applicant)

trading as _____ has applied

(Trade Name, if any)

to the Director, Division of Alcoholic Beverage Control, for a
State-issued _____ license for premises

(Type of License)

situated at _____

(No.) (Street) (Municipality)

The person(s) who will hold an interest in this license is/are:

See*

(See ** to insert other information if applicable)

Objections, if any, should be made immediately in writing to: Director, Division of Alcoholic Beverage Control, PO Box 087, Trenton, New Jersey 08625.

(Name of Applicant)

(Address of Applicant)

*If the applicant is an individual, insert the name and residence address of that individual.

If applicant is a corporation, partnership, **limited liability company**, or other legal entity, insert the names and residence address of all persons identified in N.J.A.C. 13:2- 1.2(a).

**If the application is for a building not yet constructed, insert in the Notice the following: "Plans of the building to be constructed may be examined at the Office of the Director, Division of Alcoholic Beverage

Control, 140 East Front Street, Trenton, New Jersey 08625."

If the applicant intends to conduct retail sales of alcoholic beverages as may be authorized under its license, insert in the Notice the following: "The applicant intends to engage in the retail sale of

(Alcoholic Beverage Type)

at _____

(No.) (Street) (Municipality)

under the terms and conditions allowed by law."

(b)-(d) (No change)

SUBCHAPTER 2. FILING OF APPLICATION AND ADVERTISING NOTICE OF APPLICATION FOR MUNICIPAL LICENSE

13:2-2.1 Application forms

(a) Application for license must be filed with the issuing authority, in triplicate, on forms prescribed by the Director, Division of Alcoholic Beverage Control at or before the first insertion of advertisement together with the full annual license fee and an additional \$200.00 filing fee payable to the Division of Alcoholic Beverage Control. One copy of the application and the non-returnable filing fee of \$200.00 shall be forwarded by the issuing authority to the Director immediately upon receipt thereof, and a second copy returned to the applicant. If the application is to include as the licensed premises a building not yet constructed, plans of the proposed building shall accompany the application. The plans shall show the appearance and design of the proposed building, the type or types of exterior building material and the overall room dimensions.

1. If an applicant is a corporation, partnership, **limited liability company**, or other legal entity, the names and residences of all those persons identified in N.J.A.C. 13:2- 1.2(a) shall be inserted in the application. If in listing those, another corporation, partnership, or other legal entity is noted, the notice shall also contain

the names and addresses of the officers, directors, stockholders, partners, or members in that other entity noted.

13:2-2.2 Form of notice of application

Notice of application shall be published in the following form:

-

NOTICE-

ALCOHOLIC BEVERAGE LICENSE

Take notice that _____

(Name of Applicant)

trading as _____

(Trade Name, if any)

has applied to _____

(Name of Issuing Authority)

of _____

(Municipality)

for a _____ license for premises situated

(Type of License)

at _____

(No.) (Street) (Municipality)

The person(s) who will hold an interest in this license is/are:

See*

(See ** to insert other information if applicable)

Objections, if any, should be made immediately in writing to:

_____ of _____

(Municipal Clerk) (Municipality and

Mailing Address)

(Name of Applicant)

(Address of Applicant)

*If the applicant is an individual, insert the name and residence address of that individual.

If the applicant is a corporation, partnership, **limited liability company**, or other legal entity, insert the names and residence addresses of all persons identified in N.J.A.C. 13:2-1.2(a).

If the applicant is a club, insert the name and residence address of all officers and the offices they fill respectively, and the names and residences of the directors, trustees or other governing officials.

**If the application is for a building not yet constructed, insert in the Notice the following: "Plans of building to be constructed may be examined at the office of the Municipal Clerk."

13:2-2.3 Issuing authority defined

(a) (No change)

(b) If the application is made by a member of the issuing authority or by a corporation, partnership, **limited liability company**, or other legal entity in which any member of the issuing authority is interested, directly or indirectly, the Director of the Division of Alcoholic Beverage Control is the issuing authority in the form of notice and the notice must state that any objections should be addressed to the Director, Division of Alcoholic Beverage Control, PO Box 087, Trenton, New Jersey 08625-0087. This subsection shall not apply to club licenses.

13:2-2.15 Publication of notice of change in the structure of corporate, partnership, and other types of legal entities; form

Every corporation, partnership, **L.L.C.**, and other type of legal entity licensee shall, in addition to filing written notice with the municipal issuing authority of changes in ownership, cause to be published a notice of changes in structure in the following form, not later than 10 days after the occurrence whenever the change involves a new individual acquiring one percent or more of the ownership thereof.

-

NOTICE-

Take notice that on _____ a change

(Date)

occurred in the ownership of _____

(Licensee)

trading as _____ holder of

(Trade Name, if any)

_____ for premises located

(Type of License and Name)

at _____

(No.) (Street) (Municipality)

resulting in the following persons, each acquiring the aggregate one percent or more of the ownership thereof:

Name Residence Address

Any information concerning the qualifications of any of the above current stockholders should be communicated in writing to

_____ of _____

(Municipal Clerk) (Municipality)

or (Secretary) (ABC Board)

(Name of Licensee)

SUBCHAPTER 3. ISSUANCE OF RETAIL LICENSES BY MUNICIPAL ISSUING AUTHORITIES;
SPECIAL REVIEW OF ATLANTIC CITY LICENSES.

[13:2-3.8 (Reserved)

13:2-3.9 (Reserved)

13:2-3.10 (Reserved)]

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

13:2-4.3 New or renewal license fees; certification by issuing authority

(a) Applications for a new license or for a renewal of an existing license shall be accompanied by a fee of
\$[**50.00**] **200.00** payable to the order of the Division of Alcoholic Beverage Control.

(b) (No change.)

13:2-4.4 Fee for license transfer to other persons or other premises; certification

(a) Applications for transfer of license to other persons only, or applications for transfer of license to other
premises only (not combined) shall be accompanied by:

1. A fee of \$[**50.00**] **200.00** payable to the order of the Division of Alcoholic Beverage Control and

retained by the Director whether or not the transfer is granted, and accounted for as are other license fees.

2. (No change.)

13:2-4.5 Fee for combined transfers; certification

(a) Transfers of license both as to person and place may be applied for simultaneously and in a single application, accompanied by a fee of \$~~50.00~~ 200.00 payable to the order of the Division of Alcoholic Beverage Control.

(b)-(c) (No change.)

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 \$~~50.00~~ 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.

(b) If an application for license transfer is denied or withdrawn, the 10 percent of the full annual fee deposited with the municipality shall be retained by the municipality. The \$~~50.00~~ \$200.00 State fee required to accompany the application shall be retained as a processing fee by the Director.

[13:2-4.11 (Reserved)]

SUBCHAPTER 5. ISSUANCE OF SPECIAL PERMITS BY DIRECTOR

13:2-5.1 Social affair permit

(a) Application for social affair permit may be made to the director by organizations operating solely for civic, religious, educational, charitable, fraternal, social, or recreational purposes, and not for private gain.

In order to establish its eligibility an applicant shall submit in support of its application sufficient documents such as:

1.-4. (No change.)

[5. Minutes of meetings;]

[6] **5.** Membership roster **with list of all members;**

[7] **6.** Financial records;

(Recodify existing 7. to 9. as 6. to 8. No change in text)

(b) A fee, in the sum of \$100.00, per day, made payable to the Division of Alcoholic Beverage Control must accompany each application for social affair permit filed by religious, civic, educational or veterans organizations; and \$150.00 for such other organizations, and must be received at least [seven] **14** days in advance of date for which permit is requested.

(c) – (i) (No change)

13:2-5.2 Special concessionaire permit

(a) Application for a special concessionaire permit may be made to the Director by any individual, partnership, corporation, **limited liability company** or other type of legal entity who has entered into a contract with the State of New Jersey, or any political subdivision thereof, whereby said person or organization is authorized to sell alcoholic beverages for immediate consumption in any public building or on any property owned by or under the control of the State of New Jersey or any political subdivision thereof. Such permit may also authorize the sale of alcoholic beverages in original containers for off-premises consumption, provided the applicant, with the consent of the governmental agency, establishes to the satisfaction of the Director that there is good cause for such sales.

(b) - (d) (No change)

(e) Notice of application shall be published in the following form:

- NOTICE-

ALCOHOLIC BEVERAGE PERMIT

TAKE NOTICE THAT _____

(Name of Applicant)

has applied to the DIRECTOR of the New Jersey DIVISION OF ALCOHOLIC BEVERAGE CONTROL
for a SPECIAL CONCESSIONAIRE PERMIT for premises situated at

(No.) (Street) (Municipality)

The person(s) who will hold an interest in this permit is/are:

See *

See ** to insert other information applicable

Objections, if any, should be addressed to the Director, Division of Alcoholic Beverage Control, PO Box
087, Trenton, New Jersey 08625.

(Name of Applicant)

(Address of Applicant)

*If the applicant is an individual, insert the name and residence address of that individual.

If applicant is a corporation, insert the names and residence address of all officers and all directors, and the names and residences of all stockholders holding one percent or more of any of the stock of the applicant corporation or any corporation that is a stockholder in the applicant corporation.

If the applicant is a partnership, insert the name of the partnership and the names and residence address of all partners and any limited partners holding an interest of one percent or more.

If applicant is a club, insert the names and residence address of the officers and the offices they fill respectively, and the names and residences of the directors, trustees or other governing officials.

If the applicant is a limited liability company, insert the name of the limited liability company, and the name and addresses of all officers and members.

**If the application is for a building not yet constructed, insert in the Notice the following: "Plans of building to be constructed may be examined at the office of the Director of the Division of Alcoholic Beverage Control, 140 East Front Street, Fifth Floor, Trenton, New Jersey 08625."

(f) - (i) (No change)

13:2-5.3 Special permit for a golf facility

(a) Application for a special permit may be made to the Director by any individual, partnership, corporation, **limited liability company**, or other type of legal entity which owns and operates or leases and operates a golf facility whereby said golf facility is authorized to sell open containers of alcoholic beverages for immediate consumption to members, guests of members and guests of the facility. For the purposes of this subsection:

1. – 4. (No change.).

(b) (No change.)

(c) All applicants for a special permit for a golf facility must be qualified to hold an alcoholic beverage license as provided in the Alcoholic Beverage Control Act, N.J.S.A 33:1-1 et seq. The application must be supported by the following documents before the special permit may be issued by the Director:

1. – 3. (No change.)

4. **A 12-page application, including** [Evidence] **evidence** that a copy of the application has been filed with

the municipal issuing authority of the municipality in which the facility is located;

5. – 6. (No change.)

(d)- (k) (No change)

13:2-5.4 Special permit for the sale or purchase of alcoholic beverages

(a) – (d) (No change)

(e) List of special permits issued by the Director and the required fees.

TYPE OF PERMIT PERMIT FEE

(e) List of special permits issued by the Director and the required fees.

<u>TYPE OF PERMIT</u>	<u>PERMIT FEE</u>
Temporary Extension to Administrator/Executor	\$ 50.00
Ad Interim	\$ 75.00, plus \$5.00 per day
Bulk Sale	\$ 75.00
Close Out	[\$25.00] \$1.00 per case with a minimum price of \$20.00
Donation	[\$50.00] 150.00
Extension of Premises	\$ 75.00, per day
Food and Pharmaceutical	\$ [25.00] 20.00 to 40.00
Gratuitous Gift	\$ 75.00
Gratuitous [Service] Samples	\$ 50.00
Merchandising Show: In-state licensee	[\$100.00] 75.00
Out of state licensees	\$ 100.00
Merchandising Show--Out-of-State Importers	[\$200.00] 100.00
Omnibus	\$ 750.00
Import for Personal Consumption	\$ 50.00
Retailer to Retailer Sale	\$ 75.00
Sacramental Wine	\$ 50.00
Sampling/Display	\$ 75.00
Storage in Transit	\$ 50.00
Temporary Authorization to Operate	[\$200.00] 150.00
Temporary Storage	[\$75.00] 25.00 plus 2.00 per day
[Temporary Warehousing]	[\$75.00]
Wine Parcel Delivery	\$ 75.00 to 200.00
Wine Festival	\$ 25.00
Wine Seminar	\$ 50.00

SUBCHAPTER 6. EXTENSION OF LICENSE.

[13:2-6.5 (Reserved)]

SUBCHAPTER 7. TRANSFERS OF STATE AND MUNICIPAL LICENSES.

13:2-7.4 Notice of transfer application, form

(a) Notice of application for transfer of a license shall be published in the following form:

NOTICE-

ALCOHOLIC BEVERAGE CONTROL

Take notice that application has been made to _____

_____ of _____

(Name of Issuing Authority)

(Address)

to transfer to _____

(Name of transferee)

trading as _____ for premises located at

(Trade Name, if any)

(Address of premises to which transfer is sought)

the _____ heretofore issued to

(Type of License and Number)

_____, trading as _____

(Name of Licensee in full)

(Trade Names, if any)

for premises located at _____

(No.) (Street) (Municipality)

The person(s) who will hold an interest in this license is/are:

(Name(s))

See*

(See ** to insert other information if applicable)

Objections, if any, should be made immediately in writing to:

_____, of _____

(Municipal Clerk or (Address) **or ABC Board Secretary (address)**)

Director, Division of

Alcoholic Beverage Control)

(Name of Applicant)

(Address of Applicant)

*If the applicant is an individual, insert the name and residence address of that individual.

If the applicant is a corporation, partnership or other legal entity, insert the names and residence of all officers, directors, stockholders holding one percent or more of any of the stock of the applicant corporation, general partners, members, and limited partners holding an interest of one percent or more. If, in listing those, another corporation, partnership, or other legal entity is noted, the application and notice must contain the required information concerning officers, directors, stockholders, partners, or members, of that corporation, partnership, or other legal entity.

If the applicant is a club, insert the names and residence address of all officers and the offices they fill respectively, and the names and residences of the directors, trustees or other governing officials.

If the applicant is a limited liability company, insert the name of the limited liability company and the name and addresses of all officers and members.

**If the application is for transfer of a municipal license to a building not yet constructed, insert in the Notice the following: "Plans of building to be constructed may be examined at the office of the Municipal Clerk."

If the application is for a State license for a building not yet constructed, insert "Plans of building to be constructed may be examined at the office of the Division of Alcoholic Beverage Control."

If the application is for a place-to-place transfer which involves an expansion or reduction of the premises, insert "Plans of the current license premises and proposed licensed premises may be examined at the office of the municipal clerk (or Division of Alcoholic Beverage Control, if appropriate)."

If the applicant intends to conduct retail sales of alcoholic beverages as may be authorized under a State issued license, insert in the Notice the following: "The applicant intends to engage in the retail sale of

_____ at _____

(Alcoholic beverage type)

(No.) (Street)

_____ under the terms and conditions allowed by law."

(b) – (d) (No change.)

[13:2-7.16 (Reserved)

13:2-7.17 (Reserved)

13:2-7.18 (Reserved)

13:2-7.19 (Reserved)

13:2-7.20 (Reserved)

13:2-7.21 (Reserved)

13:2-7.22 (Reserved)

13:2-7.23 (Reserved)

13:2-7.24 (Reserved)]

SUBCHAPTER 10. PLENARY AND FARM WINERY LICENSES; WINE BLENDING LICENSES;
RETAIL PRIVILEGES [PARCEL DELIVERY SERVICE].

[13:2-10.7 Parcel delivery service

Plenary and farm wineries, who wish to ship their wines in this State by parcel delivery services, must comply with the provisions of N.J.A.C. 13:2- 20.3.

13:2-10.8 (Reserved)]

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

13:2-14.6 Application for a rehabilitation employment permit; temporary work letter

(a) –(b) (No change.)

(c) A Temporary Work Letter may be issued if the applicant demonstrates to the Director's satisfaction, that the applicant has behaved in a law abiding manner and has not engaged in and will not participate in any conduct detrimental to the integrity of the alcoholic beverage industry or the public interest. **The final determination shall be in the sole discretion of the Director.**

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 \$ [150.00] **125.00** per [annually] **year**, payable on the date of application.

13:2-14.9 Termination of employment of disqualified person

No licensee shall employ in any manner whatsoever on the licensed premises any criminally disqualified person upon the withdrawal or denial of the application of such person for [an] **a** Rehabilitation Employment Permit or upon the cancellation, suspension, revocation or expiration of a Rehabilitation Employment Permit or a Temporary Work Letter.

13:2-14.10 Nontransferability of permits; term of permit; applicant's photograph and fingerprints

(a)-(b) (No change)

(c) Each applicant for his first permit shall submit with the application [one] **four** color passport-type photographs, two inches by two inches, taken not more than 30 days prior to the date of application.

(d) (No change.)

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 \$[100.00] **125.00**. The petitioner shall be required to submit **to** [a set of fingerprints] **fingerprinting** and **provide** [a **four** recent color passport photographs] (two inches by two inches) with said application, as well as any fingerprinting processing fees attendant thereto.

SUBCHAPTER 17. APPEALS.

[13:2-17.13 (Reserved)

13:2-17.14 (Reserved)

13:2-17.15 (Reserved)]

SUBCHAPTER 18. PETITION PROCEEDINGS: DISCRIMINATION AGAINST WHOLESALERS.

13:2-18.1 Grounds for relief

(a) (No change)

(b) For purposes of (a) above refusal to sell based upon any of the following shall be deemed not to be discrimination:

1. – 9. (No change in text.)

10. The material breach, by such wholesaler, of any material term or condition of sale, [or] credit, **or scope of authorization** agreed upon 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 20. TRANSPORTATION OF ALCOHOLIC BEVERAGES BY LICENSEES; INSIGNIA

13:2-20.1 Transit insignia; transportation of alcoholic beverages

No licensee shall transport alcoholic beverages into, out of, or within the State of New Jersey in any vehicle unless it is owned, leased or contracted for by the licensee. Such vehicle, while so used, shall first have issued therefor a transit insignia, [special transit insignia,] **or** transportation license insignia issued pursuant to the provisions of this subchapter, or a limited transportation permit or emergency trip permit issued pursuant to the provisions of N.J.A.C. 13:2-21.

13:2-20.3 Transportation by State licensee with retail privileges; delivery slip or route card

(a) (No change.)

[(b) The holder of a New Jersey Plenary Winery license with retail privileges or a Farm Winery license with retail privileges may authorize the shipment of wine purchased in person at retail on the licensed premises or ordered by mail or telephone (but for mail or telephone orders only if the licensee has a signed authorization by the person placing the order) to a destination within this State by a parcel delivery service

subject to the following terms and conditions:

1. The New Jersey Plenary or Farm Winery licensee with retail privileges must first file an application for authorization to utilize a parcel delivery service before it makes any such deliveries to consumers. The application is made on a form provided by the Division and must be accompanied by an annual fee of \$150.00. All parcel delivery service permits are for the one year and expire on June 30 and must be renewed annually; and
2. The parcel delivery service must first be registered and approved by the Director. Application for approval shall be made on a form to be provided by the Division. No fee is required. Once approved, a parcel delivery service shall not be required to obtain a Transportation License under N.J.S.A. 33:1-13 or any Transit Insignia under N.J.S.A. 33:1-28 or this subchapter; and
3. An invoice must be attached to every package stating the purchaser's name, address, destination, quantity of wine being shipped and place of purchase. A copy of the original invoice must be made available for inspection by any person authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq. for a period of one year at the office of the licensee; and
4. The wine shall be shipped as a restricted delivery and may be delivered only to the residence of the person who placed the order. It is the duty of personnel delivering the wine for a licensee in accordance with N.J.S.A. 33:1-28.1 et seq. and this subsection to seek to determine that, at the time of delivery of wine, the party signing a delivery receipt is of legal age to purchase and consume alcoholic beverages.]

(b) (No change in text.)

13:2-20.9 Restrictions applicable to vehicles bearing transit insignia[, special transit insignia] or transportation license insignia

(a) No licensee shall allow, permit or suffer any vehicle for which a transit insignia, [special transit insignia] or transportation license insignia is issued to be used to transport alcoholic beverages except solely for the licensee's own business.

(b) When any transit insignia, [special transit insignia] or transportation license insignia shall become marred, defaced or damaged, the licensee shall forthwith notify the Director in writing, so that there may be

appropriate replacement, if necessary, of such insignia.

(c) Transit insignia [or special transit insignia] may be used only for the vehicle for which issued, provided, however, that nothing herein contained shall prohibit the transportation of alcoholic beverages by a transferee of a license in a vehicle for which a transit insignia [or special transit insignia] was issued to his transferor for a period not exceeding seven days subsequent to the effective date of the transfer of license to such transferee.

(d) (No change.)

(e) Except as provided in (c) above, no licensee shall sell or otherwise dispose of any vehicle to which a transit insignia [or special transit insignia] is affixed, without having first removed said insignia[and having notified the Director of such removal].

13:2-20.10 Search of licensed vehicle

By acceptance of a transit insignia, [special transit insignia] or transportation license insignia, the licensee consents to the inspection and search of the vehicle for which such insignia is issued, without search warrant, by any person authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq.

[13:2-20.12 through 13:2-20.15 (Reserved)]

SUBCHAPTER 21. TRANSPORTATION OF ALCOHOLIC BEVERAGES INTO, THROUGH OR OUT OF THE STATE.

13:2-21.2 Interstate transportation for personal use; amount limitation; permit

(a) (No change)

(b) Interstate transportation of alcoholic beverages intended in good faith for personal use in excess of the limits set forth in this section is prohibited; unless the consumer:

1. (No change)

2. Acquires from the Division a special permit to authorize the interstate transportation for a fee of \$ [25.00] **50.00** as set forth in N.J.S.A. 33:1-2. No such permit shall be issued until the applicant establishes that there has been payment of all applicable New Jersey Alcoholic Beverage taxes.

13:2-21.4 Limited transportation permit

(a) (No change)

(b) Application for a limited transportation permit shall be made to the Division on a form prescribed by the Director accompanied by a fee of \$ [750.00] **500.00**.

(c) –(e) (No change)

[13:2-21.8 (Reserved)]

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

13:2-23.16 Prohibited promotions

(a) Except for consumer alcoholic beverage tasting[s] **events** [or tasting dinners] conducted in accordance with N.J.A.C. 13:2-37, and promotions permitted in this section, no licensee, permittee or brand registrant shall, directly or indirectly, allow, permit or suffer any practice or promotion that:

1. – 2. (No change.)

3. Requires or allows a consumer to prepurchase more than one drink or product at a time via tickets, tokens, admission fees, or the like, as a condition for entry into a licensed premises or as a requirement for service or entertainment thereon; [or]

4. Offers any prize, gift or award which consists of alcoholic beverages or coupons or gift certificates which may be redeemed for alcoholic beverages, such as two for one, and the like, except for a prize

consisting of alcoholic beverages in sealed containers offered in a raffle licensed pursuant to N.J.S.A. 5:8-50. A coupon or gift certificate, other than a certificate purchased by a consumer for an amount equal to the dollar value of the certificate, shall expressly state that the certificate shall not be applied toward the purchase or consumption of alcoholic beverages[.] ; **or**

5. Contains an instant win coupon, ticket, cap, game card or the like.

(b) (No change.)

13:2-23.31 Law enforcement officers; ownership prohibition; employment restrictions

(a) (No change.)

(b) No licensee shall employ or have connected with him in any business capacity whatsoever any such officer or person, except that:

1. Nothing herein shall prohibit a licensee from employing in a non- managerial capacity a special [police] **law enforcement** officer; and

2. (No change.)

(c) – (d) (No change.)

SUBCHAPTER 24. TRADE MEMBER DISCRIMINATION, MARKETING AND ADVERTISING

13:2-24.11 Manufacturers' rebates and coupons

(a) – (b) (No change.)

(c) No manufacturer, distiller, blender and rectifier, brewer, vintner, importer, wholesaler or distributor shall provide or distribute any instant win coupon, ticket, cap, game card or the like.

[(c)] **(d)** (No change in text.)

SUBCHAPTER 26. RETAIL COOPERATIVE PURCHASES.

13:2-26.1 Restrictions on cooperative purchases

(a) (No change.)

(b) No cooperative buying group may participate in any business transaction permitted by (a) above, unless the cooperative is registered with the Division in a form prescribed by the Director. Such registration shall include:

1. The identity and State issued license numbers of the members;
2. A copy of the cooperative agreement; [and]

3. A fee of \$15.00 per member; and

[3.] **4.** (No change in text.)

SUBCHAPTER 29. RECORDS

13:2-29.3 Inspection, reproduction and availability of records; copy fees

(a) (No change.)

(b) The fee for supplying copies of Division records shall be based upon the total number of pages or parts thereof to be purchased for each individual report or separate record filed with this Division, not upon the ultimate number of pages provided.

1. First page to [Twentieth] **10th** page _____ \$[1.00] **0.75** per page;
2. [Twenty-first] **Eleventh** to [Fortieth] **20th** page _____ \$[0.75] **0.50** per page;
3. All pages over [Forty (40)] **21** _____ \$[0.50] **0.25** per page.

(c)-(d) (No change.)

SUBCHAPTER 33. PRODUCT INFORMATION FILING: BRAND REGISTRATION.

13:2-33.1 Brand registration schedule

(a) No licensee shall knowingly sell, offer for sale, deliver, receive or purchase, for resale in New Jersey, any alcoholic beverage (including private label brands owned by a retailer or exclusive brands owned by a manufacturer or wholesaler and sold by such manufacturer or wholesaler exclusively to one New Jersey retailer or group of affiliated retailers) unless there is first filed with the Director of the Division of Alcoholic Beverage Control a schedule, for each separate alcoholic beverage product, listing the following:

1. – 4. (No change.)

5. The date of label approval granted by the [Federal [Bureau of] **Federal** Alcohol[,], **and** Tobacco [and Firearms (B.A.T.F.)] **Tax and Trade Bureau (TTB)**, together with a copy of the [B.A.T.F. Form 1649] **appropriate TTB form**;

6. – 8. (No change.)

(b)-(c) (No change.)

SUBCHAPTER 34. RESTRICTED BREWERY.

13:2-34.1 Application for restricted brewery license

(a) (No change.)

(a) All applicants for a restricted brewery license shall provide this Division with the following documents:

1. (No change.)

2. Proof of registration as a brewer with the **Federal** [United States Bureau of] Alcohol[,], **and** Tobacco [and Firearms] **Tax and Trade Bureau [TTB]** (must be registered prior to issuance of license);

3. – 5. (No change.)

SUBCHAPTER 40. (RESERVED)

SUBCHAPTER 43. PETITIONS FOR RELIEF TO THE DIRECTOR, PURSUANT TO N.J.S.A. 33:1-12.39.

13:2-43.3 Role of the municipal issuing authority

(a) – (b) (No change)

(c) If a license is required to obtain a Special Ruling from the Director pursuant to N.J.S.A. 33:1-12.39, the municipal issuing authority shall not pass a Resolution transferring such license until a Special Ruling is issued for the required license term(s).