

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

IN THE MATTER OF THE APPLICATION)	SR 2020-02
REQUESTING RELAXATION OF CERTAIN)	
REGULATORY REQUIREMENTS)	SPECIAL RULING GRANTING
AFFECTING WHOLESALERS AND)	RELAXATION OF N.J.A.C. 13:2-20.4,
RETAILERS DUE TO THE COVID-19)	N.J.A.C. 13:2-24.4 AND N.J.A.C. 13:2-39.1
PANDEMIC)	AND JUNE 2015 SPECIAL RULING
_____)	

BY THE ACTING DIRECTOR:

As a result of the unprecedented health hazard posed by the novel Coronavirus disease 2019 (“COVID-19”), Governor Murphy declared a Public Health Emergency and State of Emergency in Executive Order (“EO”) No. 103 (2020). In EO No. 107 (2020), the Governor adopted social mitigation strategies, such as “social distancing” and placed limitations on unnecessary person-to-person contact in order to prevent the spread of COVID-19. In furtherance of the Governor’s mandates, he ordered all restaurants, cafeterias, dining establishments and bars to cease on-premises sales and consumption of alcoholic beverages and permitted only take-out or delivery of alcoholic beverages in original sealed containers for off-premises consumption. See Paragraph 8 of EO No. 107. Liquor stores, on the other hand, were determined to be “essential retail businesses” that could remain open during their normal business hours. See Paragraph 6(l) of EO No. 107. While the Governor’s actions are necessary to protect the health, safety and welfare of the citizens of New Jersey, they are having a direct impact on the alcoholic beverage industry in this State.

The alcoholic beverage industry is comprised of a three-tier system, consisting of suppliers,

wholesalers and retailers. The Division of Alcoholic Beverage Control (the “Division”) is responsible for regulating this industry in a manner that maintains market stability, beneficial competition, and the three-tier system. See N.J.S.A. 33:1-3.1. This requires an appreciation of the different interests in each tier and a sensitive balancing of those interests.

The COVID-19 outbreak has affected each tier of the industry differently, and even within the retail tier, the bars and restaurants face different economic realities than the liquor stores do. For example, liquor stores are “essential retail businesses” and have generally remained open throughout the public health crisis, while bars and restaurants have seen significant curtailments of their businesses. As a result of this reality, the Division has received requests from the Beer Wholesalers Association of New Jersey (“BWANJ”), the New Jersey Wine and Spirits Wholesale Association (“NJWSA”), the New Jersey Licensed Beverage Association (“NJLBA”) and the New Jersey Liquor Store Alliance (“NJLSA”) seeking relaxation of several regulations, as well as a provision in a June 12, 2015 Special Ruling (“June 2015 Special Ruling”). Specifically, relaxation of the following has been sought: N.J.A.C. 13:2-20.4(b) (signatures on invoices); N.J.A.C. 13:2-39.1 (returns of merchandise); N.J.A.C. 13:2-24.4(a)(1) and (b)(1) (extension of credit and electronic Notices of Obligations); and extension of the Bill and Hold requirements contained in Section C of the June 2015 Special Ruling.

Pursuant to N.J.S.A. 33:1-39, the Director has the authority to make such general rules and regulations and such special rulings and findings “as may be necessary for the proper regulation and control of the manufacturer, sale and distribution of alcoholic beverages ..., and [to] alter, amend, repeal and publish the same from time to time.” This authority is implemented by N.J.A.C. 13:2-9.1, which allows the Director to relax certain regulations or special rulings upon a showing by a licensee of undue hardship, economic or otherwise; that the waiver of the rule will not unduly

burden any affected parties; and that the waiver is consistent with the underlying purposes of the Alcoholic Beverage Control Act (the “ABC Act”).

After reviewing the submissions made by the industry members from both the wholesale and retail tiers, the Director has determined that relaxation of certain regulations, as described below, is appropriate and necessary to provide relief to retail licensees if they are able to continue their businesses under the current circumstances, without undermining the legislative purposes of the ABC Act. While the Division has determined that the relaxation provided herein establishes an appropriate balance within the industry, the economic and social effects of this emergency are evolving and circumstances are likely to change in the future. If that occurs, the Division may consider further additional relief.

1. **Signature on Invoices.** The Division has received requests to temporarily suspend N.J.A.C. 13:2-20.4(b), which requires a licensee to sign and date a delivery slip, invoice, manifest, waybill or similar document at the time of delivery of any alcoholic beverage by a licensed manufacturer, importer or wholesaler. The request is based on recommendations by the Centers for Disease Control, as adopted by the Governor’s Executive Orders, to avoid person-to-person contact and to practice “social distancing.” The requesters suggested that alternative methods should be used by a wholesaler to ensure that deliveries of alcoholic beverages are properly acknowledged.

In light of the public health crisis and the need to take appropriate steps to prevent and reduce the spread of COVID-19, I FIND that allowing alternative methods of acknowledging receipt of an alcoholic beverage delivery is reasonable, would not unduly burden any affected parties, and is in furtherance of the Director’s statutory mandate to protect the public health, safety and welfare of the people of this State. As