

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

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| IN THE MATTER OF THE APPLICATION |) | SR 2020-22 |
| TO RELAX N.J.A.C. 13:2-35.4 WHICH |) | SPECIAL RULING GRANTING |
| REQUIRES THE DISPLAY OF PACKAGE |) | RELAXATION OF N.J.A.C. 13:2- |
| GOODS ALONG PERIMETER WALLS OF |) | 35.4(a)(1) |
| THE PRINCIPAL PUBLIC BARROOM |) | |
| _____ |) | |

BY THE DIRECTOR:

In response to the public health hazard posed by the novel Coronavirus disease (“COVID-19”), Governor Philip D. Murphy exercised his Constitutional powers and issued Executive Order No. 103 (2020) (“EO No. 103”) on March 9, 2020, which declared both a Public Health Emergency and State of Emergency. Throughout the spring and summer, the Public Health Emergency and State of Emergency remained in effect. Most recently, on December 21, 2020, Governor Murphy issued EO No. 210 (2020) further extending the Public Health Emergency in New Jersey. The alcoholic beverage industry in New Jersey has been significantly affected by the public health pandemic. The Division has taken steps throughout this time to assist licensees in navigating the situation in order to promote the beneficial aspects of competition and to maintain a stable marketplace. See N.J.S.A. 33:1-3.1. In furtherance of these legislative goals, the Division authorizes the limited relaxation of N.J.A.C. 13:2-35.4(a)(1), as set forth below.

Generally, the holder of a plenary retail consumption license or seasonal retail consumption license shall not sell or display for sale any alcoholic beverage in an original container for off-

premises consumption except from and in the bona fide public barroom¹ of the licensed premises. N.J.A.C. 13:2-35.2(a), N.J.S.A. 33:1-12.23. Any holder of a plenary retail consumption license or seasonal retail consumption license, without the “Broad Package Privilege²,” that chooses to sell package goods, must display package goods in an area located behind the bar in the principal public barroom³ or on shelving along the perimeter walls of the barroom in accordance with the specifications set forth in N.J.A.C. 13:2-35.4(a)(1).

In light of the ongoing circumstances related to COVID-19 and the restrictions imposed on plenary retail consumption and seasonal retail consumption licensees, such as capacity and operating hours limitations, the New Jersey Licensed Beverage Association (“NJLBA”) has requested a relaxation of display requirements. The NJLBA claims that, since on-premises consumption of alcoholic beverages is limited by several Executive Orders and since outdoor dining will be curtailed due to the colder weather, allowing the display of package goods to be more visibly located throughout the principal public barroom may help increase retail sales of package goods by way of customer pick-up/take-out. By allowing the display of package goods to be throughout the principal public barroom, customers will be more aware that they are able to purchase alcoholic beverages in original containers with their pick-up/take-out orders. This view

¹ A public barroom is defined at N.J.A.C. 13:2-35.1(1) as a room containing a public bar, counter or similar piece of equipment, which must occupy not less than 15 percent of the total square footage of said room and which is designed for and used to sell and dispense alcoholic beverages by the glass or other open receptacle for consumption on the licensed premises. N.J.A.C. 13:2-35.1(1).

² A Plenary Retail Consumption License with the “Broad Package Privilege” (also referred to as a “32” license”) permits the licensee to sell package goods in areas other than the public barroom. This privilege was added to certain Plenary Retail Consumption licenses in 1948 and those licenses continue to retain that privilege.

³ The principal public barroom is defined at N.J.A.C. 13:2-35.1(3) as the room in which the main public bar is located.

is consistent with N.J.S.A. 33:1-12(1) and (2), which permits licensees to sell alcoholic beverages in original containers for off-premises consumption.

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, in part, by N.J.A.C. 13:2-9.1, which allows the Director to relax certain regulations upon a showing by a licensee of undue hardship, economic or otherwise; that 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 “Act”).

Based on the ongoing health crisis, the steps being taken to reduce community spread of COVID-19 through “social distancing” and other practices intended to minimize person-to-person contact, and the economic hardship faced by plenary retail consumption and seasonal retail consumption licensees due to indoor capacity limitations and 10 p.m. closure times, the Division FINDS that a temporary limited relaxation of N.J.A.C. 13:2-35.4(a)(1) for the duration of the public health emergency is appropriate under these circumstances. The Division is satisfied that plenary retail consumption and seasonal retail consumption licensees will continue to suffer economic hardship if they are not able to display package goods more visibly because customers may not be aware that they may purchase package goods for off-premises consumption with their pick up/takeout orders.

The Division further finds that a temporary relaxation of N.J.A.C. 13:2-35.4(a)(1) will not unduly burden any affected parties. The Division is aware that plenary retail distribution licensees may be affected by this relaxation, but does not believe that this short-term remedy will

significantly interfere with their businesses. In fact, the Division notes that most plenary retail distribution licensees, which have been determined to be “essential” businesses in Executive Order No. 107 (2020), have seen an increase in their sales throughout the pandemic and have not been as negatively impacted as on-premises retailers have. Thus, on balance and with the limitations on displays by on-premises retailers, described below, the Division concludes that plenary retail distribution licensees will not be unduly burdened by this Special Ruling.

Finally, the Division finds that relaxation of N.J.A.C. 13:2-35.4(a)(1) is consistent with the Act, which allows plenary retail consumption and seasonal retail consumption licensees to sell package goods for off-premises consumption. See N.J.S.A. 33:1-12(1) and (2). Allowing plenary retail consumption and seasonal retail consumption licensees to display package goods in a more visible manner within the principal public barroom will allow them to maintain and increase retail sales of alcoholic beverages, and is not inconsistent with N.J.S.A. 33:1-12.23.

In light of the foregoing, the Division will GRANT the request for relaxation of N.J.A.C. 13:2-35.4(a)(1) and will authorize plenary retail consumption and seasonal retail consumption licensees to display package goods within the principal public barroom, not limited to behind the bar and perimeter shelving, for the limited purpose of increasing visibility of the sale of package goods for off-premises consumption, in accordance with the following parameters:

- Licensees are limited to no more than two shelving units, racks, displays, or gondolas for the display of package goods on the floor. Multiple shelving units or gondolas resembling that of a “liquor store” are not permissible;
- The display of package goods is permitted on counter tops near a register, provided the register is located within the principal public barroom;

- Licensees are not permitted to utilize pallets, stock carts (e.g. U-boats or dollies), or bar counter tops to display package goods and may also not stack package goods on the floor;
- Any display must not impede ingress or egress from the licensees' premises or obstruct any windows and otherwise must be consistent with applicable building and fire codes; and
- The sale of package goods must take place in the principal public barroom. N.J.A.C. 13:2-35.2(a), N.J.S.A. 33:1-12.23.

The Director may adjust the relief granted in this ex parte matter at his discretion, except that this Special Ruling shall be revoked at the conclusion of the Public Health Emergency or until further order of the Director. Should this relief be demonstrated to be inconsistent with the factual description provided by the NJLBA who has requested this relaxation, or should the facts and circumstances posed by the COVID-19 public health crisis change, this Special Ruling may be withdrawn or modified, as appropriate.


JAMES B. GRAZIANO
DIRECTOR

Dated: January 12, 2021
JBG/JM