

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

IN THE MATTER OF THE )  
 APPLICATION TO EXTEND THE )  
 PRICES POSTED IN THE MARCH, ) ORDER PERMITTING EXTENSION OF  
 JUNE, AUGUST, NOVEMBER AND ) PRICES POSTED IN MARCH, JUNE,  
 DECEMBER 2018 CURRENT PRICE ) AUGUST, NOVEMBER AND DECEMBER  
 LISTS ) 2018 CURRENT PRICE LISTS  
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BY THE DIRECTOR:

N.J.A.C. 13:2-24.6(a)(4) provides that a Current Price List (“CPL”) shall be filed no later than the 15<sup>th</sup> of each calendar month, and shall become effective the first day of the following calendar month and **shall remain effective for the entire month.**

On or about December 27, 2017, Jeffrey A. Warsh, Esquire, Executive Director and General Counsel to the New Jersey Wine and Spirits Wholesale Association (“NJWSWA”) submitted a request for relaxation of N.J.A.C. 13:2-24.6(a)(4), such that the prices contained in the March, June, August, November and December 2018 CPLs would be extended as shown in the chart below.

CPL	END OF MONTH	REQUESTED END OF MONTH
March 2018	Saturday, March 31, 2018	Monday, April 2, 2018
June 2018	Saturday, June 30, 2018	Monday, July 2, 2018
August 2018	Friday, August 31, 2018	Tuesday, September 4, 2018
November 2018	Friday, November 30, 2018	Sunday, December 2, 2018
December 2018	Monday, December 31, 2018	Wednesday, January 2, 2019

If the requested relaxation is granted, all New Jersey licensed wholesalers would be authorized to utilize the prices listed in the March, June, August, November and December 2018 CPLs for orders that were received on or before the close of business on the dates shown in the Requested End of Month column, above.

On February 27, 2018, Mr. Warsh and Mr Robert Sansone, Executive Vice President of Fedway Associates, Inc., appeared before me to explain the reasons underlying the relaxation request. Mr. Sansone stated that, over the past several years, the industry has changed, such that retailers typically place significant orders at the beginning and end of each month. Although retailers are able to place orders on-line before the end of each month, their practice is to assess their inventory first so they know how much product is needed. When the end of the month falls on a weekend or legal holiday, or on the eve of a weekend or legal holiday, the retailers are not

able to properly assess their inventory and place well-informed orders at the advantageous prices that may exist during the previous month. To address this situation, many wholesalers have developed an administrative “work around,” in which the wholesalers will file their CPL with two sets of prices, one set for the beginning of the month and one set for the remainder of the month. Such a practice places an operational burden on the wholesalers, but accomplishes the same result that is underlying the instant relaxation request.

In addition to his request to extend the end-of-month dates described above, Mr. Warsh requested relaxation of N.J.A.C. 13:2-24.6(a)(4), which requires that CPLs be filed on or before the 15<sup>th</sup> of each month. Specifically, Mr. Warsh is requesting an extension of the CPL filing deadlines for the May, August and October 2018 CPLs and January 2019 CPL. This request is summarized in the following chart:

<b>CPL</b>	<b>CPL FILING DEADLINE</b>	<b>REQUESTED CPL FILING DEADLINE</b>
May 2018	Sunday, April 15, 2018	Monday, April 16, 2018
August 2018	Sunday, July 15, 2018	Monday, July 16, 2018
October 2018	Saturday, September 15, 2017	Monday, September 17, 2018
January 2019	Saturday, December 15, 2018	Monday, December 17, 2018

Historically, the Division of Alcoholic Beverage Control (the “Division”) has followed the Court Rules in computing CPL filing deadlines. See R. 1:3-1. Specifically, if a CPL is due on a Saturday, Sunday or legal holiday, a licensee may timely file its CPL on the next day which is not a Saturday, Sunday or legal holiday. As such, Mr. Warsh does not need relaxation of N.J.A.C. 13:2-24.6(a)(4) for the aforementioned months since, by operation of law, the requested CPL filing deadlines set forth above apply.

However, with respect to extending the effectiveness of the prices set forth in the March, June, August, November and December 2018 CPLs, affirmative action by the Director is needed. In accordance with N.J.A.C. 13:2-9.1, the Director has the authority to relax the provisions of N.J.A.C. 13:2-24.6(a)(4) upon a showing of undue hardship (economic or otherwise); that the waiver of the rule would not unduly burden any affected parties; and that the waiver is consistent with the underlying purposes of Title 33 and its implementing regulations.

I have reviewed the request to extend the expiration dates of the aforementioned CPLs in light of the standards contained in N.J.A.C. 13:2-9.1. I believe that denying the relief sought would cause hardship to both retailers and wholesalers. Without the relief sought, retailers would not be able to assess their inventory and place their significant orders at the end of the month at the advantageous prices offered. To address this situation, some wholesalers have developed a “work around,” such that they file two sets of prices that allow retailers to order products at the previous month’s prices. Such a practice is legal, however, it places an administrative burden or hardship on the wholesalers, especially for those wholesalers whose CPLs contain thousands of products. In my view, given the change in the ordering practices in the industry, it makes more sense to review N.J.A.C. 13:2-24.6(a)(4) and possibly propose

amendments that reflect the real world practices in the industry.

Since the extension of the March, June, August, November and December 2018 CPLs would apply to all wholesale and retail licensees on a non-discriminatory basis, I do not believe that the requested approval would unduly burden any affected parties, would create a competitive advantage for some wholesalers or retailers, or would undermine the purposes of Title 33, which are, among other things, to prevent discrimination in the sale of alcoholic beverages and to maintain trade stability.

I note that wholesalers who choose to exercise the extensions granted herein must extend the prices contained in the March, June, August, November and December 2018 CPLs on a uniform basis for all products and for all retail licensees.

Accordingly, it is on this *19<sup>th</sup>* day of March, 2018,

ORDERED that wholesalers are authorized to extend prices listed in the **March 2018 CPL** for retail orders received on or before the close of business on **Monday, April 2, 2018**, provided that all such prices are extended in a uniform, non-discriminatory basis to all retail accounts; and it is further

ORDERED that wholesalers are authorized to extend prices listed in the **June 2018 CPL** for retail orders received on or before the close of business on **Monday, July 2, 2018**, provided that all such prices are extended in a uniform, non-discriminatory basis to all retail accounts; and it is further

ORDERED that wholesalers are authorized to extend prices listed in the **August 2018 CPL** for retail orders received on or before the close of business on **Tuesday, September 4, 2018**, provided that all such prices are extended in a uniform, non-discriminatory basis to all retail accounts; and it is further

ORDERED that wholesalers are authorized to extend prices listed in the **November 2018 CPL** for retail orders received on or before the close of business on **Sunday, December 2, 2018**, provided that all such prices are extended in a uniform, non-discriminatory basis to all retail accounts; and it is further

ORDERED that wholesalers are authorized to extend prices listed in the **December 2018 CPL** for retail orders received on or before the close of business on **Wednesday, January 2, 2019**, provided that all such prices are extended in a uniform, non-discriminatory basis to all retail accounts.

  
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DAVID P. RIBLE  
DIRECTOR