

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

IN THE MATTER OF THE)	AO 2020-02
EXTENSION OF ALL 2019-2020)	ORDER AUTHORIZING EXTENSION OF
MUNICIPALLY ISSUED RETAIL)	2019-2020 MUNICIPAL AND STATE
LICENSES AND STATE-ISSUED)	LICENSES AND PERMITS THROUGH
LICENSES AND PERMITS THROUGH)	WEDNESDAY, SEPTEMBER 30, 2020
WEDNESDAY, SEPTEMBER 30, 2020)	
)	
)	
)	

BY THE ACTING DIRECTOR:

The Alcoholic Beverage Control Act (“ABC Act”) provides the authority to a governing board or body of a municipality (“municipal issuing authority”) to issue and renew retail licenses as set forth in N.J.S.A. 33:1-12 within its respective borders. See N.J.S.A. 33:1-19; N.J.S.A. 33:1-24. These licenses are in effect for a one-year term, beginning on July 1st of each year. See N.J.S.A. 33:1-26. License renewal applications must be filed prior to the commencement of a new license term or not later than thirty days after the commencement thereof. N.J.S.A. 33:1-12.13. All municipally-issued licenses for the 2019-2020 license term expire on June 30, 2020, unless renewed by the municipal issuing authority in which the licensed premises is located.¹ These licenses may also be extended by the Director of the Division of Alcoholic Beverage Control (“Division”) through the issuance of *ad interim* permits pursuant to N.J.A.C. 13:2-2.10, if the municipal issuing authority has not acted upon the renewal application by June 30, 2020.

¹ In order for a license to be renewed by the municipal issuing authority, the licensee must file a renewal application, pay the required State fee, pay the municipal fee to the issuing authority, obtain an Alcoholic Beverage Retail License Certificate Renewal (e.g., tax clearance certificate) from the Division of Taxation, and be renewed by municipal resolution on or before June 30, 2020, in order to operate on July 1, 2020 for the 2020-2021 license term. See N.J.A.C. 13:2-2.1, -4.1, -4.6; N.J.S.A. 33:1-17.1.

In addition to licenses issued by municipal issuing authorities, the Division issues and renews wholesale and manufacturing licenses and associated permits. See N.J.S.A. 33:1-10, -11, -46.2 and -74. These State-issued licenses and permits are also in effect for a one-year term, beginning on July 1st of each year. See N.J.S.A. 33:1-26. Similar to the municipally-issued licenses, the State licenses and permits expire on June 30, 2020, unless they are renewed by the Division.

“State” licenses include, but are not limited to: Plenary Wholesale, Limited Wholesale, Wine Wholesale, State Beverage Distributor licenses, as well as Plenary Brewery, Limited Brewery, Restricted Brewery, Plenary Winery, Farm Winery, Wine Blending, Instructional Winemaking Facility, Out-of-State Winery, Cidery and Meadery, Plenary Distillery, Limited Distillery, Supplemental Limited Distillery, Craft Distillery, Rectifier and Blender, Bonded Warehouse Bottling, Transportation, Public Warehouse, Additional Warehouse or Sales Room, Warehouse Receipts, Bonded Warehouse Bottling, Broker, Plenary Retail Transit, and Sporting Facility licenses.

Associated “State” permits include, but are not limited to: Annual State Permits (known as “Special Concessionaire’s Permits”), Omnibus, Gratuitous Gifts and Samples, Product Introduction/Information, Donations, Sampling, Consumer Tasting for Wholesaler Licensees, Charitable and Civic Event Sampling Permit for Restricted Brewery Licensees, Sacramental Wine, Transportation License Insignias, Winery Salesrooms/Retail Outlets, Marketing Agent, Marketing Agent ID Cards, Off Premise Storage of Records, Food and Pharmaceutical, Cruise Ship and Special Golf Facility. The aforementioned “State” licenses and permits are collectively referred to as “State-issued licenses and permits.”

As a result of the unprecedented health hazard posed by the novel Coronavirus disease 2019 (“COVID-19”), on March 9, 2020, Governor Murphy declared a Public Health Emergency and State of Emergency in Executive Order (“EO”) No. 103. On March 16, 2020, Governor Murphy issued EO

No. 104, which is having a significant impact on the alcoholic beverage industry. Subsequently, on March 21, 2020, Governor Murphy issued EO No. 107, which supersedes the operative paragraphs in EO No. 104, and adopts by reference the facts and circumstances of EO Nos. 103 and 104. 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 COVID-19 outbreak has affected each tier of the industry and has affected the Division's operations.

For a variety of reasons, many licensees will not be able to take all of the steps necessary to renew their licenses by June 30, 2020. Moreover, the holders of municipally-issued licenses will be unable to obtain *ad interim* permits from the Division pursuant to N.J.A.C. 13:2-2.10. If licensees with municipally-issued licenses and State-issued licenses and permits are not able to timely renew their licenses, these licenses and permits will expire, and all manufacturer, distribution, transportation, sales and/or service of alcoholic beverages authorized under those licenses and permits will cease immediately. To avoid this dire consequence, I have determined to exercise my broad authority under N.J.S.A. 33:1-39 and to extend the 2019-2020 license term for all municipally-issued licenses and State-issued licenses and permits until Wednesday, September 30, 2020.

This extension shall apply to the following:

1. Municipally-issued licenses that expire on June 30, 2020; and
2. State issued licenses and permits that expire on June 30, 2020.

Once EO No. 103 or other restrictions are lifted, licensees and permittees will need sufficient time and finances to get their businesses fully operating again and to complete the renewal process, as described below. Although the Division cannot predict with any certainty when the public health emergency will end, it is the Division's view that a 90-day extension of the expiration date is necessary and appropriate under these unprecedented circumstances.

For municipally-issued retail licensees:

In order to renew a retail consumption or distribution license by September 30, 2020, every licensee must take the following steps:

- a. File a renewal application with the Division;
- b. Pay State filing fee;
- c. Pay municipal filing fee to the issuing authority; and
- d. Obtain an Alcoholic Beverage Retail License Certificate Renewal (e.g., tax clearance certificate) from the Division of Taxation.

The municipal issuing authority must then adopt a resolution renewing the license for the 2020-2021 license term. If a licensee is not renewed by municipal resolution on or before September 30, 2020, that licensee must cease the sale and service of alcoholic beverages, unless the licensee obtains an *ad interim* permit issued by the Division effective October 1, 2020, pursuant to N.J.A.C. 13:2-2.10.

For State-issued licenses and permits:

All holders of State-issued licenses and permits must file a renewal application, pay the requisite fee(s), and satisfy all applicable renewal requirements on or before September 30, 2020 in order to operate on October 1, 2020 for the 2020-2021 license term. If these licensees and permittees do not complete this application process on or before September 30, 2020, their privileges will lapse.

After careful consideration, the Division has determined that uniformity of all expiration dates for all licenses and permits subject to this Administrative Order is a necessary goal to maintain a stable alcoholic beverage industry. See N.J.S.A. 33:1-3.1

There is ample authority for this Administrative Order. Pursuant to N.J.S.A. 33:1-39, the Director has the broad authority to issue special rulings and findings “as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of [the ABC Act] ...” The Supreme Court interpreted this provision to include the Director’s explicit, as well as inherent, powers to ensure a stable and well-regulated alcoholic

beverage industry. See Heir v. Degnan, 82 N.J. 109, 121 (1980). The Division views this authority to extend to municipally-issued liquor licenses and State-issued licenses and permits in the face of a declared Public Health Emergency and State of Emergency to be within its purview because it ensures the uninterrupted manufacture, distribution, sale and/or service of alcoholic beverages and is within the Director's almost "limitless" powers. See R&R Marketing, LLC v. Brown-Forman Company, 158 N.J. 170, 176 (1999); Joseph H. Reinfeld, Inc. v. Schieffelin & Co., 94 N.J. 400, 412 (1983). Moreover, the Supreme Court has upheld the Director's implied authority to craft appropriate remedies to address unique situations and to deal fairly with holders of alcoholic beverage licenses. Circus Liquors Inc. v. Governing Body of Middletown Township, 199 N.J. 1, 19-21 (2009).

In light of the foregoing statutory authority and precedent, the issuance of an Administrative Order temporarily extending municipally-issued licenses and State-issued licenses and permits for the 2019-2020 license term until September 30, 2020 to prevent the cessation of alcohol manufacturer, distribution, sales and/or service in the face of the above-referenced circumstances, is consistent with the authority of the Director to ensure a properly functioning alcoholic beverage marketplace and to provide uniform and effective administration of the renewal and licensing procedures. This limited extension is also in the public interest of the State, the consuming public, the alcoholic beverage industry, and the licensees/permittees, and is necessary and appropriate under these unprecedented circumstances. See N.J.S.A. 33:1-3.1.

The rest of this page is intentionally left blank.

Accordingly, it is on this **13** day of April, 2020,

ORDERED, that all retail licenses, issued by a municipal issuing authority for the 2019-2020 license term, shall be extended until Wednesday, September 30, 2020; and it is further

ORDERED that all retail licensees must file for renewal, pay the State fee, pay the municipal fee to the issuing authority, obtain an Alcoholic Beverage Retail License Certificate Renewal (e.g., tax clearance certificate) from the Division of Taxation, and be renewed by municipal resolution on or before September 30, 2020 in order to operate on October 1, 2020 for the 2020-2021 license term; and it is further

ORDERED that any retail licensee that files its license renewal application between October 1, 2020 and October 30, 2020 will be considered timely pursuant to N.J.S.A. 33:1-12.13. Any retail licensee that files an application on or after October 31, 2020 will be required to file a petition for relief with the Division for the issuance of a new license pursuant to N.J.S.A. 33:1-12.18, and obtain such relief, in order for the municipal issuing authority to renew the license for the 2020-2021 license term; and it further

ORDERED that any retail licensee that has not been actively used in connection with the operation of a licensed premises on or before June 30, 2018 will be required to file a petition for relief with the Division pursuant to N.J.S.A. 33:1-12.39, and obtain such relief, in order for the municipal issuing authority to renew the license for the 2020-2021 license term;² and it is further

ORDERED, that all State-issued licenses and permits, issued by the Division for the 2019-2020 license term, that expire on June 30, 2020, shall be extended until Wednesday, September 30, 2020; and it is further

ORDERED, that all holders of State-issued licenses and permits must file a renewal application, pay the requisite fees, and satisfy all applicable renewal requirements on or before September 30, 2020 in order to operate on October 1, 2020 for the 2020-2021 license term; and it is further

ORDERED, that the Director may issue additional Orders to clarify and address problems not anticipated by this Order.


JAMES B. GRAZIANO
ACTING DIRECTOR

JBG/JM/APW

² No petition pursuant to N.J.S.A. 33:1-12.39 is required if a retail licensee has already obtained relief for the 2020-2021 license term.