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RULE PROPOSALS

Reporter

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**NEW JERSEY REGISTER 2025 MARCH MARCH 3, 2025 RULE PROPOSALS LAW AND PUBLIC SAFETY --
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

 Interested Persons Statement

Agency

LAW AND PUBLIC SAFETY > DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Administrative Code Citation

Proposed New Rule: N.J.A.C. 13:2-23.34

Text

Pre-Mixed Alcoholic Beverage Cocktails; Storage

Authorized By: Kirstin L. Krueger, Interim Director, Division of Alcoholic Beverage Control.

Authority: N.J.S.A. 33:1-2 and 33:1-39.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2025-018.

Please submit written comments by May 2, 2025, to:

Kirstin L. Krueger, Interim Director
Division of Alcoholic Beverage Control
140 East Front Street
PO Box 087
Trenton, New Jersey 08625-0087
Email: abcpublic@njoag.gov

The agency proposal follows:

Summary

The Division of Alcoholic Beverage Control (Division) is proposing new N.J.A.C. 13:2-23.34 that governs the storage of pre-mixed alcoholic beverages by Class C plenary retail consumption licensees. Pursuant to N.J.S.A. 33:1-2, retail licensees are not permitted to

engage in the practice of bottling alcoholic beverages. This new rule is intended to establish a set of circumstances pursuant to which retail licenses may temporarily store pre-mixed batches of drinks in enclosed containers and not violate the scope of their license privileges or run afoul of the bottling restriction at N.J.S.A. 33:1-2.

Pursuant to N.J.S.A. 33:1-39, the Director of the Division has the authority to make rules, regulations, special rulings, and findings that are "necessary for the proper regulation and control" of the manufacture, sale, and distribution of alcoholic beverages. The Division's intent through this rulemaking is to allow plenary retail consumption licensees to create pre-mixed alcoholic beverages at the beginning of the day for fulfillment of [page=440] customer orders expected to be received during that same day. The Division recognizes that many establishments' operating periods extend from one calendar day into the early morning hours of the next day. Any pre-mixed drinks must be created and used during this discrete open-to-close period, or business operating period, and any unused portions must be destroyed prior to the next business operating period.

With this new rule, the Division aims to allow plenary retail licensees to serve their customers more efficiently and provide consistently flavored mixed drinks, while at the same time balancing the public health and safety concerns of spoilage of fresh ingredients and contamination from insects and debris. Licensees should use good judgment in determining whether a pre-mixed drink has spoiled or been contaminated, and must continue to comply with all other applicable State and Federal rules and regulations, including N.J.A.C. 13:2-23.9.

The Division proposes new N.J.A.C. 13:2-23.34, which will allow licensees to pre-mix batches of alcoholic beverages for the fulfillment of expected customer orders and store them temporarily in enclosed containers for a period not to exceed one operational day, defined as one open-to-close period. Licensees exercising this privilege may store the pre-mixed drinks in any container type, including bottles with closing mechanisms, so long as those containers were not previously used by original manufacturers for the sale of alcohol. Licensees taking advantage of this privilege will be required to label each container with the ingredients used in the drink, and keep a record of when each drink was created and destroyed (or finished).

As the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rule is expected to have a positive social impact, as it establishes standards that will enhance a patron's experience at retail plenary consumption venues. Pre-mixed drinks offer the establishment the opportunity to create drinks in batches that can result in faster service times and uniform drink-to-drink consistency. Spoilage and contamination issues will likely be avoided if the pre-mixed drinks are kept in containers with lids and disposed of at the end of the open-to-close period in which they are made.

Economic Impact

The proposed new rule will have little to no negative economic impact on retail consumption licensees because the industry has already been subject to the pre-mixed drink parameters set forth at N.J.A.C. 13:2. The principles of using closed containers to store pre-mixed drinks and the 24-hour shelf-life requirement were established in ABC Bulletin 2114 (1973). This new rule is likely to have a positive economic impact on retail consumption licensees, as the rule will give the industry clarity about storing and keeping pre-mixed drinks, which will allow them to serve customers efficiently and with more consistently flavored alcoholic beverages. The Division expects that retail licensees will have to expend a nominal amount of money and staff time to comply with the labeling and recordkeeping requirements set forth in the new rule. The Division believes these costs are greatly outweighed by ensuring that pre-mixed batches are destroyed, at most, within 24 hours of creation to prevent serving spoiled products to customers.

Federal Standards Statement

The proposed new rule is consistent with the applicable Federal standard at 27 CFR 31.204, which requires that mixed cocktails may not be stored in "liquor bottles in which distilled spirits have been previously packaged for the storage of the mixture or compound pending that sale." The proposed new rule also sets forth a prohibition on using any containers that were used by alcoholic beverage manufacturers to store spirits, wine, or malt alcoholic beverages for original sale. The Division is not aware of any other applicable Federal standards.

Jobs Impact

The Division does not anticipate that the proposed new rule will result in the loss of jobs in the State. It is possible that the clarity provided by the new rule may result in additional jobs as retail consumption licensees in the State grow their following through offering consistently flavored mixed drinks and potentially expand their business, thus creating jobs in those establishments.

Agriculture Industry Impact

The Division does not anticipate that the new rule will have any impact on the agricultural industry, except perhaps a slight benefit to the industry, as retail consumption licensees may purchase more fruits and vegetable products to mix into cocktails or for use as garnishes.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (Act), N.J.S.A. 52:14B-1 et seq., requires that the Division give a description of the types and estimate of the number of small businesses to which the rulemaking will apply. Pursuant to that Act, a "small business" means any business resident in this State that employs fewer than 100 full-time employees, is independently owned and operated, and is not dominant in its field. A significant percentage of the members of New Jersey's alcoholic beverage industry could be considered "small businesses" within the meaning of the Act.

There are 8,887 retail consumption licensees in New Jersey that will be affected by this rulemaking, many of which meet the definition of small business for the purposes of analysis pursuant to this standard. The proposed new rule imposes reporting and recordkeeping requirements related to the storage and bottling of drinks, what records must be prepared (labels), and how long

records must be maintained, but the Division does not believe that any professional services will be needed to comply with the proposed new rule. The Division believes that the proposed new rule should be uniformly applied to all retail consumption licensees in order to ensure the health, safety, and welfare of consumers of pre-mixed cocktails. Consequently, no differing compliance or recording requirements for any licenses or permits are provided based on the size of the business.

Housing Affordability Impact Analysis

The proposed new rule will have no impact on the affordability of housing in New Jersey, and there is an extreme unlikelihood that the new rule would effect a change in the average costs associated with housing because the proposed new rule only concerns the regulation of the sale, manufacture, or distribution of specific alcoholic beverage products by retail consumption licensees and has no bearing on housing issues.

Smart Growth Development Impact Analysis

The proposed new rule will not have an impact on smart growth and it is extremely unlikely that it would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan in New Jersey because the proposed new rule only concerns the regulation of the sale of specific alcoholic beverage products by retail consumption licensees and has no bearing on real property.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Division has evaluated this rulemaking and determined that it will not have an impact on pretrial detention sentencing, and/or probation or parole policies concerning adults and juveniles in the State, because the proposed rule only concerns the regulation of the sale of specific alcoholic beverage products by retail consumption licensees and is unrelated to these issues. Accordingly, no further analysis is required.

Full text of the proposed new rule follows:

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

13:2-23.34 Pre-mixed drinks; storage not to exceed 24 hours; label required

(a) As used in this subchapter, the term "pre-mixed drink" shall include any alcoholic beverage in its unaltered, original manufactured state, which is then mixed by a plenary retail consumption licensee, or one of its employees, with any of the following: any other alcoholic beverage in its unaltered, original manufactured state; any other liquid, including, but not limited to, sodas, tonics, seltzers, syrups, and other natural or artificial flavorings; any fruits or vegetables, whether whole or processed; any [page=441] powdered or dissolvable flavorings, including, but not limited to, sugar, spices (such as cinnamon or salt), and powdered drink mixes; and any egg or dairy products.

(b) As set forth in this section, a retail consumption licensee may:

1. Prepare pre-mixed drinks for immediate service to customers; and
2. Prepare pre-mixed drinks for the purpose of filling orders expected to be received by customers.

(c) Pre-mixed drinks prepared pursuant to (b)2 above shall be:

1. Temporarily stored in pitchers, containers, or dispensers, including bottles or jugs with a cap or cork closing mechanism, except that such containers shall not be original containers, which means any container or bottle in which distilled spirits, wine, or malt alcoholic beverages have been previously packaged and sold by an alcoholic beverage manufacturer; and
2. Destroyed or consumed within a single business open-to-close operational period where customers are served.

(d) Notwithstanding the provisions at (c)2 above, in no event shall any pre-mixed drinks created pursuant to (b)2 above be stored for more than 24 hours.

(e) Retail consumption licensees preparing pre-mixed drinks pursuant to this section shall affix a label to the container in which the pre-mixed drink is stored setting forth the following information:

1. Identification of the type(s), brand(s), and quantities of alcoholic beverages in the pre-mixed drink;
2. Identification of all other nonalcoholic ingredients in the pre-mixed drink by generic or brand name;
3. An approximation of the percentage by volume alcohol content that each drink will contain at the time of service to a customer; and
4. The date and time the pre-mixed drink was created.

(f) In the event pre-mixed drinks are dispensed from a container, as described at (c)1 above or through automated systems, including fountains, electronic systems, pressurized systems, and slushy- or frozen-drink machines, the label requirements described at (e) above must be conspicuously displayed where the consumer ordering the pre-mixed drink may see it, except as set forth at (f)1 below.

1. If the container or system holding the pre-mixed drink cannot be located in a conspicuous place where the consumer ordering the drink can see the label, the consumer must also be provided with some alternative means of ascertaining the contents of the drink, such as providing the information required at (f) above on menus or drink lists.

(g) Retail consumption licensees preparing pre-mixed drinks pursuant to this section shall maintain, for a period of five years, a record available for inspection by the Division of the date and time any pre-mixed drink was created and the date and time when the same pre-mixed drink was consumed or destroyed. Records and container labels may be hand-written.



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