

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

**ADVISORY NOTICE (AN) 2020-07 INTRODUCING AN ONLINE FILING PROCESS
FOR *AD INTERIM* (TEMPORARY) PERMITS**

I. Introduction.

The Division of Alcoholic Beverage Control (the “Division”) is announcing a new *Ad Interim* permit application process through the POSSE online licensing system. Effective immediately, this new filing process replaces the customary in-person filing of paper *Ad Interim* permit applications by licensees.

If a plenary retail consumption or distribution licensee is unable to complete the renewal process for the 2020-2021 license term or a municipality is unable to act on a renewal application by September 30, 2020 (the extended license expiration date),¹ a licensee must apply for an *Ad Interim* permit using POSSE online. Beginning on **September 14, 2020**, applicants needing an *Ad Interim* permit must file a complete application that will be available at <https://www.nj.gov/oag/abc/posse/index.html>. Under no circumstances will the Division accept a paper application for an *Ad Interim* permit, nor will licensees be allowed to come to the Division’s offices in Trenton to obtain this permit.

These changes are being introduced in response to the public health hazard posed by the novel Coronavirus disease (“COVID-19”), Governor Philip D. Murphy’s various Executive Orders aimed at protecting the public health, safety and welfare by minimizing person-to-person contact, and the Division’s intention to modernize its business practices.

If this new electronic *Ad Interim* permitting process is successful, the Division may consider implementing it on a permanent basis.

¹ See Administrative Order (“AO”) 2020-02, Order Authorizing Extension of 2019-2020 Municipal and State Licenses and Permits Through September 30, 2020.

II. Ad Interim Permits.

Under normal circumstances, all liquor licenses are valid for a one-year term that runs from July 1 through June 30. N.J.S.A. 33:1-26. If a municipal issuing authority does not act on a complete renewal application by June 30, a licensee must obtain an *Ad Interim* (temporary) permit from the Division, effective July 1. An *Ad Interim* permit ensures the uninterrupted sale and service of alcoholic beverages and authorizes an applicant to continue to conduct the licensed business until the issuing authority has acted upon the application. N.J.A.C. 13:2-2.10(b). All alcohol sales on the licensed premises must cease on the first day following the expiration date of the license term if a license expires and an *Ad Interim* permit is not obtained.

Because of the COVID-19 pandemic, on April 13, 2020, the Division issued AO 2020-02 that extended the current 2019-2020 license term for all State- and municipally-issued retail licenses from June 30, 2020 through September 30, 2020. Because of that AO, all municipally-issued licenses for the 2019-2020 license term now expire on September 30, 2020. If a municipal issuing authority does not take action on a renewal application on or before September 30, 2020, a licensee must obtain an *Ad Interim* permit from the Division, effective October 1, 2020, if the licensee wishes to continue to sell and serve alcoholic beverages without interruption.

Historically, because of the time sensitive nature of these permits, a licensee obtained an *Ad Interim* permit by filing a paper application in person with the Division. Hundreds of licensees would come to the Division's offices with a completed application that was endorsed by the municipal issuing authority, proof of full or temporary tax clearance and payment for the fees associated with the application, and Division personnel would review the application and issue an *Ad Interim* permit to a qualified licensee. By its very nature, this process required many individuals coming in close contact with one another and congregating in confined areas

for extended periods. Therefore, to minimize such person-to-person contact and to comply with the Governor’s Executive Orders and Center for Disease Control and Department of Health safeguards and standards for social distancing during the COVID-19 pandemic, the Division has determined that *Ad Interim* Permits must be processed through POSSE.

III. New *Ad Interim* Permit Application Process.

Beginning on **September 14, 2020**, all licensees that need an *Ad Interim* permit effective October 1, 2020, must complete an online application available on POSSE. Prior to completing an online *Ad Interim* permit application, a licensee should check with the municipal issuing authority to confirm that this permit will be needed.

A complete application consists of the following:

1. Licensing identification information;
2. Requested effective dates for the *Ad Interim* permit;
3. Certification by the Licensee/Applicant of the following:
 - a. Licensee has filed a NJ ABC POSSE online or paper template renewal application with State filing fee for the 2020-2021 license term;
 - b. Licensee has paid the municipal renewal filing fee;
 - c. Licensee has received regular or “full” tax clearance issued by the New Jersey Division of Taxation (“Division of Taxation”);² and
 - d. If the Licensee has received interim or “temporary” tax clearance, the Licensee has uploaded a Temporary Tax Clearance Certificate issued by the Division of Taxation for the number of days authorized therein;
4. Payment of the *Ad Interim* permit fee of \$75 plus \$5.00 per day, in accordance with N.J.A.C. 13:2-5.4(e) by electronic check or credit card; and

² A licensee who has received regular or “full” tax clearance is only required to certify that the New Jersey Division of Taxation has issued an alcoholic beverage retail licensee clearance certificate (“tax clearance certificate”) pursuant to N.J.S.A. 54:50-28. It is NJ ABC’s understanding that a licensee with regular or “full” tax clearance does not receive a tax clearance certificate. Both the municipal issuing authority and NJ ABC will independently confirm the truthfulness of this certification. *See also*, N.J.S.A. 33:1-17.1.

5. Certification by the licensee or authorized representative of the licensee³ as to the truthfulness of the aforementioned information.

Failure to submit a complete application and pay all required fees will result in rejection of the application and an interruption in the sale of alcoholic beverages by the licensee.

After completion and submission of the *Ad Interim* permit application and payment of associated permit fees on POSSE, the application will be transmitted automatically to the appropriate municipal issuing authority (Municipal Clerk or ABC Board Secretary). The municipal issuing authority must then verify the information contained in the application and endorse it. Once endorsed by the municipal issuing authority, the application will be transmitted automatically to the Division for review, processing, and issuance of an *Ad Interim* permit. The licensee must print out the permit certificate from POSSE and visibly display it on the licensed premises, beginning October 1, 2020.

Licensees should be aware that delays in filing for *Ad Interim* permits may result in an interruption in alcohol sales. Therefore, licensees are encouraged to contact their municipal issuing authorities as soon as possible to determine whether their licenses will be renewed prior to September 30, 2020, or whether they will need to obtain an *Ad Interim* permit. *Ad Interim* permits may be renewed through POSSE, if additional time is needed to complete the renewal process.

IV. Licensees Holding Certain Permits (*Ad Interim*, Temporary Authorization to Operate (“TAPs”), and Minor and Blanket Employment Permits) Extended by AO 2020-01.

On April 1, 2020, the Division issued AO 2020-01, Order Authorizing Extension of Certain Permits During State of Emergency. That Order applied to certain retail licensees, including approximately six who were operating under *Ad Interim* permits (as well as holders of TAPs and

³ Representatives, who are authorized in POSSE to act on behalf of licensees, are permitted to complete *Ad Interim* permit applications.

minor and blanket employment permits), and extended those permits until the State of Emergency is lifted, a date undefined. Subsequent to issuing AO 2020-01, the Division issued AO 2020-02. AO 2020-02 extended all 2019-2020 municipally- and State-issued licenses and permits that expired on June 30, 2020, through Wednesday, September 30, 2020.

The Division has reviewed AO 2020-01 and 2020-02, and has determined that the permit extensions granted in AO 2020-01 created different renewal and expiration dates than for all other Division-issued permits. To address this disparity, to provide uniformity of all filing deadlines and expiration dates, and for administrative convenience, the Division has determined to vacate AO 2020-01. *See* AO 2020-04, Order Vacating AO 2020-01 (August 27, 2020.) The Division views this action as necessary to further its goals of maintaining a stable alcoholic beverage industry, to ensure fair dealing among license holders, and to address a unique situation caused by the two AOs. *See* N.J.S.A. 33:1-3.1; N.J.S.A. 33:1-39; Circus Liquors Inc. v. Governing Body of Middletown Township, 199 N.J. 1, 19-21 (2009).

Because of the Division's actions today, all licensees who require an *Ad Interim* permit, including those previously impacted by AO 2020-01, must apply for the permit as outlined in this Advisory Notice. (AO 2020-04 addresses the revised expiration dates for TAPs and minor and blanket employment permits.)

V. General Information Applicable to All Holders of *Ad Interim* Permits.

In summary, municipal issuing authorities and licensees are advised:

- 1) The *Ad Interim* permit application will be available on POSSE beginning on **Monday, September 14, 2020.**
- 2) Licensees must check with their municipal issuing authorities to determine whether an *Ad Interim* permit is needed. Taking this step could eliminate an unnecessary application.
- 3) *Ad Interim* permits are expressly subject to all limitations and special conditions previously imposed upon the license.

- 4) Licensees are required to have a renewed license or an *Ad Interim* permit on October 1, 2020 to continue operating the licensed business without interruption. **Licensees who continue to sell alcohol without a valid license or *Ad Interim* permit will be referred to the Division's Enforcement Bureau for appropriate action.**
- 5) Once the Division issues an *Ad Interim* permit, it will be posted on POSSE. **Licensees will need to log into their online account and print out the permit certificate which must be visibly displayed on the permitted premises.**
- 6) *Ad Interim* permits are subject to all ABC rules and regulations and may be cancelled by the Director in the exercise of his discretion.

Questions concerning this Advisory Notice should be directed to DAG Amy Beth Cohn at (609)376-9672 or DAG Ray Lamboy at (609)376-2774.

A handwritten signature in black ink, appearing to read "James B. Graziano". The signature is stylized and cursive.

JAMES B. GRAZIANO
ACTING DIRECTOR

DATED: August 27, 2020
JBG/RL/ABC