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Via E-Mail Only

New Mexico Regulation and Licensing Department
Alcoholic Beverage Control Division
Attn: Desirae Griego
2550 Cerrillos Road
Santa Fe, NM 87504
desirae.griego@state.nm.us

Re: Instacart's Comments on Proposed Rulemaking Regarding
Alcohol Delivery

Dear Ms. Griego:

We represent Maplebear, Inc. dba Instacart ("Instacart"), a California based technology company that enables independent contractors to provide same-day, on-demand grocery delivery services to consumers in multiple cities across the country.¹

This letter addresses the proposed rule changes relating to alcohol delivery as set forth in the Notice of Proposed Rulemaking.

Preliminarily, Instacart joins in the comments submitted by Jacqueline Flug on behalf of Drizly with respect to Sections 15.1070.8(A)(1) and 15.11.2.15(D)(1).

Instacart respectfully requests that the New Mexico Regulation and Licensing Department Alcoholic Beverage Control Division (Division) also consider the following comments to the proposed rules.

1. Section 15.1070.8 OPERATION AND PROFITING BY AUTHORIZED PERSONS

Section 15.10.70.8(A)(1) provides in pertinent part:

¹ You can access Instacart's website at www.instacart.com.

A. No person other than the ~~[approved operator]~~ licensee or lessee or employees of the ~~[approved operator]~~ licensee or lessee, shall sell or serve alcoholic beverages at the licensed premises. (1) All orders, sales, service, dispensing, delivery and receipt of payment for alcoholic beverages must be done by the ~~[approved operator]~~ licensee or employees of the [sic] ~~[approved operator]~~, or the employees of a third-party delivery licensee contracted with for delivery purposes.

As noted above, Instacart agrees with Drizly's comment that the phrase "done by" is confusing and does not accurately reflect the payment process for alcohol purchases using third party platforms. As an unlicensed third party, Instacart does not engage in any retail sales of alcohol beverages. All sales, and all receipts, are issued to consumers by Instacart's retail partners. Instacart merely facilitates the connection between the retail licensee and the consumer.

In addition, Instacart requests that the term "employee" be expanded when referencing third-party delivery licensees. Most third-parties, including Instacart, utilize independent contractors to make deliveries on behalf of the retailer.

Accordingly, Instacart proposes the following revised language for consideration:

A. No person other than the ~~[approved operator]~~ licensee or lessee or employees of the ~~[approved operator]~~ licensee or lessee, shall sell or serve alcoholic beverages at the licensed premises. (1) All orders, sales, ~~service, dispensing, delivery~~ and receipt of payment for alcoholic beverages *must be completed* ~~done~~ by the ~~[approved operator]~~ licensee or employees of the licensee. ~~[approved operator]. A~~ or the employees of a third-party delivery licensee or its employees or independent contractors contracted with for delivery purposes may facilitate orders between consumers and licensees and may deliver alcohol beverages in response to an order accepted by the licensee.

2. Section 15.11.2.15(D)(1) DOCUMENTS REQUIRED FOR DELIVERY OF ALCOHOLIC BEVERAGES and Section 15.11.20.8(C)(4) ALCOHOLIC BEVERAGE DELIVERY PERMIT

Instacart joins Drizly's comment requesting clarification regarding the specific intent of Section 15.11.2.15(D)(1) and the reference to maintaining the "identification and age information for the customer who ordered and paid for the alcoholic beverages." Instacart proposes the following revised language:

- (1) *The name and age* for the customer who ordered and paid for the alcoholic beverages.

Similarly, Section 15.11.20.8(C)(4) requires the holder of an alcoholic beverage delivery permit to “obtain valid proof of the delivery recipient’s identity and age and keep records of such in accordance with 15.11.2.15 NMAC.” Instacart proposes the following revised language:

- (4) *Shall require the delivery recipient to produce a valid form of identification to confirm his/her identity and age and shall keep a record confirming a valid form of identification was provided.*

3. Section 15.11.2.15 DOCUMENTS REQUIRED FOR DELIVERY OF ALCOHOLIC BEVERAGES

Instacart respectfully requests that Section 15.11.2.15(C) be amended to include reference to a “physical *or electronic copy*” of the receipt. Although delivery orders may be placed telephonically, most orders are received electronically. As such, the entire process is automated and designed to proceed electronically. Exclusively requiring a physical receipt is inconsistent with the electronic flow utilized for alcohol delivery and presents significant operational hurdles.

4. Section 15.11.20.11 THIRD-PARTY ALCOHOL DELIVERY LICENSE

As drafted, Section 15.11.20.11(A)(4) presents practical challenges for Instacart and other third-party delivery companies. For example, Instacart often obtains the required delivery license/permit before finalizing any contracts with a retail licensee so that Instacart is legally authorized to conduct deliveries at the time the delivery contract is executed. Requiring applicants to provide executed contracts before receiving a delivery license will necessarily require additional and unnecessary contract revisions.

Accordingly, Instacart proposes the following revision:

- (4) *An exemplar contract* between applicant and a licensee holding an alcoholic beverage delivery permit. *Upon renewal, applicant will provide an updated list of all licensees applicant has contracted with to offer delivery services.*

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Instacart appreciates the Division's consideration of Instacart's comments and proposed revisions. Please let me know if you have any questions.

Very truly yours,



Carrie L. Bonnington