

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

IN THE MATTER OF THE)
“SHOT AND BEER” PROGRAM)
TO PROMOTE COVID-19)
VACCINATIONS BY CRAFT)
ALCOHOL MANUFACTURERS)
_____)

SR 2021-04
SPECIAL RULING
GRANTING RELAXATION

BY THE DIRECTOR:

On May 3, 2021, Governor Phil Murphy announced a statewide promotion with the purpose of encouraging New Jersey’s adult population to receive one of the vaccines available to combat the novel Coronavirus disease (“COVID-19”), while also celebrating and supporting New Jersey’s craft brewery industry. Due to success of the “COVID-19 Shot and a Beer” vaccine program and the Administration’s desire to also support New Jersey’s craft alcohol industry and encourage COVID-19 vaccinations throughout the State, the Division of Alcoholic Beverage Control (the “Division”) is extending this program to include all of New Jersey’s craft manufacturers. This vaccine promotion is set to run for the duration of the month of May 2021 and seeks participation on a purely voluntary basis by the craft alcoholic beverage industry. Industry participants will not receive reimbursement or compensation for their engaging in this promotion. The promotion allows patrons 21 years of age or older who present their COVID-19 vaccine card as proof of a first dose vaccination received in the month of May to receive one free drink for on-premise consumption from a Plenary Winery, Farm Winery, Craft Distillery or Cidery and

Meadery licensee participating in the program. Patrons will only be permitted to receive one free drink from a single participating licensee as part of this promotion.

Since Craft Distillery license holders (as well as Limited Brewery licensees) are statutorily required to provide patrons with a “tour” of the manufacturing facility prior to on-premises consumption of their products, all patrons participating in this program will first be required to have a “tour” of the licensed establishment or provide proof that they already participated in a “tour” prior to receiving a free drink. See N.J.S.A. 33:1-10(1)(b), N.J.S.A. 33:1-10(3)(d).

This promotion is also available to plenary consumption licensees and holders of Special Concessionaire Permits, who are permitted to give a free drink as a measure of good will during any 24-hour period. See N.J.A.C. 13:2-23.16(a)(2)(v). Because Restricted Brewery licensees are also required to hold plenary consumption licenses, they are also permitted to offer a free drink to patrons pursuant to that regulation.

The Division’s historical position has been that manufacturing licensees are prohibited from offering a free drink to any patron(s) as a gesture of good will. This prohibition against offering free drinks was based on the Division’s view that manufacturing licensees have limited retail privileges that did not include the privilege of offering a free drink as a gesture of good will. See N.J.A.C. 13:2-23.16(a)(2)(v). In addition, the Division found that allowing manufacturing licensees to offer a free drink violates the Division’s prohibition against permitting the sale of alcoholic beverages below “cost.”¹ See N.J.A.C. 13:2-24.8. However, these are not statutory

¹ “Cost” is defined as the “actual proportionate invoice price and freight charge to a distributor or wholesaler and the actual proportionate invoice price to a retailer, as the case may be, of any given container of an alcoholic beverage, plus applicable State and Federal taxes. The actual invoice price shall be determined by the ‘last-in-first-out’ method applying general accepted accounting principles.” N.J.A.C. 13:2-24.8(b).

prohibitions, and may be relaxed by the Director of the Division under appropriate circumstances. Given the extraordinary COVID-19 public health emergency and the Governor's desire to encourage vaccination to protect the residents of this State, the Director finds that such circumstances are present.

Pursuant to N.J.S.A. 33:1-39, the Director has the authority to make such general rules and regulations and such special rulings and findings "as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages ..., and [to] alter, amend, repeal and publish the same from time to time." Such rules and regulations may cover a variety of subjects, as well as any matters whatsoever as are or may become necessary in the fair, impartial, stringent and comprehensive administration of the Alcoholic Beverage Control Act (the "ABC Act").

In general, the Director exercises his authority to relax regulations pursuant to N.J.A.C. 13:2-9.1. Under this regulation, the Director is authorized to relax certain regulations or Special Rulings upon a showing by a licensee of undue hardship, economic or otherwise; that the waiver of the rule will not unduly burden any affected parties; and that the waiver is consistent with the underlying purposes of the Act.

Based on the continuing public health state of emergency, the steps being taken to reduce community spread of COVID-19 through vaccinating as many New Jersey residents as possible and other public health measures, and the combined benefit of promoting New Jersey's craft manufacturers while encouraging COVID-19 vaccinations, the Division FINDS that a temporary relaxation of N.J.A.C. 13:2-24.8 and its policy against allowing craft manufacturers to offer a free drink as a measure of good will is appropriate and necessary under these circumstances. The Division is satisfied that the craft manufacturing industry will benefit from the Governor's

“COVID-19 Shot and a Beer” promotion, and that this program is not designed to unduly “increase consumption of alcoholic beverages.” See N.J.S.A. 33:1-39. The Division further FINDS that relaxation of N.J.A.C. 13:2-24.8 will not unduly burden any affected parties, and that due to the limited scope and purpose of the vaccination promotion, it will have no impact on the stability of the alcoholic beverage industry. Finally, the Division FINDS that relaxation provided in this Special Ruling is consistent with the Act and is within the spirit of maintaining the public health, safety and welfare of the people of New Jersey by encouraging adults in the State to receive one of the available COVID-19 vaccinations. Such relaxation is not prohibited by N.J.S.A. 33:1-10 and is consistent with the Division’s statutory mandate to regulate alcoholic beverages to protect the health, safety and welfare of the people of New Jersey. See N.J.S.A. 33:1-3.1(b)(1).

In light of the foregoing, the Division will GRANT relaxation of N.J.A.C. 13:2-24.8 and its policy against allowing craft manufacturers to offer a free drink as a measure of good will, and **will AUTHORIZE Plenary Winery, Farm Winery, Craft Distillery or Cidery and Meadery licensees, in addition to Limited Brewery licensees, to participate in the “COVID-19 Shot and a Beer” vaccine promotion from May 7, 2021 through May 31, 2021**, unless otherwise extended by Special Ruling of the Division. Participating licensees shall keep a record of the number of drinks distributed as part of this program.

The relaxation granted herein is based upon the specific facts set forth herein, and therefore, is subject to further review and modification should the factual circumstances warrant. All restrictions imposed by Executive Order of the Governor, as well as all guidelines for indoor and outdoor dining promulgated by the Department of Health remain in effect and apply to all Limited Brewery, Restricted Brewery, Plenary Winery, Farm Winery, Craft Distillery or Cidery and Meadery licensees, whether participating in the promotion or not, including capacity limitations

and bar seating restrictions. Should this relief be demonstrated to be inconsistent with the practice of any licensees, or should the facts and circumstances posed by the COVID-19 public health emergency change, this Special Ruling may be withdrawn or modified, as appropriate.



KEVIN T. BARBER
ACTING DIRECTOR

Dated: May 10, 2021

JBG/PTU