

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

IN THE MATTER OF DAILY AND)
ANNUAL SEASONAL FARM)
MARKET PERMITS TO ALLOW FOR THE)
SAMPLING, SALE, AND DELIVERY)
OF ALCOHOLIC BEVERAGES BY)
CERTAIN MANUFACTURING LICENSEES)
_____)

SR 2021-01
SPECIAL RULING ESTABLISHING
DAILY AND ANNUAL SEASONAL
FARM MARKET PERMITS

BY THE DIRECTOR:

On February 5, 2021, Governor Murphy signed into law [P.L. 2021, c.15](#). In relevant part, the law requires the Director of the Division of Alcoholic Beverage Control (the “Division”) to establish a permit that would allow the holder of certain manufacturing licenses to sell those licensee’s products in original containers at a seasonal farm market for consumption off the premises of the seasonal farm market. This new legislation authorized the creation of Daily and Annual Seasonal Farm Market Permits by way of a special ruling by the Director of the Division or promulgation of regulations. Pursuant to P.L. 2021, c.15, licensees must obtain a separate permit for each seasonal farm market at which the licensee intends to sell its products.

The Director has broad authority to regulate the alcoholic beverage industry and receives heightened deference from the courts to allow for exercise of the Director’s discretion in the “delicate area” of alcohol regulation. Circus Liquors, Inc. v. Middletown, 199 N.J. 1, 12-13 (2009). The Director is authorized to provide for contingencies “where it would be appropriate and consonant with the spirit of this chapter to issue a license but the contingency has not been expressly provided for”, and the Director may, for special cause shown, issue temporary permits. N.J.S.A. 33:1-74. It is under this authority, N.J.S.A. 33:1-39, and the authority provided by P.L. 2021, c.15, that the Director is authorizing creation of two new permits: (1) a Daily Seasonal Farm Market Permit, and (2) an Annual Seasonal Farm Market

Permit. No other permits other than the Daily or Annual Seasonal Farm Market Permit, including but not limited to the State-issued “Wine Festival Permits”, will be issued to allow manufacturers to participate at a seasonal farm market.

Daily and Annual Seasonal Farm Market Permits are available to holders of a limited brewery license, restricted brewery license, craft distillery license, plenary winery license, farm winery license, or cidery and meadery license, and may be used at a “seasonal farm market.” A “seasonal farm market” is defined as a premises or facility utilized for the primary purpose of selling predominately agricultural or horticultural products, and which is annually closed to business during an off-season for a period of not less than 90 continuous days. Permits are not intended for, and will not be issued for “roadside farm stands”, defined in P.L. 2021, c. 15 as locations “owned by a single farmer or producer at which the farmer or producer sells agricultural products only from the farmer’s or producer’s farm directly to consumers”. A separate permit must be held for each seasonal farm market at which a licensee intends to sell its products, whether the licensee holds a Daily or an Annual permit. Both permits will be available for application through the Division’s POSSE online licensing system beginning on March 18, 2021.

I. Daily or Annual Seasonal Farm Market Permit Privileges.

A. Holders of Daily or Annual Seasonal Farm Market Permits are authorized to:

- (1) sell any of their products in sealed, original containers at a seasonal farm market for consumption off of the premises of the seasonal farm market;
- (2) transport the licensee’s products in sealed, original containers to and from a seasonal farm market; and
- (3) offer samples for sampling purposes, to be consumed by persons of the legal age to consume alcoholic beverages in areas in the immediate vicinity of the alcoholic beverage vendor, during each day the seasonal farm market is operating in the amounts authorized pursuant to N.J.S.A. 33:1-10 and N.J.S.A. 33:1-12d as set forth below:
 - a. Limited brewery, restricted brewery, and cidery and meadery licensees may sell for a nominal charge or make a gratuitous offer of an open container of the products produced by the licensee, not exceeding four three-ounce samples;

- b. Plenary and farm winery licensees may sell for a nominal charge or make a gratuitous offer of an open container of wine produced by the licensee not exceeding four one and one-half ounce samples; and
- c. Craft distillery licensees may only make a gratuitous offer of an open container of a distilled alcoholic beverage produced by the licensee not exceeding three one-half ounce samples.

While N.J.S.A. 33:1-10 sets forth the maximum size of the samples that may be offered by licensees participating in seasonal farm markets, this statute (with the exception of the craft distilleries) does not establish the *number* of samples that may be provided to a patron in a calendar day. Therefore, balancing a licensee's desire to market its products at a seasonal farm market with the fact that a seasonal farm market is not a consumption venue, the Division believes that it is reasonable to look to the sampling statute at N.J.S.A. 33:1-12d to establish appropriate limits on the number of samples that may be provided by a licensee holding a Daily or Annual Seasonal Farm Market Permit in any given calendar day. The quantities and size of samples that may be provided to a patron set forth above reflect this rationale.

B. All holders of Daily or Annual Seasonal Farm Market Permits and their employees pouring samples at a seasonal farm market must receive server training and must be certified by a nationally-recognized server training program. This requirement will ensure that samples are provided in a responsible manner and are not provided to patrons who are under the legal age or who are actually or apparently intoxicated,

C. Daily Seasonal Farm Market Permits are valid for the hours during which a seasonal farm market is open within the 24-hour period for which the daily permit is issued.

D. Annual Seasonal Farm Market Permits are valid for one year from the date of issuance, and may be renewed annually, provided the applicant continues to hold a current manufacturing license. The term for Annual Seasonal Farm Market permits will commence on April 1 and will end March 31 of the year following application.

II. Application Requirements.

Applications must be submitted exclusively through the POSSE ABC Online Licensing System (“POSSE”). Daily Seasonal Farm Market permits must be applied for at least 14 days prior to the date on which the applicant proposes to attend the farm market. Applications for Annual Seasonal Farm Market Permits and their renewals shall be submitted at least 14 days prior to the date on which the applicant proposes to first attend the farm market. Paper applications will not be accepted.

The applications for both the Daily and Annual Seasonal Farm Market Permits will require the applicant to provide, at a minimum, the following information:

1. Name, address and license number of the applicant;
2. Name and address of the location of the seasonal farm market;
3. Certification by the applicant that the seasonal farm market at which it intends to attend meets the definition of “seasonal farm market” in P.L. 2021, c. 15;
4. For Daily Seasonal Farm Market Permits only, the date(s) and hours when the applicant will be attending the seasonal farm market;
5. Name, phone number and e-mail address of the seasonal farm market organizer/operator; and
6. Upload the agreement or authorization between the applicant and the seasonal farm market organizer/operator allowing the applicant to attend the seasonal farm market.

The fee for the Daily Seasonal Farm Market Permit will be \$25.00 and the fee for the Annual Seasonal Farm Market Permit will be \$125.00, in accordance with N.J.A.C. 13:2-5.5(b). Pursuant to N.J.S.A. 33:1-74, the Director has the authority adjust the fees for these permits in the exercise of his discretion. As noted above, all applications and fees must be submitted through POSSE. The Division will not process any paper applications.

III. Review Procedure.

Upon submission of a complete Seasonal Farm Market Permit application (or renewal in subsequent years) in POSSE and payment of the requisite fee, the municipal clerk and police chief (or

designee) in the municipality in which the permit will be issued will receive notice through POSSE of the application. For seasonal farm markets located on State-owned land (or land owned by a political subdivision of the State), the applicant shall provide personal notice to the designated administrative official and the chief law enforcement officer (or designee) responsible for the property of the application. The Division will consider objections made on the basis that issuance of a Daily or Annual Seasonal Farm Market Permit does not advance the public interest or is otherwise detrimental to the public health, safety and welfare of the community.

The Division may impose, whether at the request of the municipality where the seasonal farm market permit is held or at its own discretion, special conditions on the permit if it determines that they are necessary and proper to accomplish the purposes of Title 33, including the protection of public health, safety and welfare. See N.J.S.A. 33:1-32; N.J.A.C. 13:2-5.5(c). It is the responsibility of the licensee to comply with all applicable local ordinances and site plan requirements.

A licensee who receives a Daily or an Annual Seasonal Farm Market Permit may exercise only those privileges authorized by P.L. 2021, c.15 and this Special Ruling, and shall comply with all provisions of Title 33 and the implementing regulations. Violations of these provisions may be grounds for suspension or revocation of the Seasonal Farm Market Permit as well as disciplinary action against the underlying license.

IV. Best Practices for Seasonal Farm Market Organizers.

The Division is aware that there is a possibility that a large number of craft manufacturers may participate in any single seasonal farm market. Accordingly, after the first year, the Division will evaluate this new permit program to ensure that alcohol is sampled and sold at these seasonal farm markets in a safe and responsible manner. The Division encourages the organizers of seasonal farm markets to exercise “best practices” in ensuring that alcohol is sampled, consumed and purchased in a manner that protects

the public health and safety. These best practices may include, at a minimum, limiting the number of participating alcohol vendors to a reasonable number; identifying a designated “booth” for each alcohol vendor each week; requiring all sampling to occur within the immediate vicinity of each booth; and not permitting licensees to participate if there are instances of over-consumption or pass-offs to persons under the legal age to consume alcoholic beverages. The Division will consider promulgating regulations implementing this new permit program.

The Director may modify the terms of this Special Ruling and any permit issued thereunder as necessary to promote the health, safety and welfare of the citizens of New Jersey.



JAMES B. GRAZIANO
DIRECTOR

Dated: March 11 , 2021