

**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)
)
)
)
_____)

SR 2021-03
SPECIAL RULING
GRANTING RELAXATION

BY THE DIRECTOR:

On May 3, 2021, Governor Phil Murphy announced a State-wide 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. This “COVID-19 Shot and a Beer” 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 brewery 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 beer for on-premise consumption from a Limited Brewery licensee participating in the program. In accordance with existing rules regarding on-premise consumption at entities holding a Limited Brewery license, patrons participating in this program will first be required to have a “tour” of the brewery or provide proof that they already participated in a “tour.” See N.J.S.A. 33:1-10(1)(b). In addition, patrons will only be permitted to receive one free beer at a participating Limited Brewery licensee as part of this promotion.

Pursuant to the May 28, 2019 Special Ruling Authorizing Certain Activities by Holders of Limited Brewery Licenses (the “May 2019 Special Ruling”), Limited Brewery licensees are prohibited from offering a free drink to any patron(s) as a gesture of good will. See May 2019 Special Ruling, Schedule A, Section 5(g). This prohibition against offering free drinks was based on the Division’s view that Limited Breweries 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 a Limited Brewery Licensee to offer a free drink also 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 prohibitions, and may be relaxed by the Director of the Division of Alcoholic Beverages (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

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).

“ABC Act”). Pursuant to the ABC Act, the Director has ample authority to withdraw or modify the Special Ruling and Schedule A, in the exercise of his discretion.

In general, the Director exercises his authority to relax regulations or Special Rulings 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 Limited Breweries while encouraging COVID-19 vaccinations, the Division FINDS that a temporary relaxation of N.J.A.C. 13:2-24.8 and Schedule A, Section 5(g) of the May 2019 Special Ruling is appropriate and necessary under these circumstances. The Division is satisfied that the Limited Brewery industry will benefit from the Governor’s proposed “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 and Schedule A, Section 5(g) of the May 2019 Special Ruling 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 of N.J.A.C. 13:2-24.8 and Schedule A, Section 5(g) of the May 2019 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(1)b 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 Schedule A, Section 5(g) of the May 2019 Special Ruling, and **will AUTHORIZE Limited Brewery licensees to participate in the "COVID-19 Shot and a Beer" vaccine promotion from May 3, 2021 through May 31, 2021**, unless otherwise extended by Special Ruling of the Division. Participating licensees shall keep a record of the number of beers distributed as part of this program.

The relaxation granted herein is based upon the specific promotion as described in the Governor's May 3, 2021 press announcement 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 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 Limited Brewery 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.



JAMES B. GRAZIANO
DIRECTOR

Dated: May 3, 2021

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