

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

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IN THE MATTER OF THE PROPOSED)	SPECIAL RULING
AMENDMENT TO <u>N.J.A.C.</u> 13:2-37.1)	AUTHORIZING CONSUMER
(Consumer Alcoholic Beverage Tasting)	ALCOHOLIC TASTING EVENTS
Events and Samplings))	AND SAMPLINGS PURSUANT TO
)	PROPOSED AMENDMENT TO
)	<u>N.J.A.C.</u> 13:2-37.1
)	

BY THE DIRECTOR:

New legislation pertaining to the conduct of consumer alcoholic beverage tasting events and samplings was signed by Governor McGreevey on January 14, 2004 to take effect on June 1, 2004. See P.L. 2003, c. 279. The legislation permits plenary retail consumption licensees and permittees to conduct consumer tasting events and samplings of wine, beer and spirits for a fee or on a complimentary basis pursuant to the conditions established by the Division of Alcoholic Beverage Control (“Division”).

The legislation also permits plenary retail distribution licensees (package goods stores) to conduct wine tastings and samplings on a complimentary basis pursuant to the conditions established by the Division, provided: (1) patrons are limited to four one-and-one half ounce samples in any one 24-hour period; (2) samples are not offered to, or allowed to be consumed by, any minor or intoxicated person; (3) samples are not offered when the sale of alcoholic beverages is otherwise prohibited; and (4) tastings and samplings are confined to the licensed premises. In addition, the legislation provides that the wine used in the tastings and samplings on the licensed premise of a distribution licensee shall be owned by the licensee conducting these tastings and samplings. The legislation specifies that a person who violates any of the preceding conditions will be fined an amount established by the Division of Alcoholic Beverage Control.

In response, the Division is proposing to amend N.J.A.C. 13:2-37.1 to establish the conditions by which consumer alcoholic beverage tasting events and samplings may be held, as provided by P.L. 2003, c. 279. In order to balance the intent of the new legislation to extend the ability of licensees to participate in tasting events and samplings, with the legislative intent expressed in the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 *et seq.*, to strictly regulate alcoholic beverages to protect the health, safety and welfare of the people of this State, the Division has proposed some parameters for these activities.

The Division has defined “Tasting event” and “Sampling” as follows. “Tasting event” means a scheduled event hosted by a licensee or permittee, which is not open to the public and for which invitations are provided to guests 24 hours in advance. “Sampling” means an act by a licensee or permittee where a small amount of an alcoholic beverage is offered to a consumer for the purpose of inducing or promoting a sale.

For licensees and permittees who are allowed to sell alcoholic beverages in open containers, the parameters for conducting tasting events and samplings include:

(1) Tasting events are not to be open to the general public, but are to be limited to invitations given 24 hours in advance.

(2) Tasting events and samplings are not to be offered to or allowed to be consumed by any person under the legal age to consume alcoholic beverages or by any intoxicated persons.

(3) Tasting events and samplings are not to be offered when the sale of alcoholic beverages is otherwise prohibited.

(4) All samplings must be from the inventory of the licensee.

For retail distribution licensees, the parameters for conducting tasting events and samplings include:

(1) Tasting events and samplings are confined to the licensed premises and all wine used in the tasting events and samplings shall be from the inventory of the licensee conducting the tasting or sampling.

(2) Seating of any kind and any bars for the purpose of samplings or tasting events on a distribution licensed premises is prohibited.

(3) Only cheese, crackers, chips, dip and similar snack foods are permitted to be served at a tasting and only cheese and crackers are permitted at a sampling.

(4) Distribution licensees holding a tasting event must notify the Division of Alcoholic Beverage Control, in writing, at least ten days in advance of conducting a tasting event. (The notice shall describe the place, time and products to be featured at the event.)

(5) Only 12 bottles of wine may be open and offered at each tasting event. (For purposes of this regulation, an alcoholic beverage product means each specific individual brand registered alcoholic beverage product being offered.)

(6) Only one tasting event is permitted in a 24-hour period.

(7) At a tasting event, each patron/customer is limited to four one-and one-half ounce

samples.

(8) Samplings on a retail distribution licensed premises are limited to the hours of 9:00 a.m and 10:00 p.m.

(9) Patrons/customers are limited to four one-and one-half ounce samplings in any 24-hour period.

(10) Samplings may not be offered to, or allowed to be consumed by, any person under the legal age for consuming alcoholic beverages or intoxicated persons.

(11) Samplings are not to be offered when the sale of alcoholic beverages is otherwise prohibited.

(12) Only six bottles of wine may be open at any one time on a plenary retail distribution licensed premise for the purpose of sampling.

(13) When a bottle is opened for the purpose of a sampling, a form supplied by the Division identifying the brand, size and the date the bottle was opened must be completed by the licensee. (This form must be maintained on the licensed premises and available for inspection.)

(14) When a bottle is opened for the purpose of a sampling, the bottle must be marked SAMPLE and with the date the bottle was opened which coincides with the completed form.

(15) Once a bottle is opened for the purpose of sampling, it cannot be returned to the supplier.

(16) No samplings of distilled spirits, beers or malt alcoholic beverages may be provided by a Plenary Retail Distribution Licensee.

Suppliers, manufacturers or wholesalers of alcoholic beverages holding an annual special permit as provided in current regulation N.J.A.C. 13:2-37.1(a)(7) may participate in consumer tasting events and samplings hosted by licensees and permittees who are allowed to sell alcoholic beverages in open containers as well as distribution licensees. As provided in this existing regulation, each solicitor or duly authorized representative participating in consumer tasting events must hold an additional \$200.00 permit and comply with the 10 day advance reporting requirement therein.

Sanctions for any violation of State statutes, Division regulations, or terms of any permit issued, in connection with tasting events or samplings are: (1) the liquor license will be subject to the imposition of suspensions starting 5 days for a first offense, 10 days for a second offense, and 15 days for a third offense; and (2) a fine not to exceed \$500 for each offense. Although the Alcoholic Beverage Control Act provides for suspensions and revocations for violations of the Act, the new legislation provides specifically for the additional imposition of a fine for violations

of this section.

The Division's proposed amendment to N.J.A.C. 13:2-37.1 is currently under Departmental review. Pending completion of this review and the formal rulemaking process, I am issuing this Special Ruling, pursuant to N.J.S.A. 33:1-39, which provides me with specific statutory authority to make such special rulings as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages. Pursuant to that authority, I hereby allow New Jersey licensed alcoholic beverage retailers, wholesalers, and suppliers, until adoption of the amended regulation, to conduct consumer alcoholic beverage tasting events and samplings in compliance with the statutory provisions and the conditions contained herein.

Accordingly, it is on this 16th day of July, 2004,

ORDERED that, until adoption of the proposed amendment to N.J.A.C. 13:2-37.1, New Jersey licensed retailers, wholesalers and suppliers who wish to conduct consumer alcoholic beverage tasting events or samplings as provided by P.L. 2003, c. 279, shall comply with the statutory provisions and the conditions contained in this Special Ruling.

/s/

JERRY FISCHER
DIRECTOR