

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

IN THE MATTER OF THE APPLICATION)	SR 2020-01
TO RELAX CERTAIN PROVISIONS OF)	SPECIAL RULING GRANTING THE
SPECIAL RULING AUTHORIZING)	RELAXATION OF SCHEDULE A,
CERTAIN ACTIVITIES BY HOLDERS OF)	PARAGRAPH 2(j) OF THE SPECIAL
LIMITED BREWERY LICENSES)	RULING AUTHORIZING CERTAIN
)	ACTIVITIES BY HOLDERS OF
)	LIMITED BREWERY LICENSES
)	

BY THE ACTING DIRECTOR:

The Division of Alcoholic Beverage Control (the “Division”) is aware that that Limited Brewery licensees are seeking authority to deliver their products directly to consumers’ homes. The Division explicitly denied Limited Brewery licensees this privilege in its May 28, 2019 Special Ruling Authorizing Certain Activities by Holders of Limited Brewery Licenses (the “May 2019 Special Ruling”). Specifically, the Division stated, in pertinent part, that:

No Limited Brewery licensee shall deliver the malt alcoholic beverages produced on its licensed premises to consumers’ homes.
[May 2019 Special Ruling, Schedule A, Section 2(j).]

The restriction contained in the May 2019 Special Ruling was not based on a statutory prohibition contained in N.J.S.A. 33:1-10(1)b, but rather was the result of careful deliberation as to the privileges to be afforded to Limited Brewery licensees and within the discretion of the Division.

In light of the unprecedented public health hazard posed by the novel Coronavirus disease 2019 (“COVID-19”) and the State of Emergency declared by Governor Murphy in Executive Order (“EO”) No. 103 (2020), and the restrictions imposed on restaurants and bars in paragraph 8 of EO No. 107 (2020), many Limited Brewery licensees have requested that the restriction in the

May 2019 Special Ruling against home delivery of their products be relaxed. The requesters claim that, since on-premises consumption of alcoholic beverages in their tasting rooms has been temporarily suspended, allowing retail sales of their products by way of customer pick up and home deliveries will help them maintain their businesses during these uncertain times.

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 manufacturer, sale and distribution of alcoholic beverages ..., and [to] alter, amend, repeal and publish the same from time to time.” This authority is implemented by N.J.A.C. 13:2-9.1, which allows the Director 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 Alcoholic Beverage Control Act (the “Act”).

Based on the extraordinary public health crisis, the steps being taken to reduce community spread of COVID-19 through “social distancing” and other practices intended to minimize person-to-person contact, and the economic hardship faced by Limited Brewery licensees, I FIND that a temporary relaxation of Schedule A, Section 2(j) in the May 2019 Special Ruling is appropriate and necessary under these circumstances. After reviewing the record before me, I am satisfied that Limited Brewery licensees will suffer economic hardship if they are not able to offer home delivery, as their customer base will necessarily be reduced by people who are being encouraged to stay home to prevent community spread of the virus. I further FIND that relaxation of Schedule A, Section 2(j) of the May 2019 Special Ruling will not unduly burden any affected parties. Plenary retail licensees (with appropriate transit insignias) are permitted to offer home delivery of all types of alcoholic beverages in original containers and will continue to have this privilege. Based on

the limitation on the number of products available and the temporary nature of this relaxation, the Division does not expect that allowing Limited Brewery licensees this short-term privilege will significantly interfere with wholesale or retail licensees' businesses.

Finally, I FIND that relaxing the Schedule A, Section 2(j) is consistent with the Act. The May 2019 Special Ruling created stability in the alcoholic beverage marketplace and allowed Limited Brewery licensees to compete in that marketplace. Allowing home delivery of their products under these unprecedented circumstances for the duration of the public health crisis will allow Limited Brewery licensees continued access to their customers in a safe manner while their tasting rooms are closed. 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.

In light of the foregoing, I will GRANT the request for relaxation of Schedule A, Section 2(j) in the May 2019 Special Ruling, and will AUTHORIZE Limited Brewery licensees to deliver their products in original sealed containers directly to consumers' homes, provided that all deliveries are made in vehicles which have a transit insignia permit, and provided that all sales take place on the premises of the Limited Brewery either over the phone or electronically by credit card. Paragraph 8 of EO No. 107 also authorizes Limited Brewery licensees to sell their products in original sealed containers from their tasting rooms for customer pick up during their posted normal business hours, provided that pick up is arranged to occur outside or adjacent to the premises. See also AN 2020-03 – Advisory Notice to Industry Interests Operating During COVID-19 Emergency (March 30, 2020). The limitations on the quantities of products that can be sold for off-premises distribution apply. N.J.S.A. 33:1-10(1)b.

The relief granted in this ex parte matter is for the duration of the public health emergency or until further order of the Director. Should this relief be demonstrated to be inconsistent with the factual description provided by the Limited Brewery licensees who have requested this relaxation, or should the facts and circumstances posed by the COVID-19 public health crisis change, this Special Ruling may be withdrawn or modified, as appropriate.



JAMES B. GRAZIANO
ACTING DIRECTOR

Dated: March 30, 2020

JBG/PTU/APW