

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

AN 2026-10 – ADVISORY NOTICE RE:
U.S. MINT HALTING PRODUCTION OF PENNIES AND
SALES BELOW “COST” UNDER N.J.A.C. 13:2–24.8

This Advisory Notice advises that, in light of the phase out of the penny, the adjustment of a sales price up or down one to four cents does not increase or decrease the “cost” of an alcoholic beverage as defined by N.J.A.C. 13:2–2 and thus is permissible.

On November 12, 2025, the U.S. Mint halted production of one-cent coins, i.e., “pennies.”¹ Nonetheless, the U.S. Mint affirms that “[t]he penny remains legal tender and may still be used for transactions.”²

N.J.A.C. 13:2–24.8,³ at subsection (a), prohibits sales below “cost”:

[N]o wholesaler distributor or other licensee, privileged to sell to retailers, and no retail licensee, shall offer to sell or sell alcoholic beverages at a price below “cost” except for authorized samples and donations pursuant to N.J.A.C. 13:2–24.7, or upon petition to and approved by the Director, pursuant to a bona fide “close out” sale.

Furthermore, subsection (b) of N.J.A.C. 13:2–24.8 defines “cost” 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 product, plus applicable State and Federal taxes. The actual invoice price shall be determined by the “last-in-first-out” method applying generally accepted accounting principles.

The Division of Alcoholic Beverage Control (the “Division”) has received inquiries about whether alcoholic beverage licensees may round sales prices up or down to complete cash sales, despite N.J.A.C. 13:2–24.8 prohibiting sales below cost, since pennies are in short

¹ See Press Release, U.S. Mint, United States Mint Hosts Historic Ceremonial Strike for Final Production of the Circulating One-Cent Coin (Nov. 12, 2025), <https://www.usmint.gov/news/press-releases/united-states-mint-hosts-historic-ceremonial-strike-for-final-production-of-the-circulating-one-cent-coin>.

² Penny FAQs, U.S. MINT, (Nov. 12, 2025), <https://www.usmint.gov/news/media-kit/penny>.

³ N.J.A.C. 13:2–24.8 is an implementing regulation of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1–1 to 33:5–5.

supply as a result of the U.S. Mint halting their production.

Per Division guidance, a change in the price of an alcoholic beverage by a matter of cents can implicate N.J.A.C. 13:2-24.8.⁴ For instance, the Division has required that when a N.J.A.C. 13:2-24.8 “cost” calculation ends in a fractional cent, then that calculation must “be rounded off to the next higher full cent.” A.B.C. Bull. 2429, Item 3 (Dec. 14, 1982). On the other hand, the Division has maintained that certain adjustments to sales prices not contemplated by N.J.A.C. 13:2-24.8 do not count toward “cost”; namely, interest or finance charge adjustments made by wholesalers selling alcoholic beverages to retailers. See A.B.C. Bull. 2444, Item 2 (Dec. 13, 1985) (“Where interest or finance charges are added to the invoice which is not timely paid, such interest or finance charges do not increase the ‘cost’ as defined in [N.J.A.C.] 13:2-24.8.”). Ultimately, the Division views adjusting the sales price of alcoholic beverages up or down in the course of cash transactions when pennies are unavailable similarly to the above-referenced interest or finance charge adjustments not contemplated by N.J.A.C. 13:2-24.8. See A.B.C. Bull. 2444, Item 2 (Dec. 13, 1985).

Accordingly, the Division hereby interprets “cost” under N.J.A.C. 13:2-24.8 to refer to the actual proportionate invoice price and freight charge to a distributor or wholesaler and the actual proportionate price to a retailer, as the case may be, of any given container of an alcoholic beverage product, plus applicable State and Federal taxes prior to any adjustment of a sales price up or down one to four cents to accommodate a cash transaction where a penny is unavailable. Thus, any such adjustment for transactions between wholesalers, distributors, retailers, or other licensees does not increase or decrease the “cost” of an alcoholic beverage as defined by N.J.A.C. 13:2-24.8. See, e.g., Boller Beverages, Inc. v. Davis, 38 N.J. 138, 154 (1962).

Similarly, for transactions between retailers and consumers, the Division hereby interprets “price” under N.J.A.C. 13:2-24.8 to refer to the price of the product prior to any adjustment of a sales price up or down one to four cents to accommodate a cash transaction where a penny is unavailable.

Because of the Division’s interpretation of “cost” and “price” under N.J.A.C. 13:2-24.8 above, an analysis of whether a sales price is below “cost” via N.J.A.C. 13:2-24.8 is not required for any such adjustment.

As any adjustment of a sales price up or down one to four cents to accommodate a cash transaction where a penny is unavailable is after taxes and fees, all appropriate taxes on sales prices must be calculated beforehand, and subsequently remitted as is required by law. For information on how to calculate and remit taxes, please see the following from the Division of

⁴ See A.B.C. Bull. 2381, Item 3 (Dec. 12, 1980) (“Manufacturers’ . . . ‘cents-off’ coupons . . . create . . . complex issues [A] question of sales ‘below cost’ (N.J.A.C. 13:2-24.8) arises if a retailer is to redeem the . . . coupon and its pricing does not lawfully allow for the absorption of the offered discount.”); A.B.C. Bull. 2443, Item 3 (Sept. 13, 1985) (noting that, in light of a federal excise tax increase on distilled spirits, “the ‘cost’ of distilled spirits in inventory will increase” under N.J.A.C. 13:2-24.8, and “it is expected that industry members and trade magazines will publish charts or guides identifying specific cent increases”).

Taxation: Cash Transaction Rounding Guidance Due to Penny Supply Changes, N.J. Div. of TAX'N (Jan. 9, 2026), <https://www.nj.gov/treasury/taxation/businesses/salestax/cash-rounding-guidance.shtml>. Alcoholic beverage licensees who are required by law to remit Corporation Business Tax ("CBT") or Gross Income Tax ("GIT") to the Division of Taxation "must use exact accounting when determining gross receipts or total income. If a [licensee] rounds up on a transaction, that revenue is treated as additional income to the seller. When a [licensee] rounds down, it reduces the gross receipt, or total income figure." See ibid.

Finally, in view of Division of Consumer Affairs guidance, any adjustment of a sales price after taxes and fees up or down one to four cents to accommodate a cash transaction where a penny is unavailable "must be disclosed clearly and conspicuously prior to the consumer incurring any charge for the goods or services purchased." See N.J. Div. of CONSUMER AFFAIRS, CONSUMER AND BUSINESS ADVISORY: PENNIES AND CASH TRANSACTIONS (Jan. 9, 2026), <https://www.njconsumeraffairs.gov/News/Documents/penny-advisory.pdf>. The Division of Consumer Affairs has prepared a sample notice which alcoholic beverage licensees may display to disclose how they will make any such adjustments, accessible at the following URL: <https://www.njconsumeraffairs.gov/News/Documents/penny-alert.pdf>. See ibid.

This Advisory Notice does not impose any new or additional requirements that are not already required by existing statute or regulation, nor does it establish any rights or obligations on any person or party. See N.J.S.A. 52:14B–3a(d). This is a regulatory guidance document and does not provide legal advice, nor should it be treated as providing legal advice. Licensees should each speak to a qualified attorney for legal advice.

Any specific questions concerning this Advisory Notice should be directed to DAG Noah DeSimone (noah.desimone@njoag.gov, 609-262-5121).



PAUL THOMAS URBISH
DIRECTOR

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