

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY**  
**OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER**  
Statutory Authority: 4 Delaware Code, Section 304(a) (4 **Del.C. §304(a)**)  
**4 DE Admin. Code**

**FINAL**

**ORDER**

**Alcoholic Beverage Control Regulations**

**I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

The Commissioner has proposed amendments to 4 **DE Admin. Code** to reflect the current regulatory environment. The proposed regulations were available on the website of the Registrar of Regulations as well as at the Office of the Commissioner.

The notice of the proposed regulations was first made on September 1, 2014 and the same proposals were made on November 1, 2015. Three hearings were held to receive comments, September 24, 2014 in Wilmington, Delaware; September 30, 2104 in Dover, Delaware; and October 1, 2014 in Georgetown, Delaware. In addition comments were solicited and received by e-mail and by regular mail.

Many participants of the hearings and those commenting through e-mails praised the proposed changes and urged the adoption of the proposals. There were a few persons who testified on specific proposals that suggested that the proposed changes were better than the current Rule, but did not go far enough. These participants agreed that the proposed rules should be adopted, and then further changes should be explored. The comments expressed support for the adoption of the Rules with the following exceptions:

- Rule 2.1: Concern was expressed about the expansion of the type (specifically concerned about allowing the sale of cheeses) and area where products other than alcohol, ice and mixers might be displayed. Others expressed concern that the proposed rule did not go far enough in that it still prohibited the sale of meats and bread.
  - Rule 7.1: Broadening the employment of minors in a package store, Comments were made that allowing minors in stores selling alcohol is contrary to the public policy limiting access to alcohol to persons over the age of 21.
  - Rule 8: Concern was raised about the abolishment of the requirement of a surety bond in the amount of \$20,000.
  - Rule 11: Concern was expressed about the mandating of hours for stores.
  - Rule 27: Concern that deleting the words "package store" would result in unintended consequences.
  - Rule 29: Concern was raised that the requirement of a monthly book unduly increases the cost of alcohol to consumers.
  - Rule 36: Concern was raised about decreasing the time where patrons of on-premises licensees could consume alcoholic beverages purchased prior to 1:00 a.m. from 2:00 a.m. to 1:30 a.m.
  - Rule 43: Concern was raised that the inclusion of spouses of employees, stockholders, directors and officers of Suppliers and Wholesalers would be overly broad.
  - Rule 52: Opposition was raised to including premises other than restaurants and hotels in the prohibition of minors standing or sitting at service counters.
  - Rule 77: Opposition was raised to reducing the licensing fee for a Direct Shipper.
- Unnumbered:
- A. One person commented that it would be a good idea to permit a "BYOB" night at restaurants.
  - B. There was a recommendation to increase the amount of alcohol that it is permissible for one retailer to purchase from another retailer from one case per day to five cases per day.

**II. FINDINGS OF FACTS**

The Commissioner finds that it is appropriate to amend 4 **DE Admin. Code** as outlined in the proposed Rules. The comments made by the public were generally in favor of the proposals. With regard to the specific negative comments the following is the Commissioner's findings:

- Rule 2.1: The proposal to increase the area where items other than alcohol, mixers and ice can be displayed from 20 square feet to the larger of 20 square feet or 5% of the floor space was intended to recognize that all

off-premises licensees are not the same size, This change in the Rule would allow a larger store to have a proportionally larger area to display these products. Many off-premises retailers have expressed an interest in “pairing” wines and cheeses and specifically allowing cheeses to be sold clarifies the confusing language currently found in these sections. Further expansion of the rule to permit the sale of meats and breads would bring the package stores closer to being a “grocery store” or “delicatessen” that is prohibited under Title 4 Section 516 from obtaining a license.

Rule 7.1: Persons who have reached the age of 18 may work in a store. (See Title 4, Section 904(m)). The current rule limits those persons who can utilize this statute to children of the owner of a store. There is no reason to believe that this limitation will result in better, more responsible minors employed in a store. The statutory provision is permissive, thus any store that is concerned about the employment of a minor in the store may choose not to employ any person under the age of 21.

Rule 8: The requirement of a surety bond in the amount of \$20,000 for a wholesaler has been abandoned prior to the change from the Commission to the Commissioner. Any entity applying for a license as a wholesaler must demonstrate that it has the financial stability to acquire such a license. The deletion of this requirement is appropriate.

Rule 11: The current Rule requires all stores to be open from 9:00 a.m. until 1:00 a.m. unless a variance is granted by the Commissioner. The proposed rule reduces the requirement to 10 hours (significantly reduced from the currently required 16 hours) while still mandating that the store meet the need and convenience of the public.

Rule 27: The deletion of the words “package store” from new Roman Numeral IV would change the intent of the rule and is therefore inappropriate. These words will not be removed.

Rule 29: The Rule does not require a “book” form, rather a “publication” that can be distributed. The Wholesalers may agree to any “publication” form as long as all stores may access the pricing list and there are records maintained to insure compliance with the Rule.

Rule 36: As pointed out in the correspondences, reducing the time when alcohol can be consumed from 2:00 a.m. to 1:30 a.m. will result in many of the patrons drinking the beverages more rapidly. In addition, it would likely result in areas with a higher concentration of licensees with more congestion of persons leaving the establishments as there would be less staggering of closing times. The change of hours from 2:00 a.m. to 1:30 a.m. will not be made.

Rule 43: The current rule prohibits employees, stockholders and officers of Suppliers and Wholesalers from having a position with another tier. This is in keeping with the provisions of Title 4 Section 506. By adding a spouse to these restrictions, the policy behind this statute and rule is not thwarted by a subterfuge of violating the policy through a spouse. A general prohibition is appropriate and applications for variances can be made explaining the nature of the relationship and the duties and authority of the persons involved. The proposal to modify the rule will be adopted.

Rule 52: The prohibition of minors sitting or standing at service counters should apply to all establishments, not just restaurants and hotels. Clubs, bowling alleys, brew-pubs and other on-premises licensees should be prohibited from having minors sitting or standing at a bar where alcohol is being dispensed. The proposed rule change is adopted as proposed.

Rule 77: The fee for a Direct Shipper was statutorily decreased, therefore the change of the fee found in the Rule is required.

Unnumbered:

- A. The proposal to have a “BYOB” night at restaurants is statutorily prohibited, thus no change in the rule can be made.
- B. A proposal to increase the amount of alcohol a retailer can purchase from another retailer from one case per day to fives per day would be a change that was not proposed in this rule making procedure. We will consider that at some point in the near future.

### III. DECISION TO AMEND THE REGULATIONS

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 4 **DE Admin. Code** as proposed with two exceptions. The proposal to delete the words “package store” from Rule 27 is not approved and they will remain as part of that rule. Rule 36 will not change the time when patrons can consume on the premises from 2:00 a.m. to 1:30 a.m. and it shall remain at 2:00 a.m.

### IV. TEXT AND CITATION

The text of 4 **DE Admin. Code** as revised and amended hereby shall be in the form attached hereto as *Exhibit "A"*, and

said regulation shall be cited as 4 **DE Admin. Code** in the *Administrative Code of Regulations* for the Office of the Alcoholic Beverage Control Commissioner.

#### **V. EFFECTIVE DATE OF ORDER**

The actions hereinabove referred to were taken by the Commissioner pursuant to 4 **Del.C.** §§304(a) and 308 on January 15, 2016. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

**IT IS SO ORDERED** the 15<sup>th</sup> day of January 2016.

Office of the Alcoholic Beverage Control Commissioner  
John H. Cordrey, Commissioner  
Approved this 15<sup>th</sup> day of January 2016

**\* Please Note: Due to the size and extent of the revisions they are not printed here. A PDF version is available at the following link:**

<http://regulations.delaware.gov/register/february2016/final/AlcoholicBeverageRegulations.pdf>

**19 DE Reg. 775 (02/01/16) (Final)**