

DEPARTMENT OF STATE
OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER
Statutory Authority: 4 Delaware Code, Section 304 (4 **Del.C.** §304)
4 **DE Admin. Code** 701, 702

PROPOSED

PUBLIC NOTICE

Rule 701 (Formerly Rule 51) A Rule Requiring the Biennial Renewal of Wholesale, Retail, and Annual Gathering Licenses

Rule 702 (formerly Rule 51.1) A Rule Requiring the Biennial Renewal of Supplier's Licenses

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 4 **Del.C.** §304, the Delaware Alcoholic Beverage Control Commissioner proposes to update its rules related to biennial renewal of liquor licenses for wholesale, retail, gatherings, and suppliers.

In accordance with 29 **Del.C.** §10116, persons wishing to submit written comments, suggestions, briefs, and compilations of data or other written materials concerning the proposed regulations should direct them to the following address:

Doug Denison
Deputy Commissioner
Office of the Delaware Alcoholic Beverage Control Commissioner
820 N. French St., 10th Floor
Wilmington, DE 19801

Comments may also be directed via electronic mail to OABCCrulescomments@delaware.gov. Any written submission in response to this notice and relevant to the proposed regulations must be received by the Delaware Alcoholic Beverage Control Commissioner no later than 4:00 p.m. EST, January 31, 2024.

The action concerning determination of whether to adopt the proposed regulations will be based upon consideration of the written comments and any other written materials filed by the public.

Background

The Delaware Alcoholic Beverage Control Commissioner ("Commissioner" or "Office") is authorized by the General Assembly of the State of Delaware, to establish, by rules and regulations, an effective control of the business of manufacture, sale, dispensation, distribution and importation of alcoholic liquors within and into the State of Delaware, including the time, place and manner in which alcoholic liquors shall be sold and dispensed, not inconsistent with Title 4 of the Delaware Code, known as the Delaware Liquor Control Act ("DLCA") or with any other law of the State. The Commissioner is further authorized to adopt and promulgate rules and regulations not inconsistent with Title 4 or of any other law of the State, and such rules and regulations shall have the force and effect of law; provided, however that no such rule or regulation shall extend, modify or conflict with any law of this State or the reasonable implications thereof; and provided further, however, that such rules and regulations, as established by the Commissioner, shall focus primarily on public safety and the best interests of the consumer and shall not unduly restrict competition within the alcoholic beverage industry.

Summary of Proposal

4 **DE Admin. Code** 701 and 702 are updated to shorten the license renewal notice timeline. The effective dates for renewed licenses will not change. Licensees will receive notice from the Commissioner's Office when the license renewal is due and licensees will have 30 days in which to pay the fee for renewal. The rules were originally written when renewal payments were made in person or by mail. The Commissioner's Office has moved to an online renewal process, streamlining the renewals, and making it easier for licensees to renew their licenses. The months of advance notice before the deadline to renew is no longer necessary. Further, existing licensees have commented frequently that there is too much time between notice and the payment due date, causing many licensees to miss the deadline to pay the license renewal fees. Due to the increase in administrative costs and time to identify and track late renewal fees, the updates include a late

penalty that may be applied to those who do not renew licenses by the deadline.

Statutory Authority 4 Del.C. §304.

4 Del.C. §304 enables the Delaware Alcoholic Beverage Control Commissioner to adopt and promulgate rules and regulations not inconsistent with Title 4 of the Delaware Code and all such rules and regulations shall have the force and effect of law; provided, that no such rule or regulation shall extend, modify or conflict with any law of the State of Delaware or the reasonable implications thereof.

700 Renewal and Alterations of Licenses

701 (Formerly Rule 51) A Rule Requiring the Biennial Renewal of Wholesale, Retail, and Annual Gathering Licenses

1.0 Wholesaler Licenses (Even-Numbered Years)

~~All wholesalers must apply for the renewal of their license in the form approved by the Commissioner on or before January 4. The Commissioner shall provide notice of license renewal to all wholesalers by February 15 of each even-numbered year, and payment of the renewal fee from the licensee is due within 30 days. All licenses issued by the Commissioner to wholesalers shall be for a two-year~~ 2-year period beginning April 1 of each even-numbered year and ending March 31 of the following even-numbered year.

2.0 Biennial Gathering Licenses (Even-Numbered Years)

~~All applications for the~~ The Commissioner shall provide notice of license renewal of to all biennial gathering licenses ~~must by October 1 of each even-numbered year. All renewal applications and payments must include a current Form 990 of the applicant and be submitted in the form required by the Commissioner on or before October~~ November 1 of each even-numbered year. All biennial gathering licenses issued by the Commissioner shall be for a ~~two-year~~ 2-year period beginning January 1 of each ~~odd-numbered~~ even-numbered year and ending December 31 of the following even-numbered year.

3.0 Retail Licenses - Sussex County (Even-Numbered Years)

~~All~~ The Commissioner shall provide notice of license renewal to all retail licensees in Sussex County ~~must apply for the renewal of their license in the form required by the Commissioner on or before July 1 by~~ August 15 of each even-numbered year, and payment of the renewal fee from the licensee is due within 30 days. All licenses issued by the Commissioner to locations in Sussex County shall be for a period of ~~two~~ 2 years beginning October 1 of each even-numbered year and ending September 30 of the following even-numbered year.

4.0 Retail Licenses - City of Wilmington (Even-Numbered Years)

~~All~~ The Commissioner shall provide notice of license renewal to all retail licensees in the City of Wilmington ~~must apply for the renewal of their license in the form required by the Commissioner on or before April 1 by~~ May 15 of each even-numbered year, and payment of the renewal fee from the licensee is due within 30 days. All licenses issued by the Commissioner to locations in the City of Wilmington shall be for a period of ~~two~~ 2 years beginning July 1 of each even-numbered year and ending June 30 of the following even-numbered year.

5.0 Retail Licenses - Kent County (Odd-Numbered Years)

~~All~~ The Commissioner shall provide notice of license renewal to all retail licensees in Kent County ~~must apply for the renewal of their license in the form required by the Commissioner on or before July 1 by~~ August 15 of each odd-numbered year, and payment of the renewal fee from the licensee is due within 30 days. All licenses issued by the Commissioner to locations in Kent County shall be for a period of ~~two~~ 2 years beginning October 1 of each odd-numbered year and ending September 30 of the following odd-numbered year.

6.0 Retail Licenses - New Castle County (Odd-Numbered Years, A to K)

~~Retail~~ The Commissioner shall provide notice of license renewal to all retail licensees in New Castle County outside of the City of Wilmington whose name (corporate, partnership, or proprietary name, and not trade name) starts with an alphabetical letter of "A" to "K" ~~must apply for the renewal of their license in the form required by the Commissioner on or before January 4 by~~ February 15 of each odd-numbered year, and payment of the renewal fee from the licensee is due within 30 days. All licenses issued by the Commissioner to locations in New Castle County (A to K) shall be for a period of ~~two~~ 2 years beginning April 1 of each odd-numbered year and ending March 31 of the following odd-numbered year.

7.0 Retail Licenses - New Castle County (Odd-Numbered Years, L to Z)

~~Retail~~ The Commissioner shall provide notice of license renewal to all retail licensees in New Castle County outside of the City of Wilmington whose name (corporate, partnership, or proprietary name, and not trade name) starts with an alphabetical letter of "L" to "Z" ~~must apply for the renewal of their license in the form required by the Commissioner on or before April 1 by May 15 of each odd-numbered year, and payment of the renewal fee from the licensee is due within 30 days.~~ All licenses issued by the Commissioner to locations in New Castle County (L to Z) shall be for a period of ~~two~~ 2 years beginning July 1 of each odd-numbered year and ending June 30 of the following odd-numbered year.

8.0 Late Renewal Penalties for Failure to File Applications as Required

- 8.1 Any application and payment for license renewal received by the Commissioner 1 to 5 business days past the deadline noted in this regulation may result in a \$25 late penalty fee; 6 to 10 business days past the deadline may result in a \$50 late penalty fee.
- 8.2 Any late penalty fees will be assessed with the renewal fee and must be paid before the renewal license shall issue.

8.0 9.0 Penalty Fines for Failure to File Applications as Required

~~8.1~~ 9.1 Fine Fines.

~~8.1.1~~ Any licensee who ~~does not timely fails to~~ file the application for renewal as required by this Rule, or does not file the application for renewal in the form (including the fee) required by the Commissioner, or both, regulation (including the fee) for more than 10 business days after the deadlines noted in this regulation, shall pay a fine as outlined in Rule 4 **DE Admin. Code** 804 implementing the voluntary fine assessment plan:

~~8.1.1.1~~ 9.1.1 First violation, \$250 fine and administrative costs.

~~8.1.1.2~~ 9.1.2 Second violation, \$500 fine and administrative costs.

~~8.1.1.3~~ 9.1.3 Any application for renewal received after ~~three (3)~~ 3 calendar months from the time required in this rule, or any licensee who has committed a third or subsequent offense under this rule, shall be cited for a violation of this rule regulation and the matter shall be heard by the Commissioner.

~~8.2~~ 9.2 Collection of Fine and Right to Hearing

~~8.2.1~~ 9.2.1 The fine shall be collected as outlined in Rule 4 **DE Admin. Code** 804, Section 3.0 Procedure.

9.2.2 If a licensee chooses a hearing before the Commissioner, then Rule 4 **DE Admin. Code** 804, Section 4.0 Penalties and Administrative Costs, will be implemented.

~~8.3~~ 9.3 Non-Renewal of License until Fine is Paid Paid.

~~8.3.1~~ When a fine is validly imposed under this Rule regulation, the license shall not be renewed until the fine is paid in full.

~~8.4~~ 9.4 Meaning of "Timely Filing" Filing".

~~8.4.1~~ In order for any application to be timely filed under this rule, it must be received by the Commissioner or clearly marked with a post office cancellation on or before the deadline required by this Rule regulation.

9.0 10.0 This Rule Regulation Does Not Affect Revocations, Cancellations, Suspensions or Fines

10.1 Nothing in this Rule regulation shall affect or limit the authority of the Commissioner to revoke, cancel or suspend a license, to impose a fine or to issue a license for a period of time less than ~~two~~ 2 years.

10.2 ~~Further, nothing~~ Nothing in this Rule regulation shall prohibit a licensee from surrendering the license or allowing it to expire.

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

702 (Formerly Rule 51.1) A Rule Requiring the Biennial Renewal of Supplier's Licenses

1.0 Background

All suppliers are required by the Delaware Liquor Control Act to be licensed by the Delaware Alcoholic Beverage Control Commissioner. All new licensees, including those who have allowed their license to lapse, are required to pay an application processing fee pursuant to 4 **Del.C.** §554(x); however, any supplier applicant seeking a license to import ~~two hundred (200)~~ 200 cases or less per year shall not require a hearing and not be required to pay the application processing fee. Should the holder of a license to import ~~two hundred (200)~~ 200 cases or less per year apply for a license to import over

~~two hundred (200) 200~~ cases, ~~he/she~~ the license holder will be required to pay the full ~~\$1,000.00~~ \$1,000 application processing fee.

2.0 Purpose

2.4 The purpose of this ~~rule~~ regulation is to establish a procedure for the renewal of suppliers that are licensed under Chapter 5, §501(a), ~~which states:~~ 4 Del.C. §501(a).

2.1.4 ~~Before any person sells any alcoholic liquor intended for importation into this state, the person shall procure from the Commissioner a supplier's license in the form prescribed by the Commissioner and shall pay a biennial fee in the amount of \$100.00 to be permitted to sell not more than two hundred (200) cases of alcoholic liquor for importation into the state during the calendar year or a biennial fee in the amount of \$1,000.00 to be permitted to sell more than two hundred (200) cases of alcoholic liquor for importation into this state during the calendar year.~~

3.0 Procedure

3.1 ~~All~~ The Commissioner shall provide notice of license renewal to all suppliers whose name (corporate, partnership, or proprietary name, and not trade name) starts with an alphabetical letter of "A" to "K" ~~must apply for the renewal of their license in the form required by the Commissioner on or before October 1 by November 15~~ of each odd numbered year, ~~and payment of the renewal fee from the licensee is due within 30 days.~~ All licenses issued by the Commissioner to Suppliers (A to K) shall be for a period of ~~two~~ 2 years beginning January 1 of each even-numbered year and ending December 31 of the following odd-numbered year.

3.2 ~~All~~ The Commissioner shall provide notice of license renewal to all suppliers whose name (corporate, partnership, or proprietary name, and not trade name) starts with an alphabetical letter of "L" to "Z" ~~must apply for the renewal of their license in the form required by the Commissioner on or before October 1 by November 15~~ of each even numbered year, ~~and payment of the renewal fee from the licensee is due within 30 days.~~ All licenses issued by the Commissioner to Suppliers (L to Z) shall be for a period of ~~two~~ 2 years beginning January 1 of each odd-numbered year and ending December 31 of the following even-numbered year.

3.3 If the supplier fails to comply with subsection 3.2 ~~above~~ of this regulation, but renews its license prior to December 31, it will be subject to a \$100 late renewal ~~penalties as outlined in Section 4.0 of this rule~~ penalty.

3.4 If a supplier whose name begins with the letter A to K fails to submit a renewal application, along with the fee, by December 31 of odd numbered years, the license will expire, and the supplier will be prohibited by law from shipping alcoholic liquor into the state as of January 1.

3.5 If a supplier whose name begins with the letter L to Z fails to submit a renewal application, along with the fee, by December 31 of even numbered years, the license will expire, and the supplier will be prohibited by law from shipping alcoholic liquor into the state as of January 1.

3.6 If alcoholic liquor is shipped into the state by an unlicensed supplier, all alcoholic liquor may be seized under the provisions of 4 **Del.C.** Ch. 11.

3.7 Suppliers who allow their license to expire shall be required to file a complete application, including the ~~\$1,000.00~~ \$1,000 processing fee, before being issued a new license unless they apply for a license to ship ~~two hundred (200) 200~~ cases or less per year.

4.0 Penalty for Failure to File Applications as Required

4.1 ~~Fine:~~

4.1.1 Any supplier who does not timely file an application by December 31 for renewal as required by subsections 3.1 or 3.2, or does not file the application for renewal in the form required by the Commissioner including the fee, or both, shall pay a fine as outlined in Rule 4 DE Admin. Code 804 implementing the voluntary fine assessment plan.

4.1.1.1 ~~4.1.1~~ First Violation: \$250.00 \$250 fine and administrative costs.

4.1.1.2 ~~4.1.2~~ Second Violation: \$500.00 \$500 fine and administrative costs.

4.1.1.3 ~~4.1.3~~ Any application for renewal of a licensee who has committed a third or subsequent offense under this rule shall be cited for a violation of this rule and the matter shall be heard by the Commissioner.

4.2 ~~Collection of Fine and Right to Hearing:~~ Hearing.

4.2.1 The fine shall be collected as outlined in Rule 4 DE Admin. Code 804, Section 3.0, Procedure. If a licensee chooses a hearing before the Commissioner, then Rule 4 DE Admin. Code 804, Section 4.0, Penalties and Administrative Costs, will be implemented.

4.3 ~~Non-Renewal of License Until Fine is Paid:~~ Paid.

- 4.3.4 When a fine is validly imposed under this rule, the license shall not be renewed until the fine is paid in full.
- 4.4 Meaning of "Timely ~~Filing~~ Filing".
 - 4.4.1 In order for an application to be timely filed under this rule, it must be received by the Commissioner, or clearly marked with a post office cancellation, on or before the deadline required by this rule.
- 4.5 Nothing in this rule shall affect or limit the authority of the Commissioner to revoke, cancel, or suspend a license, to impose a fine, or to issue a license for a period of time less than ~~one~~ 1 year. Further, nothing in this rule shall prohibit a licensee from surrendering the license or allowing it to expire.

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

27 DE Reg. 506 (01/01/24) (Prop.)