

DEPARTMENT OF STATE
OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER
Statutory Authority: 4 Delaware Code, Sections 304 and 721 (4 **Del.C.** §§304 and 721)

FINAL

ORDER

911 A Rule Permitting Limited Self-Delivery of Beer

SUMMARY OF THE EVIDENCE

1. Title 4, Section 304 of the Delaware Code authorizes the Alcoholic Beverage Control Commissioner to establish regulations in relation to all powers, duties and functions vested pursuant to the regulation of alcoholic beverages in Delaware.

2. Pursuant to 4 Del.C. § 304, the Alcoholic Beverage Control Commissioner intends to create a new regulation, at 4 DE Admin. C. 911 to conform with the statute at 4 Del.C. §721, and to authorize Delaware licensed breweries to choose to self-deliver their beer to Delaware licensed retailers.

3. Notice of the proposed regulation change was published in the April 1, 2024 edition of the *Delaware Register of Regulations*, and the public was given thirty (30) days to provide written comment.

4. Public comments were received for the proposed regulations, all of which are supportive and positive of the changes.

5. Having provided the opportunity for public comment on the proposed regulations in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101, et. seq., this is the Commissioner's Order adopting the proposed regulations with minor, non-substantive changes.

FINDINGS OF FACT

The Commissioner finds that it is necessary to adopt the proposed regulations as published previously in order to conform with 4 Del.C. §721, and to authorize Delaware licensed breweries to self-deliver their product to Delaware licensed retailers. The Commissioner further finds that minor, non-substantive changes to the regulation were needed for ease of reading.

NARRATIVE ASSESSEMENT OR STATEMENT

The Commissioner states that an assessment is not practical for this regulation, as to the achievement of the State's greenhouse gas emissions reduction targets or the impact of this regulation on the State's resiliency to climate change, or that any such impact will be de minimis.

DECISION AND ORDER TO ADOPT THE REGULATION

For the foregoing reasons, the Commissioner concludes that it is appropriate to adopt 4 DE Admin. Code 911 in which the text of the final regulations shall be in the form referenced herein and with minor, non-substantive changes, and said regulations shall be adopted in accordance with this Order. The effective date of this Order shall be ten days after the publication of this Order and the non-substantive changes in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 9th day of May 2024 by the Office of the Delaware Alcoholic Beverage Control Commissioner.

The Honorable Jacqueline Paradee Mette, Esq.
Commissioner

911 A Rule Permitting Limited Self-Delivery of Beer

1.0 Preamble

Section 721 of Title 4 of the Delaware Code permits the Delaware Alcoholic Beverage Control Commissioner ("Commissioner" or "Office") to authorize "any brewery to sell and to deliver beer to any person in this State who holds a license to receive and resell beer" provided certain requirements are met. This regulation is promulgated to implement self-

delivery of beer by those licensed as brewers. This regulation is consistent with the Commissioner's authority to regulate time, place, and manner in which beer is sold or dispensed, and provide guidance and regulations for self-delivery of beer.

2.0 Purpose and Scope

- 2.1 Liquor licenses issued pursuant to Title 4 of the Delaware Code, the Delaware Liquor Control Act, are approved based upon the documents submitted as part of the initial application. Authorization to conduct business beyond the premises so licensed must be presented to and approved by the Commissioner.
- 2.2 This regulation provides procedures, standards, and fees for self-delivery of beer by a licensed brewery, as defined herein.

3.0 Definitions

The following words and terms, when used in this regulation, have the following meaning unless the context clearly indicates otherwise:

"Brewery" as that term is used in 4 **Del.C.** §721 and as used in this regulation, means a brew pub or microbrewery licensed by the Commissioner pursuant to 4 **Del.C.** §§512B or 512C.

"Self-delivery" means:

- 1) Delivery by a brewery;
- 2) In a vehicle owned or leased by the brewery;
- 3) Of not more than 1,500 barrels annually of its own beer that it manufactures; and
- 4) To a premises licensed by the Commissioner as a retailer pursuant to 4 **Del.C.** §101(41) and on-premise licensees pursuant to 4 **Del.C.** §512.

4.0 Procedures

- 4.1 A Delaware licensed brewery, producing no more than 5,000 barrels of beer a year across all suppliers or manufacturers that share common ownership and control as defined in 4 **Del.C.** §512G(b), may apply, upon forms provided by the Commissioner, for authorization to self-deliver its own beer produced at the licensee's approved premises as follows:
 - 4.1.1 The brewery ~~[must may]~~ submit an application for ~~[a warehouse, an additional facility to warehouse beer,]~~ and provide such documentation as required by the Commissioner, including a lease, landlord approval, and a floor plan.
 - 4.1.2 No more than 1,500 barrels of beer, or its equivalent, may be self-delivered annually by the brewery.
 - 4.1.3 Only the brewery and its employees may deliver its manufactured beer and only in vehicles owned or leased by the brewery.
 - 4.1.4 On a quarterly basis, a report documenting each sale shall be filed electronically with the Commissioner that includes the following:
 - 4.1.4.1 The date and address of each licensee to whom a delivery was made during the prior quarter;
 - 4.1.4.2 The quantity of products delivered and whether the product was provided by the bottle, can, half bottle, keg, half keg, quarter keg, or sixtel; and
 - 4.1.4.3 The total gallons delivered during the quarter. The brewery shall track total gallons delivered through self-delivery so as not to exceed 1,500 barrels of beer delivered through self-delivery, per year.
 - 4.1.5 Self-delivery over 1,500 barrels a year will result in forfeiture of the authorization to self-deliver.
- 4.2 ~~[If approved by the Commissioner, a brewery may use an additional facility to warehouse beer.~~
 - 4.2.1 ~~The brewery must submit an application for a warehouse, and provide such documentation as required by the Commissioner, including a lease, landlord approval, and a floor plan.~~
 - 4.2.2] The filing fee for an application for a warehouse is \$25, and the inspection fee is \$100.

5.0 Additional Requirements

- 5.1 Breweries authorized to self-deliver must do all of the following:
 - 5.1.1 Report to the Division of Revenue, pursuant to 4 **Del.C.** §581(b), all sales of beer that were self-delivered to retailers.
 - 5.1.2 Comply with 4 **DE Admin. Code** 904 by publishing a monthly price list for beer that will be available for sale through self-delivery. Publication may also occur on the Commissioner's webpage if *The Delaware Beverage Guide* is unable to accommodate price lists for self-delivery.

- 5.1.3 Comply with all state credit and transportation regulations and other business licensure requirements.
- 5.1.4 Comply with the 18-hour product at-rest requirement pursuant to 4 **DE Admin. Code** 903, Section 6.0. A written request for variance to that at-rest requirement may be granted for good cause shown.
- 5.1.5 Place a placard on the vehicle transporting the beer, that includes the words "Delaware Alcoholic Beverage Control Commissioner - License Number" (Insert the brewery's license number) in letters at least two inches high, uncovered, and clearly visible.
- 5.2 No brewery shall make a delivery except to a Delaware licensed package store or a Delaware licensed on-premise retail licensee during the hours and dates the package store or on-premise licensee is open to receive such delivery.
- 5.3 No brewery shall contract with a third-party entity to deliver beer. No brewery shall permit anyone other than an employee of the brewery to deliver beer pursuant to this regulation.
- 5.4 Peddling beer is not permitted. Orders for all beer shall be received, in writing, from customers before the loaded vehicles leave the brewery's premises and a copy must be on the vehicle at all times during delivery. No beer in excess of that ordered shall be carried on the vehicles.
- 5.5 A brewery authorized to self-deliver shall not discriminate among retailers when filling orders. Quantity discounts and post-offs do not apply to self-delivery.
- 5.6 A requirement that a retailer purchase 1 product in order to purchase another is prohibited. This prohibition includes combination sales if 1 or more products may be purchased only in combination with other products and not individually.
- 5.7 No brewery shall engage in any trade practice which can reasonably be expected to injure any retailer through discriminatory practices, nor engage in any trade practices which can reasonably be expected to cause, encourage, or induce a consumer to purchase, receive, or consume beer in excessive amounts or at an unduly rapid rate.
- 5.8 Failure to comply with this regulation and any other provision of the Delaware Liquor Control Act or Commissioner's regulations may result in suspension or revocation of authorization for self-delivery.

6.0 Inventory and Recording Sales

- 6.1 Pursuant to 4 **Del.C.** §304(a)(2) and (5) and 4 **Del.C.** §581(c), the Division of Alcohol and Tobacco Enforcement ("DATE") and the Division of Revenue may inspect the establishment of any licensed Delaware brewery and inventory any or all beer in the brewery's possession, as well as sale invoices or bills of sale for beer delivered, at any time they deem reasonable and necessary to carry out their statutory duties to verify the reporting and collection of taxes payable to the State of Delaware.
- 6.2 Every sale of beer through self-delivery shall be recorded by the brewery on a written invoice or bill of sale containing, at a minimum, the following:
 - 6.2.1 Name of the brewery;
 - 6.2.2 Name of the retailer;
 - 6.2.3 Date of sale;
 - 6.2.4 Quantity of beer sold;
 - 6.2.5 Price of beer sold;
 - 6.2.6 Brand/name of product sold;
 - 6.2.7 Size of container; and
 - 6.2.8 Date of delivery.
- 6.3 Upon the driver's return to the brewery's premises, the driver shall sign the copy of the invoice/bill of sale to indicate the beer was delivered to the destination listed.
- 6.4 This signed copy of the invoice/bill of sale shall be available for inspection by the Commissioner at all times.

7.0 Fees

- 7.1 The filing fee to request limited self-delivery is \$25.
- 7.2 When required by the Commissioner, the inspection fee is \$25.
- 7.3 The biennial fee for limited self-delivery is \$100.
- 7.4 The biennial fee for a warehouse is \$100.