

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** 202

FINAL

ORDER

202 (Formerly Rule 19) A Rule Defining the Words Hotel, Motel, Restaurant and Dinner Theater

House Bill No. 16 of the 148th General Assembly was approved March 23, 2015. That bill changed the definition of "Restaurant" and instead of requiring a restaurant to have a minimum of 35 dining seats for patrons, the bill provided that a restaurant must have a minimum of 12 dining seats. Rule 202 (formerly Rule 19) required a minimum of 35 dining seats in accordance with the former statute, but now is in conflict with the statutorily changed requirement. Therefore the Rule 202 3.1 must be changed by deleting the numerals "35" and replacing them with the numerals "12".

Pursuant to 29 **Del.C.** §10113(b)(5), this regulation is exempt from the procedural requirements of the Administrative Procedures Act and may be adopted informally.

IT IS SO ORDERED this 22nd day of February, 2016.
John H. Cordrey, Commissioner of Alcohol

202 (Formerly Rule 19) A Rule Defining the Words Hotel, Motel, Restaurant and Dinner Theater

This Rule supplements the definition of Hotel, Motel, Dinner Theater and Restaurant contained in the Liquor Control Act.

1.0 Hotel

- 1.1 "**Hotel**" means any establishment provided with special space and accommodation, where, in consideration of payment, food and lodging are habitually furnished to travelers.
- 1.2 There shall also be adequate and sanitary kitchen and dining room equipment and an approved storage space where alcoholic liquor may be kept. A hotel shall be advertised as such. A State or County license to operate the premises as a hotel shall also be issued and in possession of the applicant prior to the issuance of the license and at all times thereafter during the term of the license.

2.0 Motel

"**Motel**" shall mean the same as the word "**hotel**" except that a motel may consist of one or more buildings so long as it otherwise qualifies with the requirements set forth in the above definition of "**hotel**". The provisions of the Liquor Control Act shall likewise apply to applications to sell alcoholic liquor in a motel.

3.0 Restaurant

- 3.1 "**Restaurant**" means any establishment which is regularly used and kept open principally for the purpose of serving complete meals to persons for consideration, and which has seating at tables for ~~35~~ 12 or more persons and suitable kitchen facilities connected therewith for cooking an assortment of foods under the charge of a chef or cook. Seats at a bar shall not exceed 25% of the dining seats. The service of only such food and victuals as sandwiches or salads shall not be deemed to be the service of "meals".
 - 3.1.1 Complete meals shall be available at all hours that any restaurant is open for the sale of alcoholic liquor.
 - 3.1.2 There shall also be adequate and sanitary kitchen and dining room equipment, and an approved storage space where alcoholic liquor may be kept.
 - 3.1.3 A State or County license to operate the premises as a "**restaurant**" shall also be issued and in the possession of the applicant prior to the issuance of the license and at all times thereafter during the term of the license.

4.0 Complete Meals - Hotel and Restaurant

The sale of alcoholic beverages by a hotel or restaurant shall be considered as a supplement to the original purpose of providing food and lodging and furnishing food, respectively. "**Complete Meals**" shall be considered to mean the normal meals provided at breakfast, lunch and dinner, offered from menus consisting

of, but not limited to: breakfast foods, soups, appetizers, entrees, salads, vegetables, dessert's and beverages other than alcoholic. Restaurants licensed to sell "Beer Only" and "Wine Only" shall be required to furnish only two out of the four following accompaniments to meals: appetizers, soups, salads and vegetables.

5.0 Dinner Theater

- 5.1 The dinner theater shall serve at least one meal consisting of, but not limited to, appetizers, entrees, salads, vegetables, desserts and beverages other than alcoholic. There shall also be an adequate and sanitary kitchen and dining equipment with an approved storage space where alcoholic liquor may be kept.
- 5.2 The dinner theater licensee shall supply to the Commissioner the hours during which the licensee shall permit consumption of alcoholic beverages on its premises. In no event shall the dinner theater licensee allow consumption of alcoholic liquors on its premises at times other than in conjunction with meals served at the theatrical performances and during intermissions or at any other time which is not permitted by the Delaware Liquor Control Act. The hours of consumption of alcoholic liquors shall first be approved by the Commissioner before the issuance of a license.
- 5.3 Persons not of sufficient age to consume alcoholic liquors shall be allowed and permitted to be on the licensed premises of the dinner theater so long as all of the other provisions of the Liquor Control Act and Rules of this Commissioner are being complied with.

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

19 DE Reg. 858 (03/01/16) (Final)