

RULE NUMBER 1

A RULE GOVERNING THE SIGNING OF CHECKS, LICENSES, PERMITS, INVOICES AND VOUCHERS

All licenses and permits issued by the Commissioner for the manufacture, importation, sale, storage, possession, or transportation of alcoholic liquors, and all permits, invoices, checks drawn on funds of the Commissioner, payroll and other vouchers necessary to the transaction of business by the Commissioner shall be signed as required by law by the Commissioner, or in the absence of the Commissioner, by the Deputy Commissioner.

RULE NUMBER 2

PROHIBITED TRADE PRACTICES

I. Purpose

The Commissioner has concluded that reasonable marketing techniques are acceptable in the liquor industry.

Promotional activities which tend to encourage excessive and/or uncontrollable consumption of liquor resulting in increased risk to consumers and the general public are not acceptable. Activities which impact adversely on open competition within the industry are not acceptable. This rule seeks to prohibit all such acts.

II. Authority

~~The Delaware Alcoholic Beverage Control Commissioner is authorized pursuant to 4 Del. C., § 304(a)(2), to establish by rules and regulations an effective control of the manufacture, sale, dispensing, distribution, and importation of alcoholic liquor within and into this state. Such rules, however, may not be inconsistent with Title 4 of the Delaware Code or any other law of the State. This rule, therefore, implements and clarifies the grant of authority to the Commissioner contained in 4 Del. C., § 304(a)(2), to control the time, place, and manner in which alcoholic liquor shall be sold or dispensed by establishing uniform procedures for the advertising and promotion of alcoholic liquor.~~

III. Applicability

This rule shall govern the trade practices of all retail licenses, on-premise licenses, importer licenses, and supplier licenses issued by the Delaware Alcoholic Beverage Control Commissioner.

IV. Prohibited Practices

A. Retail Licensees

1. On-Premise License

No establishment licensed to sell alcoholic beverages for consumption on the premises where sold shall engage in any trade practice which can reasonably be expected to cause, encourage, or induce a consumer to purchase, receive, or consume alcoholic beverages in excessive amounts or at an unduly rapid rate and shall include, but not be limited to, the following:

- a. Giving alcoholic beverages in any form, either directly or indirectly, to any individual, organization, group or other entity except that a licensee may "comp" alcohol to compensate a patron for a failure to provide satisfactory service or product and may

donate alcohol to a not-for-profit entity that has received a Gathering license from the Commissioner.

- b. Giving any form of cash (medium of exchange), either directly or indirectly, to any individual, organization, group, or other entity, ~~except for bona fide contributions to not for profit entities and provided that~~ if such contribution is in no way conditional upon the purchase and/or consumption of alcoholic beverages.
- c. Selling alcoholic beverages at a price which is less than the seller's cost.
- d. ~~d.~~ Promoting, sponsoring, conducting, or participating in any event that is in any way conditional upon or involves consumption of alcoholic beverages.
- e. Offering or selling two (2) or more drinks for the regular price of one.
- f. Extending credit except as provided in Rule 56.
- g. Unlimited consumption of alcoholic beverages for a set price. However, caterers, as defined in 4 Del. C., §101 (7), and private functions in which the host/hostess pays a set price and which are conducted by invitation on a licensed premises are excluded from this prohibition.
- h. Delivering alcoholic beverages to any person who is or who appears to be intoxicated.
- i. Soliciting or receiving any items which an importer or supplier licensee is prohibited under Section III-V-B-1-a or III-V-B-1-b from giving to a retailer.
- j. Open bars are generally not permitted pursuant to the provisions of III-V-A-1-g above; however, the Commissioner may grant a variance to this section provided that the licensee meets the criteria that follows:

(1) The licensee must submit a written request to the Commissioner for a variance in this rule for a specific, planned event.

(2) Admission to the event must be by ticket only and include the place, time, date, and hours of the event.

(3) The request for a variance must be received by the Commissioner six (6) weeks in advance of the planned event.

(4) Food of adequate variety and quantity must be offered as part of the package price for a ticket to the event.

(5) Non-alcoholic beverages must be available and offered as part of the package price of a ticket for the event.

(6) The tickets used for each event must contain a statement that the licensee retains the right to discontinue service of alcoholic liquor as required by state law and Delaware Alcoholic Beverage Control Commissioner rules.

(7) All servers of alcoholic liquor and staff at the event must be trained in compliance with the Delaware mandatory server training law.

(8) Adequate staff must be on site to monitor drinking by patrons and to take action consistent with state law and Commissioner rules.

(9) The approval for an open bar by the Commissioner does not authorize the unlimited consumption of alcoholic beverages for a set price. Licensees, therefore, are still required to comply with all other applicable rules and laws, including the prohibition on serving a patron who is intoxicated or appears to be intoxicated and to refuse service of alcoholic liquor to underage patrons.

k. Engaging in any restraint of trade or commerce of this State as prohibited by 6 Del.C. §2103.

2. Off-Premise License

No establishment licensed to sell alcoholic beverages for consumption not on the premise where sold shall engage in any trade practice which can reasonably be expected to cause, encourage, or induce a consumer to purchase, receive, or consume alcoholic beverages in excessive amounts or at any unduly rapid rate and shall include, but not be limited to, the following:

a. Giving alcoholic beverages in any form, either directly or indirectly, to any individual, organization, group, or other entity, except that wine tasting on those premises properly licensed for such is permitted in accordance with established regulations and compensating a customer for product purchased which is not satisfactory. Further it is permissible for a retailer to donate alcohol to a not-for-profit entity that has obtained a Gathering license from the Commissioner.

b. Selling alcoholic beverages at a price which is less than the seller's cost.

c. Promoting, sponsoring, conducting, or participating in any event in which any gift, prize, service, or other gratuity is received by any consumer and is in any way conditional upon or involves consumption of alcoholic beverages.

d. Extending credit except as provided in Rule 56.

e. Delivering alcoholic beverages to any person who is or who appears to be intoxicated.

f. Soliciting or receiving any items which an importer licensee is prohibited under Section III-V-B-1-a or III-V-B-1-b from giving to a retailer.

g. Engaging in any restraint of trade or commerce of this State as prohibited by 6 Del.C. §2103.

B. Importer Licensees

1. No importer shall engage in any trade practice which can reasonably be expected to injure any retailer through discriminatory practices, nor shall any importer engage in any trade practices which can reasonably be expected to cause, encourage, or induce a consumer to purchase, receive, or consume alcoholic beverages in excessive amounts or at any unduly rapid rate and shall include, but not be limited to, the following:

a. Giving alcoholic beverages in any form, either directly or indirectly, to any individual, organization, group, or other entity except that an importer may donate alcoholic beverages to a not-for-profit entity who has obtained a Gathering license from the Commissioner.

b. Giving any form of cash (medium of exchange) either directly or indirectly, to any individual, organization, etc. except for bona fide contributions to not for profit entities and provided that such contribution is in no way conditional upon the purchase and/or consumption of alcoholic beverages.

c. Requiring any retailer to take and dispose of a certain quota of any alcoholic beverages.

d. Requiring that a retailer purchase one product in order to purchase another or requiring that one or more products may be purchased only in combinations with other products.

e. Engaging in any restraint of trade or commerce of this State as prohibited by 6 Del.C. §2103.

2. The granting of quantity discounts by wholesalers to retailers shall not be considered an unfair trade practice provided that the wholesaler and retailer comply with the provisions of Rule 29.

C. Supplier Licensees

1. No supplier shall engage in any trade practice which can reasonably be expected to injure any retailer, importer, or other supplier through discriminatory practices, nor shall any supplier engage in any trade practices which can reasonably be expected to cause, encourage, or induce a consumer to purchase, receive, or consume alcoholic beverages in excessive amounts or at an unduly rapid rate and shall include, but not be limited to, the following:

a. Any practice which is not permitted by the Federal Alcohol Administration Act

b. Engaging in any restraint of trade or commerce of this State as prohibited by 6 Del.C. §2103.

V. Severability

~~If any part of this rule is held to be unconstitutional or otherwise contrary to law, then it shall be severed and the remaining portions shall remain in full force and effect.~~

~~VI. Effective Date~~

~~The effective date of this rule shall be June 1, 1992.~~

RULE NUMBER 2.1

ITEMS AUTHORIZED FOR SALE IN LICENSED RETAIL PACKAGE STORES

1. The following items may be offered for sale in package stores as complementary to the sale of alcoholic beverages: mixers, ice, sodas, cigarettes cigars or other tobacco products in packs sealed by the manufacturer, lottery tickets, money orders and pre-packaged "snack" food items which meet the following criteria:

1.1. Sold to consumer in package/container as received by licensee.

1.2. Food items, including cheese and dairy products may not be cooked, ~~refrigerated~~ or offered as a loose item, unwrapped or repackaged.

1.3. Dairy items, breads and, meats, ~~cheeses and other food items~~ are prohibited from being sold ~~excluded to the extent of limitations described in criterion 1.2, above.~~

1.4. The sale of insulated single container covers which serve to keep a beverage at a cool temperature is or a cooler are permitted. ~~The sale of those coolers which are used to hold foods and/or multiple unit containers of packaged liquid products is prohibited.~~

1.5. Area assigned to display of these items is limited to the greater of 20 square feet or five (5%) percent of their total floor space, exclusive of display of ice, mixers and sodas.

2. Variance:

The holder of a license to sell alcoholic beverages in a package store for off-premises consumption may apply, in writing, to the Commissioner for a variance in any of the requirements of this Rule for good cause shown, provided that such variance does not violate any provisions of the Liquor Control Act.

~~3. Severability:~~

~~If any provision of this Rule shall be declared invalid, the remaining portions of the Rule shall remain valid and effective.~~

~~4. Effective Date:~~

~~APPROVED AND EFFECTIVE THIS 20th day of March, 1997.~~

RULE NUMBER 3

A RULE REQUIRING PRIOR APPROVAL BY THE COMMISSIONER OF
CHANGES IN OWNERSHIP, OFFICERS, OR DIRECTORS,
FINANCIAL INTEREST, OR LEASE

As authorized by law, the Commissioner may refuse approval of changes in the ownership, officers or directors, financial interest, or lease in connection with any license. For this purpose, no such change shall be implemented until reported to and approved by the Commissioner in the following manner:

A. Changes of ownership (no publication is required)

1. Entire Change:

Whenever the entire ownership of a license of a licensee is being changed, the

following shall be filed with the Commissioner on behalf of the new owner or owners:

- a. An application.
- b. A financial statement of the proposed licensee.
- c. Personal financial statements of all individuals, partners, or stockholders holding at least 10 percent or more of the corporate stock.
- d. Notarized statements in the form prepared by the Commissioner, Form (A-2) signed by all individuals who after the change is made, will have an ownership interest directly or otherwise with the criminal record of each. However, if the corporation or club is listed on a stock exchange or traded over the counter, or is the holder of a multiple activity club, the criminal history of individual stockholders, officers or directors shall not be submitted, but instead an affidavit completed by each giving permission to the Commissioner to request the criminal history from the proper police department.
- e. Copy of the agreement of terms of the sale or other exchange of financial interest, including stock distribution.
- f. Deposit of ~~\$1,000~~500 application process fee [4 Del. Code, Sec. 544(x)].
- g. Minutes of meeting establishing officers and/or directors, copies of stock certificates and/or any other corporate documentary information as the Commissioner deems necessary.
- h. Certification from the State Tax Division that all obligations regarding the applicant are current.
- i. ~~Certified~~ copy of certificate of incorporation, if applying as a corporation, or proof of partnership agreement explaining interest and profit/loss distribution.
- j. Letter of approval from the licensee from whom the license is to be transferred.
- k. Lease, if the premises is not owned by the applicant; or copy of deed if applicant owns the premises.
- l. Floor plan containing elevation, including dimensions of all rooms and seating arrangement of entire premises.

2. Partial Change.

Whenever only part of the ownership of a license or licensee is being changed, the following shall be filed with the Commissioner on behalf of the new owner or owners.

- a. An application.
- b. A financial statement of the licensee as of the time after the change is made.
- c. Personal financial statement of the new applicant or partners.
- d. Notarized statements in the form prepared by the Commissioner (Form A-2) signed by all individuals who, after the change is made, will have an ownership interest, directly or otherwise, including criminal record.
- e. Copy of the agreement of terms of the sale or other exchange of financial interest, including stock distribution and consideration given.
- f. If a corporation or club, a statement consenting to the change in ownership signed and sealed by the president and secretary currently approved by the Commissioner. A partnership shall submit copy of change in original agreement.
- g. Deposit of ~~\$1,000~~500 application process fee [4 Del. Code, Section 554 (x)], but this fee shall not apply to applications for change of officers, directors or stockholders of a corporate licensee if there is no change in the majority of stockholders or majority of directors.

B. Change of ownership of corporation or club solely through the sale of shares of stock by stockholders:

When a corporation or club is involved and the change of ownership is being made solely through the sale or exchange of the shares of stock by stockholders, the corporation or club and the stockholders ~~shall comply with paragraph A.2. above and need not file sub-paragraphs i through m of paragraph A.1. above except the corporation or club shall file a statement consenting to the~~

change in ownership signed and sealed by the president and secretary currently approved by the Commissioner.

C. Changes in officers and directors of a corporation or club when sales of corporate stock are not involved.

Persons elected as officers and directors shall each submit to the Commissioner, within thirty (30) days of the election, a notarized statement in the form prepared by the Commissioner (Form A-2), and the corporation or club to which they have been elected shall submit in writing to the Commissioner within seven (7) days after the election the names, resident addresses, and offices held of the new officers and directors. If the Commissioner desires further documentation, the licensee may be required to furnish such other records or statements requested by the Commissioner. Any new officer or director is not qualified to act as such in matters pertaining to the Rules of this Commissioner and the Liquor Control Act until approved by this Commissioner.

D. Changes in Financial Interest.

No persons shall obtain a financial interest of any kind, other than as owner or stockholder or club member reported pursuant to this rule, in a license or license holder without previously submitting full details to the Commissioner; provided, however, that such requirement shall not be construed to apply to loans made to a licensee or a license holder which do not involve repayment based on the volume of business or a percentage of profits of the licensee or license holder.

E. Changes in Lease.

No change shall be made in a lease as to the parties, as to any of its terms or conditions, or to create or modify a rental based upon the license holder's volume of business or profits without first being submitted to the Commissioner, except that any change in the amount of rent (when there is no change in the method of computing rent) need not be submitted to the Commissioner.

F. Exceptions:

1. The requirements of this Rule shall not apply to corporations or clubs which are listed on a recognized stock exchange or have stock which is traded over-the-counter, unless any such corporation or club changes all of its stock ownership. However, all corporations and clubs which are listed on a recognized stock exchange or have stock which is traded over-the-counter shall be required to submit an A-2 form and affidavit as provided in subsection A.l.d. of this Rule on behalf of the corporate or club officer responsible for the operation of the alcoholic beverage service for which the license was procured. Additionally, a list of all officers and directors must be submitted at each license renewal.

2. If a corporation or club not excluded under F.1. of this section changes any class of its stock ownership by more than 25 percent during the effective year of the license as a result by the acquisition of stock by new persons, then all of the applicable requirements of this Rule shall apply. However, if a corporation or club, not excluded under F.1. of this paragraph, changes any class of stock ownership by 25 percent or less during the effective year of the license as a result of the acquisition of stock by new persons, the only requirements are notification of the stock change, which shall be reported by the corporation or club in writing to the Commissioner within seven (7) days after such stock transfer together with a copy of the terms of the sale or other exchange of financial interest, including stock distribution and consideration given, and submission within thirty (30) days thereafter by each new stockholder of the notarized statement in the form prepared by the Commissioner (Form A-2) and copies of the stock certificates.

3. If one or more stockholders of a corporation or club, not excluded under F.1. of this section, transfers himself of all or any part of his stock ownership back to the corporation or to any of the other Commissioner approved stockholders, the corporation or club shall notify the Commissioner of the stock change within seven (7) days and shall submit a copy of the terms of the

agreement of sale or transfer including stock distribution and consideration given along with copies of stock certificates.

4. The requirements of this Rule shall not apply to holders of multiple activity club licenses. However, all multiple activity clubs shall be required to submit an A-2 form and accompanying affidavit as provided in subsection A.1.d. of the Rule on behalf of the club officer responsible for the operation of the alcoholic beverage service for which the license was procured. Additionally, a list of all officers and directors must be submitted at each license renewal.

5. If the license is held by tenants by the entirety and one spouse dies, the surviving spouse need not comply with the above provision of A.2. of this Rule but shall make request to the Commissioner for change in the license for its issuance to the survivor and at that time submit a death certificate.

G. Arrests and/or Convictions.

Any arrest and/or conviction of an approved licensee, member of a club, officer, director or stockholder must be submitted to the Commissioner within seven (7) days indicating the date, charge and disposition.

H. Commissioner Approval or Disapproval.

The Commissioner may disapprove for cause as defined, but not limited to 4 Del. Code, Sec. 543 (a) through (f) any new individuals, officers, directors, partners, stockholders, leases, or debts in connection with a license. All submissions made to the Commissioner in compliance with this Rule shall be approved or disapproved in writing mailed to the license holder or applicant making the submission within sixty (60) days after they are received by the Commissioner.

~~I. Severability.~~

~~If any provision of this rule shall be declared invalid, the remaining portions of the Rule shall remain valid and effective.~~

~~J. Effective Date:~~

~~Approved and effective on December 18, 1996.~~

RULE NUMBER 4

A RULE REQUIRING CERTAIN INFORMATION BY PERSONS DESIRING TO MAKE APPLICATION FOR A LICENSE TO SELL ALCOHOLIC LIQUOR

Any person proposing to make application for a license to sell alcoholic liquor shall first obtain from and submit to the Commissioner a form requesting such permission together with a certification from the appropriate governmental authorities that the location and building for which a license will be applied conforms with zoning ordinances allowing the sale of alcoholic liquor and with building ordinances.

~~Any person proposing to make application to sell alcoholic liquor in a package store located in a 15-acre shopping center must in addition to the above submission file a certified copy of an up-to-date plot plan prepared by a professional land surveyor substantiating the size of the shopping center. The plot plan must be filed with the Commissioner within 90 days of its preparation.~~

~~Upon receipt of these documents, the applicant will be furnished appropriate application forms along with advertising and instructions for their completion and submission to the Commissioner.~~

~~EFFECTIVE DATE: This rule shall be effective May 1, 1985.~~

RULE NUMBER 5

~~A RULE SHOWING THE METHOD TO BE FOLLOWED IN THE
PURCHASE OF WINE FOR SACRAMENTAL PURPOSES~~

REPEALED

~~EFFECTIVE: May 1, 1986~~

RULE NUMBER 6

~~A RULE TO GOVERN THE MANUFACTURE AND STORAGE OF WINE
MADE BY AN INDIVIDUAL FOR CONSUMPTION IN HIS OWN HOME.~~

~~REPEALED~~

~~EFFECTIVE: October 4, 1973~~

RULE NUMBER 7

A RULE REQUIRING PERSONS BETWEEN THE AGES OF
16 AND 18 TO SECURE A WORK PERMIT TO BE EMPLOYED
BY AN ON-PREMISES LICENSEE

A. No licensee shall employ, or allow to be employed on its licensed premises a person under the age of twenty-one, except that a hotel, restaurant, club or boat with authorized dining facilities, race track licensee, dinner theater, caterer, or bowling alley, may employ a person under the age of nineteen who has been issued a valid work permit under this rule or is employed in a capacity unrelated to the selling, serving, dispensing or handling of alcoholic liquor without a permit from the Commissioner, and that the on-premises as listed above may employ a person nineteen years of age or older to serve alcoholic liquors to its patrons without a permit from the Commissioner. A person employed, or allowed to work in a kitchen, dining room, or any room where alcoholic liquor is sold, served, dispensed, or consumed, is employed in a capacity related to the handling of alcoholic liquor. The permit shall be available on the premises of the licensee for inspection at all times during the employment of the minor.

B. Any person between the ages of sixteen and eighteen, unless excepted by the above provisions of this Rule, who desires to be employed or allowed to be employed on a licensed premises, by a licensee, in any capacity on a regular, part time, or engagement basis, with or without compensation must first apply and, obtain a work permit from this Commissioner. Persons sixteen and seventeen years of age must first meet the requirements of the Department of Labor and Industrial Relations, and present eligibility slips and approval of the Department of Labor (these permits are obtained from the school attended, district wherein the person resides or the Department of Labor). The Commissioner may consider, among other factors, the following:

1. The applicant's character and maturity.
2. The applicant's prior police record. No permit shall be issued to a person who has been convicted of any felony, sex offense, drug offense, or law concerning alcoholic beverages,

Sworn to and subscribed before me
this ____ day of _____, 20__.

Signature of Applicant

I. The Commissioner's work permit is to be obtained by employee and given to employer at time of commencing work, who shall keep it as long as employee remains working at this establishment after which the permit is to be surrendered to the Delaware Alcoholic Beverage Control Commissioner by the employer. In the event employee secures work at another establishment, a new permit shall be applied for and secured from the Delaware Alcoholic Beverage Control Commissioner.

J. Employees under the age of nineteen years shall not receive orders for, serve alcoholic liquors, or be involved in the sale of alcoholic liquors in any way. This prohibition shall not apply to persons nineteen years ~~e—~~of age or older who are employed in an on-premises as listed in A.

K. Employees, not of the legal drinking age, shall not work in any capacity behind a counter at which alcoholic liquors are located, may not mix alcoholic beverage drinks or draw beer from its dispenser.

~~L. Effective Date. The effective date of this rule shall be on July 1, 1984.~~

RULE NUMBER 7.1

EMPLOYMENT OF SONS OR DAUGHTERS OF OWNERS OF PERSONS WHO HAVE REACHED THE AGE OF 18 YEARS IN PACKAGE STORES IN STORES

a. ~~Purpose and Scope. This rule implements the provisions of 4 Del. C. §904(m), 63 Del. L. Chap. 95 (approved July 7, 1981).~~

b. ~~Statute. Section 904(m), Title 4, Delaware Code, provides:~~

~~(m) Nothing in this Section shall prevent the employment in a store by a retailer of his son or daughter who has reached the age of 18 years, under such conditions as the Commissioner may by rule prescribe; provided, however, that no such minor shall sell or serve alcoholic liquor.~~

c. Definitions.

~~(1) The term "son or daughter" means the natural, adoptive, step, or foster child of a retailer, or a child under the legal guardianship of a retailer.~~

~~(2) "Retailer" means the person permitted to sell alcoholic liquors in a store in the State, not for consumption on the premises. 4 Del. C. 4 §101(2735) (1978 Suppl.). A natural person who is a sole proprietor, general partner, or owner of 25 percent or more of the issued and outstanding stock of a package store shall be considered as a "person" within the meaning of §101(2731), for purposes of this Rule.~~

~~(3) The term "sell or serve alcoholic liquors" means acting in any manner toward a consumer which encourages, induces, or fosters the sale of any goods, whether or not they contain alcoholic liquor. The term includes, but is not limited to, advising consumers on the selection of goods, delivery of goods to consumers before payment, and ringing up sales. The term does not include stocking shelves, affixing price labels, and other acts not requiring direct contact with consumers, nor does it include assisting consumers in carrying parcels from the store. A minor shall not at any~~

time be permitted unaccompanied access to the premises.

(4) The term "store" means an establishment licensed by the Commissioner only for the sale of alcoholic liquors for consumption off of the premises where sold.

d. Permits Required; Standards.

(1) No retailer shall employ ~~his son or daughter~~ a person between the ages of 18 and 21 in his~~their~~ store unless the ~~son or daughter~~ person between the ages of 18 and 21 shall first have been approved by the Commissioner and received a permit to work in the store.

(2) The permit required by subparagraph (1) shall be issued upon application showing that:

(a) The applicant is 18 years of age or older;

~~(b) The applicant is the son or daughter of the retailer in whose store he or she will be employed;~~

~~(c)~~ The applicant is a mature and responsible person; and

~~(cd)~~ The applicant has not been the subject of any judicial or administrative proceedings by any federal, state or local governmental agency involving:

(1) Violations of laws or regulations respecting controlled substances;

(2) Violations of laws or regulations respecting alcoholic liquors; or

(3) Violations of criminal statutes carrying a penalty of incarceration of more than 1 year, whether or not a sentence of imprisonment was actually imposed.

(3) Permits shall continue in full force and effect until the holder attains the age of 21~~0~~ years, unless sooner revoked.

e. Application for Permit; Contents; Procedure.

(1) Any person ~~who is the son or daughter of a retailer~~ who has reached the age of 18 years may apply to the Commissioner for a permit to work in a store ~~owned by his or her parent.~~

(2) The application shall state:

(a) The name, address, ~~telephone number, Social Security number~~ and date of birth of the applicant;

~~(b) The name, address and telephone number of the applicant's parents;~~

~~(c)~~ The name and address of the store where the applicant will be employed;

~~(cd)~~ The name and address of the high school most recently attended by the applicant;

~~(de)~~ Any and all arrest and criminal or juvenile charges against the applicant, and their disposition, and all school disciplinary actions involving the applicant;

~~(ef)~~ The names, addresses and telephone numbers of 3 character references, who shall not be related to the applicant.

(3) The application shall be signed by the applicant, at least one and the parent and an approved owner of the store ~~having an ownership interest in the licensed establishment.~~

f. Approval of Application. The ~~Executive Secretary~~ Deputy Commissioner may approve or disapprove applications. An applicant may appeal disapproval to the ~~full~~ Commissioner.

g. Violations. A violation of this rule shall, in addition to any other penalty provided by the Liquor Control Act or these Rules, be punished by revocation of the applicant's permit, and such permit holder shall not be permitted to be employed thereafter under the provisions of this Rule or Rule 7.

h. Effective Date. ~~This Rule shall be effective August 30, 1981.~~

RULE NUMBER 8

A RULE GOVERNING TAXES PAID ON WINE, CIDER, SPIRITS, AND BEER ENTERING THE STATE OF DELAWARE

I. PURPOSE AND SCOPE:

- ~~A. To have a uniform and accountable information system from Delaware importers and out-of-state suppliers in regard to wine, spirits, and beer.~~
- ~~B. To include Bond Alcohol in with the reporting and tax payment procedures for all wine, cider, spirits, and beer.~~
- ~~C. To clarify the procedure for Delaware Importers to report and take tax credits for transfers, returns, breakage and sales to federal instrumentalities.~~
- ~~D. To clarify the procedure for bringing alcoholic liquor into the state of Delaware other than through regularly licensed importers.~~

II. DEFINITIONS:

- A. PURCHASES: Means when the merchandise has been unloaded on the premises of the licensee and receipt acknowledged by signing the waybill.
- B. PORT OF ENTRY: Means the initial place, airport, common carrierUPS terminal, or supply point for final distribution and delivery to the individual's home within Delaware.
- C. IMPORTER: Means wholesaler.
- D. COMMISSIONER: Means the Delaware Alcoholic Beverage Control Commissioner or Designee, the Division of Revenue.
- E. WINE, CIDER, SPIRITS, BEER: Means all alcoholic liquor to include bond alcohol as well as non-bond alcohol.

III. REPORTING PROCEDURES FOR THE SHIPMENT OF WINE, CIDER, SPIRITS, AND BEER INTO THE STATE OF DELAWARE:

A. Licensed Importers:

1. Each licensed importer, when placing an order with a supplier, shall mail or electronically transmit directly to the supplier a true copy of the numbered purchase order showing the quantity, variety and size of container for each alcoholic liquor ordered. These purchase orders are to be provided on demand when requested by the Commissioner.
2. Each licensed importer, shall record for the Commissioner by the close of business on the last calendar day of the month all purchases of wines, cider, spirits, and beer. This report shall show the importer purchase order number, supplier invoice number, amount of cases, exact gallonage for wine, cider, and spirits, and exact barrelage for beer. Each page shall be sub-totaled, except the last page, which shall show a grand total. This report shall be submitted to the Commissioner by the last business day following the last calendar day of the reporting month, except for the month of May. The May report will be due by the 15th of June.
3. If there is a variance between the supplier sales report in B-1 below and the importer purchases report in III-A-2 above, a full explanation will be required from both the supplier and the importer and a fine can be imposed on that supplier and/or importer.

B. Licensed out-of-state suppliers:

1. Each licensed supplier shall record for the Commissioner by the close of business on the last calendar day of each month all shipments of wine, cider, spirits, and beer into Delaware. This report shall be submitted to the Commissioner by the fifteenth day following the last calendar day of the reporting month. This report shall show the supplier invoice number, the importer

purchase order number, date shipment was made or sent, number of cases and/or barrels and total amount in gallons or in barrelage, or both. This report shall have attached any credit invoices and/or memos issued for returns or transfers relating to the Delaware importer for that month. This information must be in the same form as stated above in this paragraph. A fine can be imposed on that supplier for failure to send any credit invoices and/or memos. If there were not any shipments made to Delaware, then the report must state "NO SHIPMENTS FOR THE MONTH OF". If the supplier does not send the monthly report, a fine can be imposed by the Commissioner on that supplier. If the purchase order number does not appear on the report or correspond with the importer purchase order number, then a fine can be imposed on that supplier and/or the importer.

2. Although it is not required that sales invoices be sent with the supplier's monthly report, sales invoices are to be provided on demand when requested by the Commissioner.

III.V. PROCEDURES FOR TAX PAYMENTS AND TAX CREDITS:

A. Tax Payments Due From Importers:

1. Tax due the state of Delaware on the purchases reported in Paragraph III-A-2 above, shall be verified, computed, and paid by cash, money order, or check by the last business day of the calendar month in which it is required to be reported except for the month of May. The May tax payment must be paid by the fifteenth day of June, and if the date falls on a Saturday or Sunday, the next business day of the calendar month.

2. Any beer, spirits, wines or cider on which the Delaware tax has not been paid in accordance with this rule shall be seized by DATEthe Commissioner.

~~3. To ensure payment of taxes, each licensed importer shall, on July 1 of each year, post a surety bond in the amount of \$20,000.00~~

B. Tax Credits:

Tax credits for transfers, returns, breakage, and sales to federal instrumentalities must be taken in the month that they occur. Claims for tax credits must be presented to the Commissioner on "DELAWARE IMPORTERS TAX CREDIT REPORT", and must include copies of invoices or other documentation verifying each claimed credit. These reports must be filed with the "CERTIFIED STATEMENT OF WINES, CIDER, SPIRITS, AND BEER PURCHASES REPORT" due on the last business day following the last calendar day of the reporting month. No pre-approval is required in order to take a credit against taxes due, provided that the importer fully complies with the above reporting requirements and stipulations set forth below:

1. Transfers and Returns: The Delaware importer will list each transfer/return on the monthly Tax Credit Report and attach an invoice showing the brand, size, type and the amount of alcoholic liquor shipped in gallons or barrelage.

2. Breakage: Tax credit on breakage requires a verification memorandum from the importer to the common carrier, which must be submitted with the monthly Tax Credit Report. No credit will be allowed on less than full case lots; and, should continuous breakage occur, a penalty equal to 150 percent of the importers cost shall be levied against the supplier. No tax credit shall be allowed for post delivery breakage.

3. Sales of Beer to Federal Instrumentalities: The Delaware importer will list all sales of beer to an instrumentality of the Armed Forces of the United States on the monthly Tax Credit Report. Copies of invoices must be attached showing the brand, size, type and the amount in gallons or barrelage of beer shipped.

All tax credits are subject to verification by the Commissioner, and will be disallowed if the proper documentation is not submitted with the monthly "DELAWARE IMPORTERS TAX CREDIT REPORT".

V. AN INDIVIDUAL BRINGING ALCOHOLIC BEVERAGES INTO DELAWARE:

~~Any individual wishing to bring into the state of Delaware alcoholic liquor which is not available through regularly licensed importers must:~~

~~A. Notify and receive approval from the Commissioner a letter of intent, and identifying the "Port of Entry", date of arrival and cost.~~

~~B. Ship by common carrier to a "Port of Entry". The common carrier must have a bill of lading with type of items, size, brands and amounts on it.~~

~~C. Notify the Commissioner that the shipment of alcoholic liquor has arrived and have an agent from the Alcoholic Beverage Control Commissioner inspect, validate, and approve said merchandise.~~

~~D. Pay the Delaware state tax and 25% enforcement fee which will be computed on the value of the alcoholic liquor. After making payment, the consignee will receive two copies of the realized purchase order.~~

VI. EXCEPTIONS:

~~A. This rule shall parallel federal regulations in that U.S. citizens are allowed to bring into the state of Delaware up to one liter per day of alcoholic liquor, days not cumulative.~~

~~B. Any adult non-resident who is in transit and shall stay not more than 72 hours in Delaware is allowed to have tax free four liters of alcoholic liquor.~~

~~C. Any adult non-resident who shall stay longer than 72 hours in the state of Delaware is allowed to bring in up to one liter of alcoholic liquor.~~

~~D. Diplomatic, consular, and other privileged personnel have the privilege of importing alcoholic liquor free of tax.~~

IVII. A GUIDELINE FOR METRIC GALLONAGE CONVERSION TABLES:

~~A. To ensure that all liquor excise taxes are determined in a uniform manner, the use of a standard conversion table for commonly used container sizes of spirits and wines based upon the conversion factors used by the U.S. Department of Treasury is to be used.~~

~~B. The official factor for spirits is one liter = .26417 gallons.~~

~~C. The Delaware tax in 4 Del. C., §581, for beer provides a per barrel (31 U.S. gallons) tax computation.~~

VIII. EFFECTIVE DATE:

~~The effective date of this rule shall be February 1, 1997.~~

RULE NUMBER 8.1

A RULE GOVERNING THE SHIPMENT AND STORAGE OF ALCOHOLIC LIQUORS BY SUPPLIERS AND WHOLESALERS

I. History

~~This rule was enacted in its original form on September 1, 1983, and established guidelines for the importation, delivery, and interstate shipment of alcoholic liquor by licensed importers. Prior to 1983, the content of this rule had been part of Rule 8, enacted by the Commissioner on February 1, 1960. On February 1, 1990, the Commissioner amended Rule 8.1 by removing the restriction on the use of separate business entities, owned by one or more licensed importers, to store and transport alcoholic liquor for licensed importers.~~

~~Since November 1965, the hours during which importers can deliver alcoholic liquor have been governed by Rule 10. In order to consolidate the rules regulating importers, the provisions of Rule 10 have been merged into the current revision of Rule 8.1, thereby allowing the Commissioner to repeal the present Rule 10 dated February 2, 1967.~~

II. Purpose

This amended rule is promulgated, in part, pursuant to the Commissioner's authority to regulate time, place, and manner in which alcoholic liquor is sold or dispensed, and provides regulations for the marking of vehicles used by licensed importers for the transportation of alcoholic liquor. It also establishes standards for the distribution of alcoholic liquor by importers to establishments licensed by the Commissioner for the sale of alcoholic liquor. ~~4 Del. C., Section 304 (A)(1)(2)~~

In addition, the Commissioner has found, pursuant to the Commissioner's authority, to promulgate rules and regulations necessary for the enforcement and furtherance of the objectives of 4 Del. C., Section 501, that all alcoholic liquor imported into this state must be unloaded and physically stored for a reasonable period of time to allow for enforcement of the regulatory provisions of the Liquor Control Act and Commissioner Rules. ~~4 Del. C., Section 501(e)~~. This rule, therefore, implements and clarifies 4 Del. C., Section 501 (f) as to what period of time alcoholic liquors must be physically stored after it is unloaded in order to comply with 4 Del. C., Section 501 (f) and all other provisions of Title 4, the Liquor Control Act, and the Commissioner Rules and Regulations promulgated thereto.

Specifically, the Commissioner has found that seventy-two (72) hours is a reasonable "at-rest" period of time to enable the Commissioner DATE to carry out its statutory duties to inspect and inventory licensed Delaware warehouses, pursuant to 4 Del. C., Section 304 (A) (2) (3) and (5) and 4 Del. C., Section 581(c), which the Commissioner has found to be in furtherance of the objectives for 4 Del. C., Section 501 (f).

III. Definitions: As Used in this Rule

A. "Supplier" may be a brewery, winery, distiller, alcoholic beverage importer, or alcoholic beverage broker that sells alcoholic beverages to importers of the State of Delaware. A supplier's organization may be located within or without the State of Delaware.

B. "Importer" shall mean wholesaler and shall be located within the State of Delaware.

C. "Establishment" means any place located physically in this state where alcoholic liquor of one or more varieties is stored, sold, or used by authority of any law of this state, or where alcoholic liquor of one or more varieties is manufactured by virtue of any law of this state.

III.V. Procedures

A. Importer's vehicles, in which alcoholic beverages are shipped into and throughout Delaware, shall have painted on both of their sides the name of the importer and the words "Delaware Alcoholic Beverage Control Commissioner - License Number" (Insert the importer's license number) in letters at least two inches high, uncovered, and clearly visible.

~~B. When shipments for one or more importers are made in vehicles other than those owned by an importer licensed by the Commissioner, then both sides of the vehicle used for conveyance of alcoholic beverages to or from the importer's warehouse, shall have a sign attached bearing the words, "Delaware Alcoholic Beverage Control Commissioner License Number" (Insert the license number of each importer shipping goods on such vehicle) in letters at least two inches high, uncovered, and clearly visible.~~

~~C. Vehicles owned by suppliers in which alcoholic beverages are shipped into Delaware, need not have the name of the Commissioner or the Delaware licensed importer's license number affixed to the side of the vehicle.~~

~~C.D. Vehicles owned by all suppliers shall not be used for delivery of alcoholic beverages to retailers in the State of Delaware, except it shall not be unlawful for importers to have suppliers' trucks if:~~

~~1. The importer gives evidence of such hiring to the Commissioner.~~

~~2. Delivery shall be made under the supervision of an employee of the importer, who shall accompany the vehicle and be responsible for the delivery complying with the law and regulations of~~

~~the Commissioner. Such vehicle shall have the proper signs affixed thereto.~~

~~DE.~~ No peddling shall be allowed. Definite orders for all alcoholic beverages shipped from an importer's warehouse shall have been received from customers before the loaded vehicles leave the warehouse.

~~EF.~~ No alcoholic beverages in excess of that ordered shall be carried on the vehicles.

~~FG.~~ A statement showing the destination of each package of alcoholic beverages shall be furnished the driver and carried by ~~the driver~~him over the route.

~~GH.~~ Upon the driver's return to the warehouse, ~~the driver~~he shall sign the statement showing the alcoholic beverages have been delivered to the destination listed. This statement shall be available for inspection by the Commissioner at all times.

IV. Importers' Warehouses

A. Importers may have one or more warehouses in different locations within the State of Delaware provided proper application for such extra warehouse(s) is filed and approved by the Commissioner.

B. The person in charge of an importer's warehouse must be approved by the Commissioner.

C. All importers' warehouses used for the storage of alcoholic liquor, except public cold storage establishments, must be either owned or rented directly by the importer or a business entity in which the importer maintains complete ownership ~~or shares ownership with another licensed importer.~~ The person in charge of the importer's warehouse is to be upon the regular salary list or payroll of such importer.

D. The importer is responsible for ensuring compliance with the Liquor Control Act and Commissioner Rules at all premises licensed in its name by the Commissioner.

VI. Hours of Delivery

A. Delivery trucks and other vehicles of an importer, licensed by the Commissioner for the delivery of alcoholic liquor to licensed retail establishments, may leave the warehouse after ~~five~~seven o'clock in the morning on any day when deliveries of alcoholic liquors are permitted; provided, however, that no actual delivery of beer, spirits, or wine to any licensed establishment is permitted before ~~seven~~nine o'clock in the morning and no Importer may require a Retailer to accept deliveries prior to nine o'clock in the morning.

B. Delivery trucks or other vehicles may operate as late as necessary to properly deliver orders; provided the trucks or other vehicles leave the warehouse prior to five-thirty o'clock in the afternoon, other than during the period from December 10 to December 31 when the trucks or other vehicles shall be permitted to leave the warehouse prior to eight o'clock in the evening.

C. There shall be no delivery of beer, spirits, or wine on any holiday specified in Title 4, Del., ~~C.~~, ~~Chapter 7~~, Section 709 (de).

D. Deliveries of alcoholic liquor by importers, or their authorized representatives, to retail establishments, at any time not permitted by this rule is prohibited.

VII. The "At-Rest Requirement" [4 Del. C., Section 501(f)]

A. A licensed Delaware importer shall not import alcoholic liquor into the State of Delaware unless said alcoholic liquor is delivered directly from a Delaware licensed supplier by either the supplier, the importer, or common carrier to a licensed Delaware warehouse or warehouses.

B. Said licensed Delaware warehouse or warehouses must be owned, leased, or operated in accordance with Section IV. (C) of this rule.

C. All alcoholic liquor delivered to said warehouse or warehouses must be unloaded and physically stored for a period of ~~at least seventy-two (72) hours.~~ at least eighteen (18) hours

D. The minimum period of ~~seventy-two (72)~~eighteen (18) hours "at rest" is required to enable the Commissioner, or ~~its enforcement officers or agents~~DATE, to inspect and inventory

wholesale warehouses for the purpose of verifying taxes that are required to be paid on alcoholic liquor purchased by limporters, pursuant to 4 Del. C., Section 581(a) and Delaware Alcoholic Beverage Control Commissioner Rule 8.

E. Variances of the ~~eighteen~~^{seventy-two} (18~~72~~⁷²) hour storage requirement may be granted for good cause if formally made in writing and submitted to the ~~Executive Secretary of the Commissioner. The Commissioner may then ratify the Executive Secretary's grant of said variance at the next regularly scheduled Commissioner meeting.~~

VIII. Inspections and Inventories

Pursuant to 4 Del. C., Section 304 (A) (2) and (5) and 4 Del. C., Section 581 (c), ~~the Commissioner, its enforcement officers~~ DATE and ~~agents~~ the Division of Revenue may inspect the establishment of any licensed Delaware limporter and inventory any or all alcoholic liquor in the limporter's possession at any time they ~~Commissioner~~ deems reasonable and necessary to carry out ~~its~~ their statutory duties to verify the reporting and collection of taxes payable to the State of Delaware.

VIII~~X~~. Interstate Shipments

A. Every person in charge of transportation by motor vehicle, by railroad, by water vessel, by common carrier, or by any other vehicle that transports alcoholic beverages in or through the State of Delaware in an interstate shipment shall have a way bill. The carrier must have in his possession the way bill and be prepared to present it when asked.

B. The way-bill shall embody these written or printed terms:

1. The date of its issue.
2. The name and address of the consignor.
3. The name and address of the consignee.
4. A statement as to whether the goods will be delivered to a specified person or to the order of a specified person.
5. A description of the package, stating the number and contents.
6. The signature of the carrier or his duly authorized agent.

X. Severability.

~~If any provision of this Rule shall be declared invalid, the remaining portions of this Rule shall remain valid and effective.~~

XI. Effective Date

~~This Rule shall be effective on May 1, 1991.~~

RULE NUMBER 9

RULE REGARDING THE PAYMENT OF TAX

~~No person shall purchase, receive, transport or keep in his possession any alcohol, spirits, wine or beer unless the tax shall have been paid as provided by Delaware laws and Rule No. 8.~~

Effective: _____ February 1, 1960

RULE NUMBER 10

HOURS DURING WHICH IMPORTERS AND MANUFACTURERS
MAY DELIVER ALCOHOLIC LIQUOR
IN THE STATE OF DELAWARE

REPEALED

EFFECTIVE: ~~May 1, 1994~~

NOTE: Incorporated into Rule 8.1

RULE NUMBER 11

A RULE PROVIDING SPECIFICATIONS FOR STORES
AND OFF-PREMISES

Before issuance of a license ~~or renewal of license~~ to sell alcoholic liquors in a store, the premises must be approved as to conditions by the Commissioner through an inspection by the Enforcement Division DATE ~~or other employees of the Commissioner staff.~~

1. All parts of the premises must be kept clean. Cellars, basements and yards must be neat and free of rubbish.

2. If other parts of a building in which a store is located are occupied as living quarters, there shall be no doors communicating with the store unless authorized in writing by the Commissioner.

3. All parts of the rooms where alcoholic liquor is sold shall be visible from the street unless a variance is granted by the Commissioner in writing.

4. ~~An accurate clock shall be installed in the store. The dial and numbers thereon shall be of such as to be plainly visible to everyone in the store and properly located with sufficient illumination to accomplish the purpose of keeping all customers and employees informed as to the correct time.~~

5. ~~Alcoholic liquors must be neatly arranged and properly marked as to price.~~

6. ~~Adequate secure storage must be provided for stock. Empty containers shall not be stored outside the licensed premises during closed hours.~~

7. ~~Internal passages of shopping centers available to the public shall be deemed to be streets within the meaning of this rule.~~

8. ~~The standard hours of operation must be 9:00 A.M. to 1:00 A.M. unless a variance is granted by the Commissioner in writing. Licensee shall operate a minimum of ten (10) hours per day, except Sundays, unless a variance is granted in writing by the Commissioner.~~

9. The approved hours and days of operation must be posted in a conspicuous place in order that all customers may be properly informed.

10. ~~An up-to-date copy of the rules of the Commissioner and Liquor Control Act must be on the premises at all times.~~

11. Decals ~~A decal~~, purchased through the Commissioner, stating the legal drinking age in the State and another must be conspicuously displayed at each entrance to the premises. The term conspicuous, for the purpose of this rule, means that advertisements and all other postings of any type (with the exception of the warning to pregnant woman of the risk of birth defects from the consumption of alcoholic beverages, Rule 11 paragraph 12, and posting of the hours of business Rule 11, paragraph 9) may not be displaced within two feet of the decal stating the legal drinking age.

~~12. A decal, purchased through the Commissioner, warning pregnant women of the risk of birth defects from the consumption of alcoholic beverages must be conspicuously displayed at each entrance to the premises. The term conspicuous, for the purpose of this rule, means that advertisements and all other posting of any type (with the exception of the legal drinking age notice, Rule 11 paragraph 11, and the posting of business hours, Rule 11, paragraph 9) may not be displayed within two feet of the decal warning pregnant women of the risk of birth defects from the consumption of alcoholic beverages.~~

~~13 The effective date of this Rule shall be January 1, 1990.~~

RULE NUMBER 11.1

SPIRITS, WINE, AND BEER TASTINGS

1. Authority

~~This Rule implements the grant of authority to the Commissioner contained in 4 Del. C., §§ 525 and 554(ee), to issue licenses and collect licensing fees with respect to spirits, wine, and beer tasting.~~

2. Applicability

~~The Commissioner may grant a spirits, wine, and beer tasting license to any person holding a retailer license as defined by 4 Del. C., §101(354) for a biennial fee of \$150400.~~

23. Application Process

23.1. Retailer licensees may apply in writing to the Commissioner for a license to conduct spirits, wine, and beer tasting on their licensed premises.

23.2. Two copies of the establishment's floor plan must accompany the licensee's letter of request. The floor plans must clearly indicate the area to be used for tasting events and shall be submitted on size 8 1/2 x 11 inch paper.

34. License Restrictions

34.1. Pursuant to 4 Del., C., §525, spirits, wine, and beer tasting licenses may only be granted to the holder of retailer's license.

34.2. No licensee shall conduct spirits, wine, and beer tastings without a license from the Commissioner.

34.3. Spirits, wine, and beer tasting may only take place in a separate portion of a licensee's premises approved by the Commissioner where alcoholic beverages are not sold.

4.3.1.—The separate portion of the premises shall be an area designated by the Commissioner for spirits, wine, and beer tasting.

34.4. No licensee may charge for the alcoholic beverages offered for tasting or for the services involved.

34.5. The quantity of any individual spirit, wine, and beer sampled shall not exceed one (1) ounce per person for wine and beer or one-half (1/2) ounce per person for spirits.

~~4.6. Spirits offered for tasting must be 80 proof or less and beer must be a new product line in the marketplace less than 1 year.~~

~~5. Any licensee who violates the provisions of this rule shall be subject to the sanctions and penalties as provided by the Liquor Control Act and Rules of the Commissioner.~~

6. Severability

~~If any provision of this rule is declared invalid the remaining portions of the rule shall remain valid and effective.~~

~~7. Effective Date: APPROVED AND EFFECTIVE This 20TH day of March, 1997.~~

RULE NUMBER 12

STATE OF EMERGENCY

Whenever, pursuant to the Constitution and laws of the State of Delaware, the Governor or Acting Governor of this State shall declare a state of emergency, call out the organized militia or any portion or individual thereof to execute or insure obedience to law, or declare a state of martial law, in this State, or any section thereof, all licensees licensed under the Liquor Control Act of the State of Delaware and the Rules of this Commissioner, shall upon notice from the Commissioner, announced publicly or delivered personally, be required to suspend further business under the licenses issued by the Commissioner until such time as the Commissioner shall determine and so inform said licensees that the proclamation of emergency or crisis as issued by the Governor or Acting Governor has been terminated, provided that the Commissioner shall specify the geographical limit in this State or any section thereof within which area said licensee shall be suspended.

EFFECTIVE: August 20, 1970

RULE NUMBER 13

LABELING, AND STANDARDS OF IDENTITY AND STANDARDS OF FILL OF ALCOHOLIC LIQUORS

a. Purpose and Scope. This rule is intended to reduce obstacles to commerce in alcoholic liquors by adopting, to the extent possible under the Liquor Control Act, 4 Del. Code, federal laws and regulations relating to labeling, standards of identity, and standards of fill of alcoholic liquors. This rule applies to all alcoholic liquors manufactured, bottled, packaged, sold, imported, received, and stored for resale in the State of Delaware.

b. Labeling. It shall be unlawful for any person to manufacture, bottle, package, sell, import, receive, or store for resale in this State alcoholic liquors, unless such liquors are labeled in conformity with federal laws and regulations applicable to such alcoholic liquors. It shall not be necessary for a manufacturer or supplier to file with the Commissioner evidence of label approval by an agency of the United States, except upon written request by the Commissioner.

c. Standards of Identity. It shall be unlawful for any person to manufacture, bottle, package, sell, import, receive, or store for resale in this State alcoholic liquors, unless such liquors conform to the standards of identity provided by federal laws and regulations applicable to such alcoholic liquors.

d. Standards of Fill.

~~(1) It shall be unlawful for any person to manufacture, bottle, package, sell, import, receive, or possess for resale in this State alcoholic liquors, unless such liquors are bottled and packed in primary containers and cartons or cases of primary containers in conformity with federal laws and regulations applicable to such alcoholic liquors.~~

~~(2) Beer and malt beverages not required by federal law to be in metric primary containers may be manufactured, bottled, packaged, sold, imported, received, and stored for resale in any size primary container usual and customary to the brewing industry.~~

e. Effective date; Repeal of Former Rule. This rule is effective on March 27, 1982. Rule 13, effective February 2, 1967, is repealed.

Approved: February 25, 1982

RULE NUMBER 14

A RULE GOVERNING ALCOHOLIC LIQUORS RETURNED

TO THE MANUFACTURER BY THE IMPORTER

Spirits and wine upon which a tax has already been paid and beer which has been delivered to the importer and which are in the stock of a retail dealer or of an importer, may be returned to the manufacturer of the merchandise in question, through the importer who originally brought the merchandise into the state.

The tax paid upon or recorded on this will be credited to the account of the importer if the provisions hereinafter noted are complied with.

The merchandise so returned must be replaced at the time of its return by goods of the same brand, from the same manufacturer, and in the same size containers as the merchandise that is being returned, unless the same brand and same size containers are no longer stocked by the importer. In such instance, the merchandise may be returned by the importer placing with the request for return an order to the same manufacturer covering at least equal gallonage for what is being returned.

The importer desiring to make such replacement shall notify the Commissioner, DATE and the Division of Revenue explaining in detail what ~~he~~the Importer desires to do and an inspector of the Commissioner, DATE or the Division of Revenue will arrange with ~~him~~the Importer to supervise the replacement. Upon the certification of the inspector that the old merchandise has been shipped to the manufacturer and the replacement has been made, a credit of the tax on the returned goods will be applied to the account of the importer and ~~he~~the Importer in turn will make such adjustment between ~~himself~~the Importer and the retailers as may seem proper to them.

Replacements will necessarily be subject to the same tax as is ordinarily collected.

Effective: — February 1, 1960

RULE NUMBER 15

A RULE TO REGULATE THE USE OF SAMPLES FOR TASTING AND SAMPLES NOT FOR TASTING

A. Samples for Tasting

1. ~~Whenever it is necessary or desirable to procure samples of alcoholic liquor for tasting purposes prior to the issuance of an order for the goods, an importer may do so by sending a letter to the Commissioner in triplicate, stating what he desires to procure, the total quantity and the size of the separate samples. This notification should consist of an original and two carbons. The original will be retained in the office of the Commissioner, one of the carbons returned to the importer approved, and the other carbon will be used by the inspector in clearing the shipment.~~ A licensed Importer may import alcoholic beverages for marketing purposes to provide samples for tasting to the holder of a retailers' license.

2. ~~The shipments approved should have the proper sticker attached to them and upon arrival in Delaware, will be marked "Tax Free" and cleared, by, the Commissioner's inspector. The shipments of alcoholic beverages imported for tax free samplesampling purposes must not be greater in quantity than one case (3 gal.)three (3) gallons of spirits and/or three cases (3 gal.) of wine, and/or ten (2.25 gal.)two and a quarter gallons of beer, in immediate containers of 6 oz. or larger capacity. The goods may be all of one kind and size or assorted, and must be an introductory~~

~~shipment of kind not previously and commonly merchandised in Delaware.~~

~~3. Whenever it is desirable for an importer to use samples in introducing a brand of alcoholic liquor to the retail trade, such samples may not be used after the expiration of 30 days from the date on which such brand was first offered for sale in the State of Delaware, except when a brand would change from a blend to a straight, or vice versa. When a change takes place as described in the above exception, sampling may, take place for a period of 30 days after the changed product has been offered for sale in this State.~~

~~4.—Each sample shall have distinctly printed or stamped across the label thereof or on a sticker permanently affixed to the container adjacent to the label the following legend: "SAMPLE FOR TASTING -- NOT FOF RESALE" in black letters at least one-half inch in height on a white or light yellow background.~~

~~5. All seals on such bottles must be broken prior to bottle leaving importer's warehouse, provided, however, that this shall not require the breaking of seals upon or the puncturing or opening of container of beer before these are taken from such warehouse. No bottle or partial bottle is to be left with any retail licensee, his employee, or any individual, and must remain in the possession of the representative of the manufacturer or importer; provided, however, in regards to beer a single bottle or can thereof containing not more than 12 fluid ounces may be left with a licensee.~~

~~6. Paragraphs 4 and 5 above shall apply to all samples, regardless of whether or not tax has been paid.~~

B. ~~Samples Not For Tasting~~

~~1. Whenever it is desirable for an importer to show to retail licensees the type of packaging or the type of containers of alcoholic liquors being offered for sale by the importer, the importer's salesman shall be permitted to have in his possession and show to retail licensees containers of alcoholic liquors which are unopened and have no broken seals if such containers are set forth on an invoice marked "Transport" which the importer has issued to the salesman and which the salesman has on his person at the time. The original and all copies of the invoice, except for the copy in the possession of the salesman, shall be voided on the date of issuance. The original of the invoice shall be retained by the importer, and the Commissioner's customary copy shall be forwarded to the Commissioner in the same manner as other invoices. The copy of the invoice delivered to the salesman shall be returned to the importer within two weeks after its date of issuance, whereupon the importer shall void that copy and retain it. The alcoholic liquors described in the invoice shall not be charged out of the importer's inventory and shall be physically returned to the importer's inventory at the time the salesman's copy of the invoice is returned to the importer.~~

~~2. It shall be the responsibility of the importer that all the alcoholic liquors described in the invoice, while said alcoholic liquors are not physically in the importer's inventory, shall at all times be in the possession of the person, authorized by the importer, who has physical possession of the salesman's copy of the invoice.~~

EFFECTIVE: JANUARY 6, 1971

RULE NUMBER 16, AS AMENDED

A REGULATION CONCERNING THE SOLICITATION OF ORDERS FOR

ALCOHOLIC LIQUORS IN THE STATE OF DELAWARE, THE
TRANSPORTATION OF SAMPLES, AND STANDARDS PROVIDING FOR
THE ISSUANCE OF PERMITS IN CONNECTION THEREWITH.

~~Orders for the sale of alcoholic liquors may be taken and samples thereof may be transported only by an agent, sales representative, or other person sponsored by a manufacturer, importer, or distributor licensed by the Commissioner. No person shall solicit orders for alcoholic liquors or transport samples thereof unless such person has in his~~their ~~possession a permit issued to him~~them ~~by the Commissioner. Such permit shall be issued by the Commissioner: (1) upon the request of any licensed manufacturer~~ or importer or distributor~~; and (2) upon proof that the person to be licensed is employed or sponsored by said manufacturer, or importer, or distributor; and (3) upon approval by the Commissioner of the character of the applicant applying but not restricted to Section 543 (b) (3-9) of the Liquor Control Act, and the reputation of the applicants for honesty and legal behavior; and (4) upon receipt by the Commissioner of an affidavit in the following form executed by the person to be licensed:~~

STATE OF:)
 :
COUNTY OF:) SS.

I, the undersigned, having been first duly sworn according to law, depose and say as follows:.

(1) I desire to secure a license from the Delaware Alcoholic Beverage Control Commissioner under the provisions of Rule 16, ~~As Amended~~, and I make this affidavit for that purpose.

(2) I am employed or sponsored by

(3) I am familiar with the laws and Commissioner rules governing the sale and distribution of alcoholic liquors in the State of Delaware, particularly those pertaining to the method of handling samples, prohibiting the offering of inducements in any form, prohibiting tie-in sales, and those concerning credit regulations.

(4) I will not in anyway violate such laws or rules.

(5) I ~~have~~have not been convicted of a felony a sex offense, a gambling offense, or a law concerning alcoholic beverages. (If answer is in affirmative, attach arrest record.)

(Signature of Applicant)

SWORN TO AND SUBSCRIBED before me this _____ day of _____ 2019 ____.

(Notary Public)

A license issued by the Commissioner shall be signed, by the person to whom it is issued. Each license shall be valid, unless revoked by the Commissioner, as long as the license holder remains sponsored or employed by the licensed manufacturer, or importer, ~~or distributor~~.

A license may be refused or revoked for cause as set forth above by the Commissioner at any time after a hearing and due notice to the salesman. The salesman shall have the right to be represented by counsel, subpoena witnesses in ~~his~~their behalf, and otherwise offer a defense. The refusal or revocation by the Commissioner shall be in writing and shall state the grounds and reasons therefor. Any person holding a license shall surrender the same to the Commissioner

forthwith upon the termination of ~~his~~their employment or sponsorship by a manufacturer, or ~~importer, or distributor~~. The employer or sponsor shall notify the Commissioner within two days after termination of the employment or sponsorship of any person holding a license under this rule, or of the arrest of such person for a felony, sex offense, gambling offense, or law concerning alcoholic beverages.

EFFECTIVE: ~~March 1, 1968~~

RULE NUMBER 17

~~A RULE SHOWING METHOD TO BE FOLLOWED WHEN ORDERING ALCOHOLIC LIQUOR THROUGH THE COMMISSIONER WHENEVER IT IS FOUND IMPRACTICAL TO DO SO THROUGH THE REGULARLY LICENSED IMPORTERS AND FIXING THE CHARGE TO BE MADE FOR SUCH SERVICE~~

REPEALED

EFFECTIVE: _____ ~~May 1, 1986.~~

RULE NUMBER 18

A RULE REGULATING CLUBS AND MULTIPLE ACTIVITY CLUBS

A. CLUBS

"The word "club" means a corporation or association created by competent authority, which is the owner, lessee or occupant of premises operated solely for objects of national, social, patriotic, political or athletic nature, or the like, whether or not for pecuniary gain, and the property as well as the advantages of which belong to or are enjoyed by the stockholders or by the members of such corporation or association."

~~Every 'club' as above defined, shall have been in continuous existence, with at least 25 bona fide members in good standing, and with duly qualified and acting officers and governing board, for a period of at least six months prior to the making of an application for a license under the Liquor Control Act. This club status, in its entirety shall remain so long as it has a license to sell alcoholic liquor.~~

At the time of the making of an application for a license under the Liquor Control Act, and at all times after the granting of a license, upon demand of the Commissioner, such 'club' shall produce at the office of the Commissioner, the original or a properly authenticated copy of its charter or articles of association, its minute books, membership and financial records, covering the full-period of its licensed existence.

Said charter, articles of association, minutes and financial records will show that all profit from the sale of alcoholic beverages is controlled by the membership, and its properly elected officers, and used for the authorized objects of the club.

At the time of the making of an application for a license to sell alcoholic liquors and at any time after the granting of a license, upon demand of the Commissioner, such club shall furnish the Commissioner forthwith with a statement, signed by its President or Vice-President and notarized,

setting forth the reason for organization of the club and the activities in detail carried on by the club.

No club licensed under the Delaware Liquor Control Act shall have or maintain any "peephole", "bell", "buzzer", or other warning device at any entrance to the club premises; and immediate access to all parts of the premises of the club shall at all times be accorded to DATE or the authorized representatives of the Commissioner, including all qualified police officers in the State of Delaware, when accompanied by DATE or an Inspector of the Commissioner, all of whom shall be permitted to enter immediately and given immediate access to all parts of the premises of a club without a search warrant.

~~The licensed club shall maintain only such locked doors or other safeguards as are necessary to prohibit unauthorized persons from entering the premises.~~

~~A series of locked doors is not permitted without special permission in writing from the Commissioner and the door or doors used are to be of the kind normally used in the entrances of homes, stores, or other commercial establishments.~~

~~A club is prohibited from maintaining blacked-out windows, provided that this regulation shall not prohibit the use of ordinary curtains, drapes or blinds for decorative purposes.~~

No person under the age of twenty years shall be permitted upon the premises of a licensed club, subject, however, to the following exceptions:

- ~~1. Where a club is also licensed as a multiple activity club;~~
- ~~2. Where a licensed club maintains a junior class of membership or maintains a restaurant or dining facilities, authorized by the Commissioner, and where meals are regularly served to members and guests, such junior members, and guests of members, regardless of age, may be permitted upon the club premises excepting that part thereof where alcoholic liquor is sold, served or dispensed as the primary activity;~~
- ~~3. Where a licensed club has a mixed membership, consisting of members of both sexes, any child or children of a member of a guest of a child of a member in the presence of said child may be permitted upon the club premises when accompanied by his or her adult parent member. Children of members shall not be permitted on any portion of the club premises where alcoholic beverages are sold or otherwise dispensed as the sole activity;~~
- ~~4. Where a licensed club has been granted permission in writing by the Commissioner to entertain minors onto premises for special occasions following a written request to the Commissioner from the club outlining the purpose, sponsor, and hours of same.~~
- ~~5. Where employment of a person sixteen years of age or older has been authorized by permit issued by the Commissioner as provided in Chapter 9, Section 904(g) of the Liquor Control Act.~~

EFFECTIVE: FEBRUARY 24, 1977

RULE NUMBER 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.

A. HOTEL

"The word "hotel" means any establishment provided with special space and accommodation, where, in consideration of payment, food and lodging are habitually furnished to travelers."

~~Such special space and accommodation shall be interpreted as meaning the availability of ten (10) or more rooms for sleeping purposes for travelers and a dining room having a seating capacity at one time for at least thirty (30) travelers. A hotel shall serve three regular meals each day during the hours of 8:00 A.M. and 10:00 A.M. (Breakfast), 11:00 A.M. and 2:00 P.M. (Lunch), and 5:00 P.M. and 9:00 P.M. (Dinner). There shall be a lobby having at least 150 square feet of floor space, and there shall be separate toilet accommodations for males and females on each sleeping floor. 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.~~

B. MOTEL

~~"The word "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."~~

C. HOTEL OR MOTEL APPLICATIONS

~~Subject to the provisions of the Liquor Control Act, the Commissioner may hear and either approve or disapprove an application for a license prior to the construction of the "hotel" or "motel", provided that any approval by the Commissioner of the application shall expressly condition the issuance of the license upon compliance by the applicant within a stated period (which may be extended only by the Commissioner) of the requirements of this rule and any representations made by the applicant to the Commissioner, which the Commissioner may deem appropriate.~~

D. RESTAURANT

~~"The word "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 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'."~~

~~(1) A restaurant shall serve at least lunch and dinner five days each week. The lunch hours shall consist of a minimum of three hours, preferably between 11:00 A.M. and 2:00 P.M. and the dinner hours shall consist of a minimum of four hours preferably between 5:00 P.M. and 9:00 P.M.~~

~~(2) Food Complete meals shall be available at all hours that any restaurant is open for the sale of alcoholic liquor.~~

~~(23) There shall also be adequate and sanitary kitchen and dining room equipment, and an approved storage space where alcoholic liquor may be kept.~~

~~(4) A "restaurant" shall be advertised as such and the word "Restaurant" must be used on the menu, in all outside advertising and in the tradename.~~

~~(35) 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.~~

~~The requirements in the above paragraphs shall apply to restaurants licensed to sell alcoholic liquor on Sunday. However, Sunday shall not be included as one of the five days required by paragraph two. Accordingly, a restaurant with a Sunday sale license shall serve meals on at least six days, including Sunday.~~

E. RESTAURANT APPLICATION

~~Subject to the provisions of the Liquor Control Act, the Commissioner may hear and either approve or disapprove an application for a license prior to the construction of the "restaurant" provided that any approval by the Commissioner of the application shall expressly condition the issuance of the license upon compliance by the applicant within a stated period (which may be extended only by the Commissioner) of the requirements of this rule and any representations made by the applicant to the Commissioner, which the Commissioner may deem appropriate.~~

F. 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 ~~see~~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.

FG. DINNER THEATER

~~The portion of the premises for a dinner theater used for the presenting of public performances featuring live actors in dramatic or musical productions shall not be a part of the premises licensed for the consumption of alcoholic liquor. 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.~~

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.

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.

H. VARIATIONS

~~The holder of or applicant for a hotel, motel, restaurant or dinner theater license may apply in writing to the Commissioner for a variance in this rule for good cause shown.~~

~~I. EFFECTIVE DATE. This rule shall be effective May 1, 1986.~~

RULE NUMBER 19.1

BOTTLE CLUBS - LICENSING AND OPERATION

A. Purpose and Scope

This Rule implements the 1982 and 1989 Amendments to the Liquor Control Act extending the jurisdiction of the Commissioner to so called "bottle clubs." 4 Del. Code, Sec. 515, 515Aa, 902(7) and 554(aa), 60 Delaware Laws, Chapter 232 (April 30, 1982), 67 Delaware Laws, Chapter 122 (July 14, 1989). It applies to all businesses operated for profit where patrons carry onto the premises alcoholic liquors to be consumed thereon and removed by patrons upon their departure.

B. Statutory Basis

1. ~~4 Del. Code, Sec. 515.~~

~~Section 515 provides in part that establishments commonly known as "bottle clubs" shall be an exception to the definition of clubs set forth in Section 101(8) of this title. A "bottle club" shall be defined as an establishment operated for profit or pecuniary gain where persons enter upon the premises for purposes of consuming alcoholic liquors which are brought onto the premises by customers of the establishment and are consumed thereon and removed by such persons upon their departure."~~

2. ~~4 Del. Code, Sec. 515a.~~

~~Section 515a. Licenses for establishments commonly known as "bottle clubs" provide:~~

~~a. "Except as provided in this section, it shall be unlawful to operate for profit or pecuniary gain a "bottle club."~~

~~b. The Commissioner may, upon application, grant a license to the owner, lessor, or person in charge of the premises to operate a "bottle club" in accordance with this chapter.~~

~~c. A "bottle club" license authorized by this section shall be granted only to persons doing business in an establishment meeting the standards of a restaurant as defined by this Title. Such license shall permit the establishment to operate as a "bottle club" on every day of the week and on holidays except between the hours of 2:00 a.m. and 9:00 a.m. during which time no alcoholic liquors shall be consumed upon the premises of such establishments.~~

3. ~~4 Del. Code, Sec. 902~~

~~Section 902. Offenses carrying a penalty of fine of \$500 to 41,000 or imprisonment for three to six months on failure to pay fine, provides:~~

~~"Whoever:~~

~~(7) not bring the holder of a license authorized by Section 515a, operates or maintains an establishment commonly known as a "bottle club", shall, in addition to payment of costs, be fined not less than \$500 nor more than \$1,000, and, on failure to pay such fine and costs, shall be imprisoned not less than three nor more than six months."~~

4. ~~4 Del. Code, Sec. 554~~

~~License fees, provide in part:~~

~~"(aa) for a license as a "bottle club" authorized by Section 515a of this Title, the fee shall be \$75.00."~~

C. Definitions

1. "Bottle Club" means an establishment operated for profit or pecuniary gain where persons enter upon the premises for the purposes of consuming alcoholic liquors which are brought onto the premises by customers of the establishment and are consumed therein and removed by such persons upon their departure.

2. The term "operated for profit or pecuniary gain" means a business owned by a sole proprietor, partnership, corporation or other business association where such owner is not exempt from federal or state taxes on income on the profits (or losses) from such business, or the profits (or losses) from such business are for the benefit of an individual partnership, corporation or other business association which is not exempt from federal or state taxes on income. An organization qualified to receive a gathering license under 4 Del. Code, Sec. 514, shall be deemed to be not for profit or pecuniary gain unless the profits or losses from such enterprise are otherwise subject to federal or state tax on income.

3. The word "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 thirty-five (35) or more persons, and suitable kitchen facilities connected therewith for cooking an assortment of foods under the charge of a chef or cook. The service of only such food and victuals as sandwiches or salads shall not be deemed to be the service of "meals" [4 Del. Code, Sec. 101(3528)]. In addition, a "restaurant" shall have a valid and current restaurant retailer license required by 30 Del. Code, Sec. 2906.

4. The word "consume" in any tense, means the act of drinking or eating alcoholic beverages and includes possession of an alcoholic beverage with the present ability to drink or eat it, preparation, concocting, mixing or ingestion of beverages containing alcoholic liquor on or immediately in conjunction with the premises of an establishment. By way of illustration, and not by limitation, it shall include the practice whereby patrons leave the premises to consume an alcoholic drink in the parking lot, in their cars, or other areas immediately adjacent to the premises, and return to the premises when such is done repeatedly.

CD. General Policy

No establishment shall be operated for profit or pecuniary gain as a "bottle club" unless licensed by the Commissioner. Licensed "bottle clubs" shall, within the limits of their license, be held to the same standards of performance and financial responsibility as other types of license holders.

E. Licensing

1. Application for License: Procedure

~~Any person who is the owner or lessee, or who is recognized by the Commissioner as being in charge of a restaurant, may apply to the Commissioner for a license to operate a "bottle club" on the premises of the restaurant. Applications shall be processed in accordance with 4 Del. C., Sec. 541. The application processing fee shall be \$200. 4 Del. C., Sec. 554 (X).~~

2. Adjudication of Application for License

~~An application for a "bottle club" license may be denied for any of the reasons provided by 4 Del. C., Sections 543 (a) , (b) , (c) , (d) , or (f) . For the purposes of section 543(b)(1), the Commissioner shall consider the number of all on-premises licenses of whatever type or class. Further, the Commissioner will not grant a "bottle club" license when there is another "bottle club" within the distances prescribed by Section 543(d).~~

3. Term of License

~~The terms of "bottle club" license shall be as prescribed by Rule 51.~~

4. Cancellation or Suspension of License

~~The Commissioner shall be guided by the provisions of 4 Del. C., Section 561.~~

DF. Standards of Operation for "Bottle Club"

1. Hours of Operation

An establishment operated as a "bottle club" shall not permit the consumption of alcoholic beverages on its premises after 2:00 a.m. or before 9:00 a.m. on any day. The presence of alcoholic liquors on the premises of a "bottle club" between the hours of 2:00 a.m. and 9:00 a.m. shall be prima facie evidence of a violation.

2. Service of General Public.

~~A "bottle club" license must serve the public convenience and necessity.~~ A "bottle club" may require membership upon payment of a reasonable fee, but approval of such membership shall not be unreasonably denied. A club shall not charge an admission charge or fee, but may charge a cover or minimum during hours when live entertainment is actually being presented.

3. Service of Food

A reasonable selection of food shall be available from a written menu or menu board at all hours when alcoholic beverages are being consumed. The selection of foods shall include a choice of sandwiches, entrees, and non-alcoholic beverages.

4. Service of Persons Under 21

Minors may be admitted to the premises of a "bottle club." Minors may not consume alcoholic beverages at any time. It shall be a rebuttable presumption that minors found on the premises or departing therefrom who are found to have consumed alcoholic liquors or are in possession of alcoholic liquors, consumed or possessed such alcoholic liquors on the premises.

5. Service of Alcoholic Liquors.

A "bottle club" may serve food, non-alcoholic beverages, mixers and ice and may charge for such service. "Bottle clubs" may not mix or provide bartender service to patrons, nor may a "bottle club" chill or keep alcoholic liquors for customers. A "bottle club" shall not serve alcoholic liquors.

6. Presence of Intoxicated Persons on Premises

A "bottle club" shall not permit an intoxicated person to remain on its premises.

~~7. Gambling shall only be permitted as provided in Delaware Alcoholic Beverage Control Commissioner's Rule 40.~~

8. Design and Layout

a.—In a "bottle club" there shall be seating at tables for not less than thirty-five persons. Seats at a bar shall not exceed 250% of the ~~total seating capacity~~dining seats of the establishment.

~~b. The premises shall be maintained in a neat and tidy condition at all times.~~

~~c. There shall be separate lavatories for male and female customers.~~

~~d. "Bottle clubs" shall be so designed as to have a glass door or window(s) permitting observation of the interior of the establishment from outside thereof. Such windows or doors may be covered by a translucent curtain or drape on the interior of the premises, but such curtains or drapes shall not be so thick as to totally preclude the passage of light.~~

9. Financial Records

"Bottle club" shall maintain complete and accurate books and records reflecting:

a. The names and address of members.

b. The names and addresses of all employees including their compensation and tips.

c. Gross receipts from the sale of food, including the number of persons to whom food was served.

d. Any such other records as are required in the normal and ordinary operation of business.

e. Such books and records shall be made available to the Commissioner, its officers and agents, at any time during normal business hours.

G. Penalties

1. General

Establishments licensed as "bottle clubs" shall be subject to all laws, rules and regulations applicable to other types of licenses. Where provisions of this rule applicable specifically to "bottle clubs" are more restrictive than rules applicable to other types of license, the former shall prevail.

First and second violations of this rule by licensed "bottle clubs" shall be processed pursuant to the provisions of Rule 71 (Voluntary Fine Assessment). Third and subsequent violations will require a hearing before the Commissioner.

2. Determination of Fines for Third and Subsequent Offenses

Section 914 of 4, Del. Code, imposes a limit on fines of 10% of the estimated average gross monthly sales of alcoholic liquors during the twelve (12) months immediately preceding the date of an adjudication of guilty. The following formula shall be used by the Commissioner to estimate constructive sales of alcoholic liquors by a "bottle club".

a. The Commissioner shall determine the sum of members and customers, by taking the gross receipts from admission fees, cover charges and minimum charges, and dividing by the average admission fee, cover charge or minimum charge, yielding the average daily utilization and adding thereto the total number of members.

b. The foregoing sum shall be multiplied by \$5.00, yielding the estimated gross receipts from the constructive sale of alcoholic beverages.

c. The estimated gross receipts, above, shall be divided by 12 and the dividend multiplied by 10, the result being the maximum fine.

3. Suspension of License.

In the event the determination of fines is insufficient or is declared unlawful by any court, and the Commissioner is prevented from imposing a fine, the license shall be suspended for a

~~period determined by the Commissioner. This provision shall not, in any event, however, be construed to prevent the Commissioner from imposing a penalty of suspension or cancellation of license when such action is warranted by the facts of the case.~~

H. Effective Date

~~Approved and effective on June 14, 1990.~~

RULE NUMBER 20

A RULE REGULATING SHIPS CHANDLERS

REPEALED

EFFECTIVE: May 1, 1986

RULE NUMBER 21

A RULE PROVIDING SPECIFICATIONS FOR ALL ON-PREMISES ESTABLISHMENTS

Before issuance of a license or renewal of license to sell alcoholic liquor in an on-premises establishment, the premises must be approved as to condition by the Commissioner through an inspection by the DATE Enforcement Section or other employees of the Commissioner's staff.

The following general rules shall govern with respect to on-premises establishments:

1. Each dispenser of alcoholic beverages shall bear the name of the product dispensed therefrom.

~~2. Separate restrooms for men and women available to the public as approved by the Commissioner.~~

3. On-premises establishments shall maintain standards consistent with the requirements of the Division of Public Health or the appropriate local agency having similar jurisdiction in the service of drinks and food, if applicable, including normal standards of cleanliness and shall have proper facilities for the cleansing of reusable utensils, glasses, dishes, etc.

34. ~~All areas~~ An area where alcoholic liquor is sold, served, dispensed or consumed shall be visible from the outside and shall be sufficiently lighted so as to permit the viewing of persons on the premise at all time that patrons and/or employees are on the premises, whether during or outside of normal operating hours.

a. The provisions of this section shall not apply to the rooms of a hotel.

b. The Commissioner may, for cause and upon request, grant a variance to the requirement.

45. If other parts of the building in which an on-premises establishment is located are occupied as living quarters, there shall be no doors communicating with the licensed areas unless authorized in writing by the Commissioner:

~~6. An accurate clock shall be installed in each area where alcoholic liquor is regularly dispensed.~~

57. Adequate, separate and secure storage facilities approved by the Commissioner must be available on the licensed premises for the storage of all alcoholic liquors for establishments operating during prohibited hours of sale.

8. ~~The standard hours of operation must be as required by the Liquor Control Act or local ordinance unless a variance is granted by the Commissioner in writing. The hours of operation for restaurants, hotels and dinner theaters are outlined in Rule 19.~~

69. The approved hours and days of operation must be posted in a conspicuous place in order that all customers may be properly informed.

~~10. An up-to-date copy of the rules of the Commissioner and the Liquor Control Act must be on the premises at all times.~~

~~711. A decal, Decals purchased through the Commissioner, stating the legal drinking age in the state and warning pregnant women of the risk of birth defects from the consumption of alcoholic beverages must be conspicuously displayed at each entrance to the premises. The term conspicuous, for the purpose of this rule, means that advertisements and all other postings of any type (with the exception of the warning to pregnant women of the risk of birth defects from the consumption of alcoholic beverages, Rule 21, paragraph 12 and the posting of the hours of business, Rule 21, paragraph 9) may not be displayed within two feet of the decal stating the legal drinking age.~~

~~12. A decal, purchased through the Commissioner, warning pregnant women of the risk of birth defects from the consumption of alcoholic beverages must be conspicuously displayed at each entrance to the premises. The term conspicuous, for the purpose of this rule, means that advertisements and all other postings of any type (with the exception of the legal drinking age notice, Rule 21, paragraph 11, and the hours of business Rule 21 paragraph 9) may not be displayed within two feet of the decal warning pregnant women of the risk of birth defects from the consumption of alcoholic beverages.~~

~~813. The license for the current year must be posted in a conspicuous place on the licensed premises.~~

~~14. The effective date of this rule shall be January 1, 1990.~~

RULE NUMBER 22

~~A RULE PROVIDING CERTAIN REQUIREMENTS FOR TAVERNS, RESTAURANTS, TAPROOMS, CLUBS, HOTELS, RACE TRACKS, DINNER THEATERS, RAILROADS AND BOATS.~~

~~9. All alcoholic liquors shall, within one-half hour after legal sales of alcoholic liquors cease, be placed in adequate storage facilities out of reach of patrons.~~

~~No holder of a restaurant, club, or hotel license, who offers for sale in his licensed premises, commodities or services other than alcoholic beverages, shall remain open during hours when the sale of alcoholic beverages is prohibited, unless he shall keep all alcoholic beverages upon the premises in a separate beverage department, or in cabinets provided for storage of same, which shall be securely closed and locked during the hours when sale of alcoholic beverages is prohibited.~~

~~EFFECTIVE DATE: OCTOBER 24, 1974~~

RULE NUMBER 23

~~A RULE GOVERNING THE TIME AND MANNER IN WHICH
ALCOHOLIC LIQUOR MAY BE SOLD, SERVED OR DISPENSED
IN A TAPROOM AND REGULATING THE BUSINESS CONDUCTED
THEREIN~~

~~All rules and regulations of the Commissioner and all provisions of the Liquor Control Act now in force specifying the time and the manner in which alcoholic liquor may be sold, served or dispensed in a restaurant and regulating the business conducted therein, shall apply to and govern all establishments licensed as taprooms and the persons in charge thereof, insofar as the same may be applicable thereto.~~

Effective: ~~February 1, 1960~~

RULE NUMBER 24

CLUB MEMBERS, MULTIPLE ACTIVITY CLUB MEMBERS AND SALES OF ALCOHOLIC LIQUOR IN EACH SUCH CLUB

A. CLUBS

Except as provided herein, a license for the sale of alcoholic liquor by a club authorizes the sale of such alcoholic liquor to club members only. A member of a club is defined by ~~Section 101, Chapter 1, Title 4, Delaware Code of 1953,~~ as follows:

"Member of a club" means an individual who, whether as a charter member or admitted in accordance with the rules or the by-laws of the club, has become a member thereof, who maintains ~~his~~their membership by the payment of dues in the manner established by the rules or by-laws, and whose name and address is entered on the list of members supplied to the Commissioner at the time of the application for a license under Chapter 5 of this Title, or, if admitted thereafter, within eight days after his admission and payment of dues, if such dues are required. The Commissioner is authorized to extend the meaning of the words "member of a club" to include those who are granted temporary membership or membership of less than one year in accordance with a rule or by-law of the club approved by the Commissioner.

A guest may consume alcoholic liquor at a club provided that at all times ~~he~~the guest is on the licensed premises the host member of the club who introduced ~~him~~the guest also remains on the licensed premises and pays for the alcoholic liquor.

~~A temporary member may purchase alcoholic liquor at a club. No club shall issue temporary memberships without first receiving written approval from the Commissioner. In requesting such approval, the club shall state to the Commissioner the purpose of temporary memberships, the conditions under which such memberships will be issued and file with the Commissioner a certified copy of the rule or by-law of the club which pertains to such memberships.~~

~~Guests, immediately upon entrance to club premises, shall be registered in a guest book by name, date of visit and the name of their host. A club shall keep the guest book for a period of one year after the date the visit and make it available to the Commissioner upon reasonable request.~~

If the club in the form of a lodge desires ~~members~~members of subordinate lodges under the same grand lodge to have the privilege of buying alcoholic liquor at their club, this may be done by the lodge passing a resolution granting the privileges of the club to members of other subordinate lodges, providing such member presents ~~his~~their card indicating ~~his~~their membership in such subordinate lodge. A record shall be kept of the names of such members of subordinate lodges to whom such privileges are extended.

B. MULTIPLE ACTIVITY CLUB

A license for the sale of alcoholic liquor by a multiple activity club to persons who are guests of that club or of a member of that club is in addition to its license as a club which authorizes the sale of alcoholic liquor only to members of the club.

~~A member of a multiple activity club is defined by Title 4, Delaware Code, Section 101 as follows:~~

~~"Member of a Club" which is a multiple activity club means a person who, pursuant to the charter, by-law or rules of the club, is a member in good standing of that club and whose name and address is supplied in writing to the Commissioner by the club within eight days after his admission to membership, or a person who holds a temporary membership in such club, pursuant to a charter provision, by-law or rule approved by the Commissioner.~~

~~A guest of a multiple activity club or a member of such a club shall register prior to or~~

~~immediately upon entrance to club premises as a guest under a charter provision, by law or rule of the club approved in advance by the Commissioner. Registration of a guest requires that the name of the guest and the date of the visit be included in a register open to the inspection of the Commissioner which states the facilities of the club that are open to such person and the time period for which the person is to be a guest. The multiple activity club shall keep the guest book for a period of one year after the date of the visit and make it available to the Commissioner upon reasonable request.~~

~~EFFECTIVE: February 17, 1971~~

RULE NUMBER 25

~~A RULE DEFINING THE METHOD TO BE FOLLOWED BY A CLUB IN SECURING A LICENSE FOR THE SALE OF ALCOHOLIC LIQUOR FOR CONSUMPTION OFF THE PREMISES AND TO WHOM SUCH SALES CAN BE MADE~~

~~Section 516, Chapter 5, Title 4, Delaware Code of 1953, reads partially as follows:~~

~~"Any person in charge of * * * club*** may apply for a license to purchase*** and to keep and sell and deliver on the premises only spirits, wine or beer by the bottle or half-bottle only, but not for consumption on the premises where sold, or in any dependency thereof."~~

~~There is no reference to the cost of granting a license to a Club for the sale of alcoholic liquors to be consumed off the premises.~~

~~It is the ruling of the Commissioner that a license may be granted to a club for the sale of alcoholic liquors to be consumed off the premises and that the license if granted will be granted without payment of any money therefor, provided the provisions of Section 516, Chapter 5, Title 4, Delaware Code of 1953 are followed so far as the quantities so sold and delivered are complied with.~~

~~Sales of alcoholic liquor under the license granted to Clubs for consumption off the premises shall be made to members only.~~

~~Effective: February 1, 1960~~

RULE NUMBER 26

~~A RULE REGULATING THE SALE OF ALCOHOLIC LIQUOR BY CLUBS AND ITS POSSESSION BY MEMBERS~~

~~REPEALED~~

~~EFFECTIVE: May 1, 1986~~

RULE NUMBER 27

ADVERTISING AND PROMOTION OF ALCOHOLIC LIQUOR

I. Purpose

~~The Commissioner recognizes that responsible advertising of alcoholic liquor by licensees constitutes a proper medium of information to the general public. Advertising, however, which is~~

~~deceptive or misleading to the consumer or general public is contrary to the public interest and is not conducive to the proper regulation and control of alcoholic liquor. The Commissioner finds that advertisements of any kind which tend to promote the mistaken belief that groups of package stores are being operated as a liquor store chain or jointly owned or operated are misleading and deceptive.~~

~~It is the considered judgment of the Commissioner that, in the absence of appropriate notification to the public, joint or group advertisements listing the names and addresses of multiple licensees and containing a common symbol or name, and related practices involving the use of such common symbol or name, may:~~

~~A. Create the mistaken impression that the licensees are a chain enterprise or are jointly owned, operated, or controlled.~~

~~B. Tend to deceive the consumer.~~

~~C. Constitute misleading and deceptive advertising and offering of alcoholic beverages.~~

~~The purpose of this rule is to eliminate such deceptive or misleading advertising and related practices which contravene the provisions, intent, and purpose of the Liquor Control Act, the Delaware Code, and Commissioner Rules, and which deceive or tend to deceive the consumer and general public.~~

II. Authority

~~The Delaware Alcoholic Beverage Control Commissioner is authorized pursuant to 4 Del. C., §304(a)(2), to establish by rules and regulations an effective control of the manufacture, sale, dispensing, distribution, and importation of alcoholic liquor within and into this state. Such rules, however, may not be inconsistent with Title 4 of the Delaware Code or any other law of the State. This rule, therefore, implements and clarifies the grant of authority to the Commissioner contained in 4 Del. C., §304 (a) (2), to control the time, place, and manner in which alcoholic liquor shall be sold or dispensed by establishing uniform procedures for the advertising and promotion of alcoholic liquor.~~

III. Definition

The term "advertisement or promotion" includes any written or oral statement, illustration, or depiction which is intended to induce sales of alcoholic liquor or related services in the State of Delaware, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or any written, printed, graphic, or other matter accompanying the bottle, billboard, sign, other outdoor display, public transit card, other periodical, literature, publication, or in any radio or television transmission, internet, digital media or in any other media.

The term shall not include:

The label affixed to bottles of alcoholic liquors, individual covering carton, or other primary container, or

Any editorial or other reading matter, such as a press release, in a periodical, publication, or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by a licensee.

IV. History

~~Prior to the current revision of Rule 27, joint advertising involving the use of common symbols, trade names, or logos was not permitted by the Commissioner. The Commissioner by promulgation of this rule is rescinding the prohibition on joint advertising or promotion of alcoholic liquor provided the procedures contained herein are satisfied.~~

IV. Applicability

This rule shall govern the procedure by which all licensees of the Commissioner advertise or

promote the sale of alcoholic liquor within and without the state. In addition, this rule shall govern the procedure by which retail licensees may jointly advertise or promote the sale of alcoholic liquor.

III.VI. Prohibited Acts

A. No person licensed by the Commissioner shall sell or offer to sell alcoholic liquor by means of any advertisement or promotion including any statement, representation, symbol, depiction, or reference, directly or indirectly, which:

1. Would reasonably be expected to induce minors to purchase or consume alcoholic liquor.
2. Would reasonably be expected to induce any person to consume alcoholic liquor to excess.
3. Is illegal under any federal, state, or local law, or Commissioner rule.
4. ~~Implies that the product is endorsed by any government by the use of flags, seals, or other insignia, or otherwise.~~
5. ~~Makes any humorous or frivolous reference to, or is suggestive of, the intoxicating effects of alcoholic liquor.~~
6. Is false or misleading in any material respect, or implies that the product has a curative or therapeutic effect.

B. No person, corporation, partnership, or other entity licensed by the Commissioner to sell alcoholic liquor shall engage in any deceptive or misleading advertising, or cause or permit his/her name to appear in, or be used in conjunction with, any deceptive or misleading advertisement or promotion of alcoholic liquor.

~~C. No person, corporation, partnership, or other entity licensed by the Commissioner to sell alcoholic liquor shall engage in any restraint of trade or commerce of this state as prohibited by 6 Del. C., §2103.~~

VII. Joint Advertising

~~A. Any one or more package stores may, jointly or singly, advertise alcoholic liquor in accordance with this rule. However, if such advertisement contains (a) the name, trade name, trademark, insignia, symbol, or logo-type of any unlicensed person, corporation, cooperative advertising group or business entity, or (b) any trade name, trademark, insignia symbol, or logo-type not belonging exclusively to one participating package store licensee, then such advertisement shall also prominently feature in bold print that is equal or larger in size than the print used elsewhere in advertisement, the following statement:~~

~~**THE STORES LISTED IN THIS ADVERTISEMENT ARE INDEPENDENTLY OWNED AND OPERATED. THEY ARE NOT PART OF A CHAIN AND ARE NOT A COOPERATIVE SALES GROUP.**~~

~~B. At the time of its publication, any joint advertising which does not reflect the actual price of the products being offered for sale by the participating package stores must state in bold print, equal or larger in size than the print used elsewhere in the advertisement, that "prices may vary at any of the listed stores" or "prices in this advertisement may not be available at all listed stores."~~

IV.VIII. Signs on Licensed Premises

No ~~package store licensee~~ shall display any sign on the exterior or in the interior of a licensed premises which contains or advertises:

1. The name, trade name, trademark, symbol, or logo-type of any other retail licensee, or of any unlicensed person, corporation, cooperative advertising group or business entity, or
2. Any trade name, trademark, insignia, symbol, or logo-type not belonging exclusively to such licensee, unless there is prominently posted, at or near each public entrance, check-out counter, and cash register a sign containing the following statement:

NOTICE TO CONSUMERS:
THIS STORE IS INDEPENDENTLY OWNED AND OPERATED.
IT IS NOT PART OF ANY CHAIN OR COOPERATIVE SALES GROUP.

~~IX. Variances~~

~~The Commissioner may grant variances to this rule, upon a showing of good cause, to licensees adversely affected by it, under such terms and conditions as the Commissioner deems appropriate.~~

~~X. Severability~~

~~If any part of this rule is held to be unconstitutional or otherwise contrary to law, then it shall be severed and the remaining portions shall remain in full force and effect.~~

~~XI. Effective Date~~

~~The effective date of this rule shall be June 1, 1992.~~

RULE NUMBER 28

A RULE REGARDING THE TRANSFER OF A LICENSE

REPEALED

~~EFFECTIVE: May 1, 1986~~

RULE NUMBER 29

PUBLICATION OF PRICES AND POST-OFFS BY IMPORTERS (a.k.a."WHOLESALEERS")

This regulation shall govern the procedure by which all licensed wholesalers notice prices, post-offs, and quantity discounts of alcoholic liquor offered for sale to licensed Delaware retailers. The sale of all alcoholic liquor in Delaware by wholesalers to retailers must conform to the provisions of this regulation. In addition, this regulation shall govern the procedure by which records relating to post-offs and quantity discounts are maintained.

29.1 Definitions

Designated Publication: Means the single publication agreed to be used by a majority of the licensed Delaware Wholesalers for the compilation of monthly price lists for all alcoholic liquor prices, post-offs, and quantity discounts offered for sale to Delaware licensed retailers. In the absence of a clear majority voting to change the existing publication, the publication will remain the publication that is in effect at the time of the vote.

Monthly Price List: Means the monthly price listing prepared by, or on behalf of, a Delaware licensed wholesaler for all alcoholic liquor prices, post-offs, and quantity discounts offered for sale to Delaware licensed retailers. The monthly price list shall contain the presumptive price, but may be superseded by any subsequent updated notification issued by the wholesaler, provided the DATE and the Commissioner are ~~Division is~~ notified of the updated listing.

Post-Off: Means a reduction in the price regularly charged by wholesalers, as published to the trade, which is sold by wholesalers to licensed retailers.

Price: Means the amount of money given or set as consideration for the sale of a specified order of alcoholic liquor.

Quantity Discount: Means a reduction in the price regularly charged by wholesalers, as published to the trade, which is sold by wholesalers to licensed retailers and is based on whole or in part on the quantity of alcoholic liquor purchased.

Retailer: Means all establishments licensed by the Commission to sell alcoholic liquor directly to the public.

Updated Notification: Means notification of changes to prices, post-offs and quantity discounts made after the submission of the monthly Price List to the designated publication.

Wholesaler: Means licensed Delaware Importer (a.k.a."wholesaler").

29.2 Procedures for Providing Notice of Prices, Post-Offs, and Quantity Discounts

a. Every wholesaler shall prepare a monthly price list of all alcoholic products they intend to offer for sale during the next month. This monthly price list shall include regular prices, as well as post-offs and quantity discounts, if offered. The monthly price list shall be printed in a publication designated by a majority of licensed Delaware Wholesalers not less than five (5) business days prior to the end of the preceding month.

b. A copy of the monthly price list shall also be filed with ~~the Division~~DATE (via hard copy and/or electronically) when submitted to the designated publication. The prices stated therein shall be the "presumptive price," subject to change, revision, substitution, or addition in accordance with the updated notification procedures set forth herein.

c. In the event of a change in the price from that set forth in the monthly price list, the wholesaler shall provide Updated Notification, to all licensed retailers, and to the Division (via hard copy and/or electronically (including e-mail)) Updated Notification shall be made by a wholesaler to all licensed retailers via a recorded message, accessible through a toll-free "800" number, which can be accessed by any licensed retailer 24 hours a day to obtain information regarding current pricing of items being offered by the wholesaler. The "800" number will be updated every Monday by 10:00 A.M.: provided however, notwithstanding anything in this regulation to the contrary, that any wholesaler may change prices at anytime by mailing a pricing announcement to all retailers and the Division by U.S. mail. In the event of a conflict between the recorded message and the mailed notice, the lower price will control. In addition, the wholesaler shall advise the Division of prices offered in the "800" number at the time any change is made to the recorded message.

d. Upon Petition of an interested party, the Commissioner may approve an alternative procedure(s) for providing notice of prices, post-offs and quantity discounts where the petitioner demonstrates that (1) the alternative method is technologically feasible, (2) will provide sufficient notice of prices, post-offs and quantity discounts to Delaware retailers and to ~~the Division~~DATE, and (3) will not harm the public interest.

29.3 Procedures for Providing Notice of Prices for New Products

a. Prices of new brands, types, or sizes shall be effective after the wholesaler has given the required notice in writing to the trade industry, as follows:

1. By mailing a pricing announcement directly to all retail licensees of the trade and ~~the Division~~ DATE by United States mail, or
2. By inclusion of prices in the monthly price list submitted to the designated publication as heretofore described, or
3. By including notice thereof in the form of Updated Notification, as described in 29.2 (c) above.

b. Newly listed or changed prices shall continue from their effective date until changed by the wholesaler in accordance with the procedures established by this regulation. The duration of the prices set for post-offs and quantity discounts of new products shall be the effective dates listed in the new product pricing announcement, the monthly price list, and/or in the Updated Notification.

c. Alternative methods for providing notice of prices for new products may be approved by the Commissioner in the same manner set forth in paragraph 29.2 (d) of this regulation.

29.4 Duty of Wholesalers to Fill Orders

The procedure and regulations for licensed wholesalers who offer post-offs or quantity discounts to licensed retailers shall be as follows:

a. Licensed wholesalers shall not discriminate among licensed retailers in filling orders for post-offs or quantity discounts.

b. Licensed wholesalers must honor the orders placed by licensed retailers for post-offs and quantity discounts in the sequential order in which they are placed, unless excused from doing so by the Commissioner upon proof of good cause.

c. If a licensed wholesaler is unable to fill the first order of a retailer for a post off or quantity discount due to the depletion of its stock, the retailer shall have the option of having the order filled at the same price offered during the post-off or quantity discount period when stock is next available, or of purchasing a suitable substitute product of comparable value if the wholesaler chooses to offer a substitute product.

d. Licensed wholesalers shall deliver all alcoholic liquor products offered for sale as post-offs or quantity discounts to the purchasing licensed retailer within five (5) working days, not including weekends or legal holidays, of the last date that the post-off or quantity discount is offered.

e. Notwithstanding anything within this regulation to the contrary, offers of distressed items in quantities of more than 10 cases shall be made on a "first come/first serve" basis, subject to the requirement that Updated Notification of such post-off be given. Distressed items, excluding beer, in quantities of 10 cases or less shall not be subject to the Updated Notification requirements of these regulations and may be offered for sale to any retail licensee at the licensed wholesaler's discretion. For purposes of this subsection: 1) a distressed item is an alcoholic beverage product subject to close-out and/or expiration, and 2) "first come/first serve" means that orders for alcoholic beverage products are filled in the sequential order by which the orders are received by the wholesaler.

29.5 Procedure for Recording the Sale of Alcoholic Liquor by Wholesalers

Every sale of alcoholic liquor, including post-offs, quantity discounts, and otherwise reduced prices, shall be recorded by the licensed wholesaler on a written invoice or bill of sale containing at a minimum the following:

1. Name of the wholesaler
2. Name of the retailer
3. Date of sale
4. Quantity of alcoholic liquor sold
5. Price of alcoholic liquor sold
6. Brand
7. Size of container
8. Date of delivery

The regular price of alcoholic liquor sold at post-off, quantity discount, or discount pursuant to Section 29.4 (d) above shall also be stated on the bill of sale or invoice, as well as the basis for the discount. All credit(s) associated with the sale of alcoholic liquor must be stated or affixed to the original bills of sale or invoices retained by the licensed retailer and wholesaler.

29.6 Tie-In Sales

A requirement by a wholesaler that a retailer purchase one product in order to purchase another is prohibited. This prohibition includes combination sales if one or more products may be purchased only in combination with other products and not individually. However, a wholesaler is not prohibited from selling at a special combination price two or more kinds or brands of products to a retailer, provided: (a) the retailer has the option of purchasing either or both products at the usual price, and (b) the retailer is not required to purchase any product he or she does not want. As to (a) and (b) above, wholesaler licensees shall not be required to sell or deliver beer to a retail licensee in quantities of less than five (5) cases.

29.7 Consortium Buying

a. Nothing in this regulation shall be deemed to preclude a wholesaler of alcoholic liquor licensed by the ~~Delaware Alcoholic Beverage Control~~ Commissioner from publishing or offering a discount, based upon the quantity of product purchased, to a pool, cooperative, or consortium of two or more licensed retailers, provided that the billing, shipment, transportation, and storage of all related alcoholic liquor conforms with state law and the regulations of the Commissioner. Similarly nothing in this regulation shall be deemed to require a wholesaler of alcoholic liquor to offer post-offs or quantity discounts.

b. The delivery of all alcoholic liquor purchased by a pool, cooperative, or consortium of retailers, to its members, must be made by the holder of a license issued by the Commissioner to deliver alcoholic liquor, as required by 4 Del. C., § 701.

29.8 Severability

~~If any part of this regulation is held to be unconstitutional or otherwise contrary to law, then it shall be severed and the remaining portions shall remain in full force and effect.~~

29.9 Effective date

The effective date of this regulation shall be May 11, 1999.

RULE NUMBER 29.1

POST-OFFS

REPEALED

EFFECTIVE: June 1, 1992

NOTE

See Rule 29 regarding "Post-Offs" or "Tie-In Sales"

RULE NUMBER 29A

A RULE REGARDING PRICE INCREASES AND DECREASES
ON ALCOHOLIC LIQUORS.

REPEALED.

Effective: February 2, 1967

RULE NUMBER 30

A RULE TO PROHIBIT "TIE-IN SALES" BY LICENSEES

REPEALED

EFFECTIVE: June 1, 1992

NOTE

See Rule 29 regarding "Post-offs" or "Tie-In Sales"

RULE NUMBER 31

A RULE GOVERNING THE RETURN OF ALCOHOLIC LIQUOR
TO THE SELLER AFTER IT HAS BEEN RECEIVED BY THE PURCHASER.

No licensee, Wholesaler or retailer, shall accept the return of any alcoholic liquors sold by him if the delivery of the alcoholic liquor so sold shall have been accepted by the purchaser after immediate inspection. The purchaser, however, shall have the privilege of making an immediate inspection of the goods before receiving them. If a retail licensee after delivery determines that his

order was incorrectly filled, he may return the incorrectly filled part of the order within thirty-six (36) hours after delivery or, with the permission of the Commissioner, at a later date. ~~The Executive Secretary, in his discretion, may grant such permission.~~

This restriction shall not apply to alcoholic liquors purchased for a Gathering of Persons which remain on hand after the period for which the license has been issued, nor to alcoholic liquors sold to an individual consumer when returned because of a defect in quality.

Whenever a retailer's license terminates for any reason, all unopened and unused alcoholic liquors shall be returned to the importer from whom originally purchased, but such importer may with Commissioner approval reject any such alcoholic liquor as not being fit for resale. Upon such a determination, the unsalable alcoholic liquor shall be disposed of or returned to the former licensee as directed by the Commissioner.

Whenever an importers license terminates for any reason, the alcoholic liquors shall be disposed of in a manner approved by the Commissioner.

When the business of any licensee is temporarily suspended, the alcoholic liquors shall be stored or disposed of in a manner approved by ~~the~~ Commissioner.

Effective: February 2, 1967

RULE NUMBER 32

A RULE DEFINING AND REGULATING MULTIPLE ACTIVITY CLUBS LICENSED TO SELL TO GUESTS OF SUCH CLUBS AND GUESTS OF MEMBERS

A licensed club whose gross revenue from the sale of alcoholic liquor does not exceed 40% of its total annual revenue from all sources (~~determined by its books and records only after one year of operation as a licensed club~~) and which either:

1. Serves meals at regular hours six days a week, or,
2. Has a physical facility, regularly used by members of the club other than club rooms for the sale and service of food and alcoholic liquor and which facility is of a permanent nature and regularly used, i.e., tennis court, golf course, indoor pool, may apply for a Multiple Activity Club License.

~~The holder of a Multiple Activity Club License must continue to have in good standing its club license.~~

A Multiple Activity Club License permits the sale of alcoholic liquor to guests of the club or guests of its members.

~~At the time of application, and if the license is granted at all times thereafter, the Multiple Activity Club will keep accurate books and records, which will be shown to the Commissioner or the Commissioner's agents at any reasonable time showing separately the gross revenue from the sale of spirits, wine or beer and the gross revenue from all sources including dues, fees, and assessments.~~

~~An application for such license shall be made on forms supplied by the Commissioner and shall consist of:~~

- ~~1. Application.~~
- ~~2. Financial Statement.~~
- ~~3. Publishers' Certificates.~~
- ~~4. An audit with supporting documents, showing gross revenue from all sources for one year prior to the application and gross revenue from the sales of alcoholic liquors.~~
- ~~5. An affirmation of the statements made in the application last filed with the Commissioner regarding the presently held license.~~
- ~~6. A sworn description with supporting evidence of the dining program and/or the~~

physical facility.

RULE NUMBER 33

A RULE DEFINING AND REGULATING THE QUANTITIES OF SALES AND METHODS OF DELIVERIES OF CERTAIN OFF-PREMISES SALES BY LICENSEES

The holder of a license for the sale of retail of alcoholic liquor, not for consumption on the premises where sold, other than a licensed importer, may sell alcoholic liquors of the variety and quantity and to the persons permitted by the Liquor Control Act, as presently in force and as hereafter amended, and the merchandise so sold shall be delivered to the purchaser or ~~his~~ their agent on the premises and removed by such purchaser or agent from the premises with the seals of the bottles unbroken. For the purpose of this sub-section only, the "premises" of a holder of a license for sale at retail shall be deemed to extend to the street or curb line of the public street, road or highway nearest to the front entrance of his establishment, or if there be no established street or curb line, then to the nearest edge of the street, road or highway nearest to the front entrance of ~~his~~ the establishment, to a distance, however, of not more than 100 feet from such front entrance.

An importer may sell the variety of alcoholic liquor authorized by ~~his~~ its license, to a person who is the holder of a license to purchase the same for resale, in such quantities as may be ordered by the purchaser, and shall transport the merchandise so sold from the importer's establishment to the establishment of the purchaser.

An importer licensed for the sale of beer is permitted ~~under 4 Delaware Code, §101~~ to sell beer in half-barrel or quarter-barrel containers to a gathering of persons for dispensing at a gathering of persons, but not for resale ~~the holder of a personal license. Such importer shall transport the beer so sold from his warehouse to the residence of the purchaser.~~

4 Delaware Code, §101 permits an importer to sell alcoholic liquor to an active owner of a wholesale liquor business for the latter's personal use. Importers may sell to the active owners of their respective companies only the variety of alcoholic liquor authorized by the importer's license. Importers must sell only to those active owners who are holders of a license to purchase for personal stock even though the purchase may not exceed the quantities permitted to be purchased without a license. An importer shall not deliver the merchandise as sold, except beer in half-barrel or quarter-barrel containers.

Delivery of alcoholic liquor shall not be made by an importer to any place licensed for the sale of alcoholic liquor outside of the hours during which such place is authorized to do business. Sale and delivery by an importer to a person who is the holder of a license to purchase for personal stock shall not be made after 10:00 P. M. of any day and before nine o'clock A. M. of the day following.

Effective: February 1, 1960

RULE NUMBER 34

A RULE REQUIRING CERTAIN ESTABLISHMENTS LICENSED FOR THE SALE OF ALCOHOLIC LIQUOR TO MAINTAIN AND/OR SUBMIT CERTAIN RECORDS OR REPORTS CONCERNING PURCHASES AND INVENTORIES OF ALCOHOLIC LIQUOR TO THE COMMISSIONER.

~~For the purpose of carrying out the duties and powers of the Commissioner as required by Section 304 (2) and (5) of the Liquor Control Act, the following is provided:~~

I. Each holder of a retailer's license (except the holder of a Gathering License) shall keep and maintain upon the licensed premises records of invoices adequately and fully reflecting all purchases of alcoholic beverages. All invoices shall be systematically filed and maintained for a period of one year ~~three years~~ from date of delivery.

The records referred to in this rule shall be open to the inspection of DATE or the~~this~~ Commissioner ~~or its designated agent~~ at all reasonable hours.

II. SIGNATURES

~~Each report required by this rule shall be signed by the licensee, either the individual, authorized partner, and/or by the President and attested by the Secretary of the corporation.~~

III. IMPORTERS

(a) Monthly Reports Required

Considering the provisions of 4 Delaware Code, Sections 507 (a) and ~~710718~~; the previous practice of this Commissioner and ~~importers~~ licensees; and the policy of consistency and accuracy of recording and reporting all purchases and sales, all ~~importer~~ licensees shall keep a true and accurate record of the quantities of alcoholic liquors purchased, sold, and on hand, and shall make monthly reports thereof, together with such other and further information as this Commissioner may from time to time require, upon forms provided for such purpose by the Commissioner.

Each monthly report shall cover the period from the last Saturday of the preceding month to the last Saturday of the current month and must be received by the Commissioner on or before noon of the fifteenth day following the last day of the month for which the report applies.

(b) Invoices

All ~~importers~~ shall submit to the Commissioner an invoice prepared in the form approved by the Commissioner covering each sale of alcoholic liquor. The invoices for each monthly period must be kept in numerical order and submitted to the Commissioner on or before noon of the fifth day following the last day of the period for which they apply.

(c) When there are No Sales or No Purchases or Both

All ~~importers~~ shall be required to file said reports even though there are no purchases or no sales of alcoholic liquor or both unless said ~~importers~~ have obtained from the Commissioner written authorization not to file the reports required by this Rule. That is, if an ~~importer~~ has no sales or no purchases or both during the applicable period under this Rule, the report filed with the Commissioner shall indicate such unless the ~~importer~~ is excused in writing by the Commissioner from filing such reports.

~~IV. The revised Rule is effective November 1, 1986.~~

RULE NUMBER 35. As Amended

A RULE GOVERNING THE ISSUANCE OF A LICENSE FOR A GATHERING TO BE HELD IN LICENSED ESTABLISHMENTS IN THE STATE OF DELAWARE

~~No license will be issued for a gathering where alcoholic liquor is to be offered for Gala in any establishment holding a license issued by the Commissioner.~~

~~Licenses for private gatherings to serve alcoholic liquor gratuitously may be issued to persons holding such gatherings at licensed clubs, hotels or restaurants with facilities, which, in the opinion of the Commissioner, are adequate to insure the privacy of such gatherings.~~

~~The application for a such private gathering license shall indicate clearly the area of the club,~~

~~hotel or restaurant~~non-gathering licensee where such gathering will take place and the license shall exclusively cover and pertain only to the described part of the premises.

All alcoholic liquors served at such private gathering must be purchased from the ~~club, hotel or restaurant~~on-premises licensee where the gathering is being held or from an Importer or retailer. All unused alcoholic liquors must be stored and locked immediately following the private gathering in storage cabinets set aside in the area used for the gathering. None of the alcoholic liquors may be removed from the specified area, except by employees of the ~~licensed club, hotel or restaurant~~licensee for the purpose of returning such alcoholic liquors to stock.

The Commissioner shall look to the holder of such private gathering license for compliance with the laws of Delaware and the rules and regulations of the Commissioner relating to alcoholic liquors. However, a violation of such laws, rules or regulations of the Commissioner shall be cause for the Commissioner to deny future applications for private gathering licenses on the ~~premises~~premises of the club, hotel or restaurantlicensee where the violation occurred.

Every application filed in accordance with this rule shall be accompanied by the sum of \$5.00 payable to the ~~State Treasurer of the State of Delaware~~Commissioner, which shall be refunded if the application is not approved.

Effective: ~~November 19, 1963~~

RULE NUMBER 35.1

GATHERING LICENSES

Purpose and Scope

This rule implements the definition of "gathering of persons" under the Liquor Control Act.

"Gathering of persons" or "gathering" means a banquet, picnic, bazaar, fair, or similar private gathering, or similar public gathering, where food or drink are sold, served, or dispensed by non-profit organizations such as churches, colleges, universities, volunteer fire companies, political parties, or other similar non-profit groups having a common civic, social, educational, or religious purpose, or where entrance tickets are sold or entrance fees are required by those non-profit organizations.

A. Gathering License:

1. ~~The organization must be non-profit as defined under the Liquor Control Act~~a not-for-profit organization.

2. The organization must submit proof of incorporation or file an alternative, for example, Articles of Association.

3. Form 990 must be filed with the Delaware Alcoholic Beverage Control Commissioner. If the organization is new, proof from the Department of Treasury that non-profit status has been requested must be filed with the application.

4. Religious organizations must file Form 1065.

5. Political organizations must be registered and acknowledged by the Department of Elections.

6. Application must be completed and submitted with proper fee.

7. Daily gathering applications must be completed and submitted ten (10) working days prior to the scheduled gathering.

~~8. A first-time inspection for a gathering must be conducted.~~

B. Renewal of Annual Gathering:

~~1. Application with proper fee must be completed and submitted by October 1 in order to be acted on by the Commissioner prior to the end of the year.~~

~~2. An annual inspection must be conducted.~~

~~3. Applicable Form 990 or Form 1065 must be submitted.~~

~~4. A list, with birth dates, of all individuals who are under the age of 21 must be submitted.~~

~~C. Variance:~~

~~The holder of a license to sell alcoholic beverages at a "gathering of persons" or "gathering" may apply, in writing, to the Commissioner for a variance in any of the requirements of this Rule for good cause shown; provided that such variance does not violate any provisions of the Liquor Control Act.~~

~~D. Severability:~~

~~If any provision of this Rule shall be declared invalid, the remaining portions of the Rule shall remain valid and effective.~~

~~E. Effective Date:~~

~~Approved and effective on June 14, 1990.~~

RULE NUMBER 36

DELIVERY, SALE AND CONSUMPTION OF ALCOHOLIC LIQUORS
FOR ON-PREMISES CONSUMPTION

A. Purpose and Scope

This rule defines the term "Delivery", "Sale", "Service" and "Consumption" of alcoholic liquors and prescribes the hours of the day when alcoholic liquors may be delivered, sold and consumed, under the provisions of 4 Del. C. §714(d)709.

B. Definitions

(1) "Consumption" of alcoholic liquors means the act of drinking or eating alcoholic beverages, includes possession of an alcoholic beverage with the present ability to drink or eat it.

(2) "Delivery" of alcoholic liquors means the transfer of possession or custody of alcoholic liquors from one person to another.

(3) "Sale" of alcoholic liquors means ~~to transfer ownership of alcoholic liquors, whether or not payment and delivery occur contemporaneously.~~ solicit or receive an order for; keep or expose for sale, deliver for value or in any other way than purely gratuitously.

(4) "Service" of alcoholic liquors means the ~~preparation, storage or~~ delivery of alcoholic beverages.

(5) "Time of Day" means prevailing local time in the State of Delaware as fixed by Executive Order or pursuant to the Uniform Time Act of 1966, 15 U.S.C. §260, ET seq.

C. Prohibited Acts

~~(1) No person licensed by the Commissioner shall sell, serve or deliver alcoholic liquors on, in or from an establishment licensed for On-premises consumption between the hours of 1:00 A.M. and 9:00 A.M. No alcoholic liquors shall be consumed on licensed premises between the hours of 2:00-1:30A.M. and 9:00 A.M.~~

~~(2) No person licensed by the Commissioner shall serve, sell, deliver or permit another to consume alcoholic liquors on, in or from his licensed premises on the holidays prescribed in 4 Del. C. §714(e) unless permitted to do so by law or special license.~~

~~APPROVED this 15th day of August, 1985.~~

RULE NUMBER 37

FINANCIAL RESPONSIBILITY - PAYMENT

REPEALED

EFFECTIVE: FEBRUARY 7, 1990

~~NOTE: Repealed not to conflict with 4 Del. Code, Chapter 3, Section 304(b).~~

RULE NUMBER 38

A RULE TO REQUIRE THE POSTING OF A NOTICE OF
SUSPENSION OF LICENSE UPON THE OUTER DOOR OF
ALL LICENSED PREMISES UPON ISSUANCE OF ORDER
OF SUSPENSION AND PROHIBITING ANY REMOVAL,
TAMPERING WITH OR MUTILATION OF SUCH NOTICE
DURING THE PERIOD OF SUSPENSION

Under the suspension of any license by order of the Commissioner under the provisions of Section 561, Chapter 5, Title 4, Delaware Code of 1953, there shall be placed conspicuously upon the outer door of the licensed premises by an officer of the Commissioner, a sign containing the legend "LIQUOR LICENSE SUSPENDED FOR VIOLATION OF THE LIQUOR CONTROL ACT". The design of such sign, including the lettering and coloring, shall be as designated from time to time by the Commissioner. Such sign shall remain at all times the property of the Commissioner and shall, remain where so affixed by an officer of the Commissioner until removed by order of the Commissioner. If the licensee whose license is suspended shall remove, tamper with or in any way mutilate such sign, or, directly or indirectly, cause such sign to be removed, tampered with or mutilated, such action shall be cause for the cancellation or revocation of the license and all persons responsible for such removal, tampering or mutilation shall be liable for any appropriate penalty under the Liquor Control Act.

Effective: February 1, 1960

RULE NUMBER 39

~~A RULE TO PREVENT UNFAIR AND DISCRIMINATORY PRACTICES
IN RELATION TO THE SALE OF ALCOHOLIC BEVERAGES
NOT FOR CONSUMPTION ON THE PREMISES WHERE SOLD.~~

REPEALED

Effective: November 20, 1960

STATE OF DELAWARE
DEPARTMENT OF ADMINISTRATIVE SERVICES
ALCOHOLIC BEVERAGE CONTROL COMMISSIONER
820 FRENCH STREET
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~~A Resolution to repeal Rule 39 of the Rules of the Delaware Alcoholic Beverage Control
Commissioner.~~

~~WHEREAS, the Supreme Court of the United States, in its decision in California Retail Liquor~~

~~Dealers Assn. v. Midcal Aluminum, Inc. # issued March 3, 1980, held that state imposed liquor resale price maintenance is contrary to Federal antitrust laws unless clearly articulated and firmly expressed as state policy and actively supervised by the state, itself; and WHEREAS, the Attorney General of the State of Delaware, on March 20, 1980, issued an opinion declaring that Rule 39 did not meet the Midcal Aluminum standards; and WHEREAS, the Commissioner on March 20, 1980, voted to suspend enforcement of Rule 39, and on May 8, 1980, by unanimous vote reaffirmed its suspension of Rule 39; and WHEREAS, the effects of the suspension of Rule 39, as evidenced by performance of the liquor market in the State of Delaware between March and October, 1980, reflect reductions in consumer prices of alcoholic liquor, increased revenues to the State and no significant increase in the number of business failures among establishments licensed to sell alcoholic liquor or consumption off of the premises where sold, NOW, THEREFORE, this 20th day of November, 1980, it is RESOLVED, that Rule Number 39 of the Rules of the Delaware Alcoholic Beverage Control Commissioner be, and the same hereby is, REPEALED.~~

RULE NUMBER 40

A RULE PERTAINING TO GAMBLING ON LICENSED PREMISES

I. Purpose and Findings

The purpose of this rule is to promote the health, safety, and welfare of the citizens of this state by providing administrative guidelines for those establishments licensed by the Delaware Alcoholic Beverage Control Commissioner who elect to conduct legalized forms of gambling on their licensed premises.

It is the finding of the Commissioner that some licensed establishments provide various forms of gambling activities on their licensed premises. While it is not within the scope of the Commissioner's authority to regulate such gambling activities, the Commissioner does, however, recognize its authority to regulate its licensees and to insure that gambling activities taking place in licensed establishments are conducted in strict compliance with the State Constitution and other laws of this state pertaining to the regulation of gambling.

II. Authority

The Commissioner may adopt and promulgate any rule it deems necessary to carry out its lawful mandate, provided that such rules are not inconsistent with Title 4 of the Delaware Code or of any other law of the state, and all such rules shall have the force and effect of law [4 Del. C. §304 (a) (1)].

The Commissioner notes that all establishments licensed by the state to sell alcoholic liquor are subject to administrative sanctions for unlawful acts committed by licensees, or their employees, in connection with the operation of a licensed establishment.

III. Applicability

This rule shall govern establishments licensed by the Commissioner to sell alcoholic liquor either on or off the premises or both, who elect to conduct legal forms of gambling on the licensed premises.

IV. Procedure

It shall be the responsibility of every holder of a license issued by the Commissioner who conducts, or intends to conduct, any gambling activity authorized by the State Constitution, or other statute of the Delaware Code, to obtain the necessary licenses or permits as required by the appropriate issuing authority prior to conducting any such gambling activity.

Any licensee of the Commissioner who has legally obtained a license or permit to conduct gambling activities on their licensed premises shall be responsible to insure that the gambling activity is conducted in strict accordance with the rules and regulations of the issuing state authority.

V. Prohibited Acts

No establishment licensed by the Commissioner for the sale of alcoholic beverages either on or off the licensed premises shall engage in, or knowingly permit any patron, employee, staff member or other person under their employ, supervision, direction or control, to engage in or promote any form of illegal or unlicensed gambling activity on the licensed premises in any manner not consistent with the Constitution of this state, or any criminal or civil statute of the Delaware Code.

VI. Severability

~~If any part of this rule is held to be unconstitutional or otherwise contrary to law, then it shall be severed and the remaining portions shall remain in full force and effect.~~

VII. Effective Date

~~This rule shall be effective on December 15, 1994.~~

RULE NUMBER 41

A RULE REQUIRING ~~A AN~~ AN ADDITIONAL DEPOSIT OF \$100.00
ON CERTAIN APPLICATIONS FOR A LICENSE

~~Any applicant for a license that requests a continuance for a hearing shall pay all costs necessitated by the continuance. Each application for a license by an applicant or applicants or for a location for which an application has been submitted within one year from the date of the second application and upon which a hearing is required or requested shall be accompanied by a deposit of \$100.00 payable to the Commissioner for the purpose of defraying the expenses connected with said hearing. No portion of this sum will be refunded.~~

~~Effective: February 1, 1960~~

RULE NUMBER 42

A RULE GOVERNING SPECIFICATIONS AND ALTERATIONS
TO PROPOSED AND LICENSED ESTABLISHMENTS

I. HISTORY:

~~This rule was enacted in its original form on February 1, 1960, and required every person applying for an alcoholic liquor license to submit specifications and a floor plan of proposed establishments to the Commissioner for approval. It also required that any proposed alterations to an existing licensed establishment be presented to the Commissioner for approval before execution. The original Rule 42 did not state the specific items to be included in the floor plan, nor did it address the authorization of drive-in or walk-up windows for the sale of alcoholic liquor.~~

II. PURPOSE:

~~This amended rule requires the submission of design specifications or alterations of proposed and existing establishments either licensed or to be licensed by the Commissioner for the sale of alcoholic liquor, to ensure compliance with the Liquor Control Act and Commissioner Rules.~~

The Commissioner has concluded, pursuant to ~~its~~ the Commissioner's authority to regulate time, place, and manner in which alcoholic liquor is sold and dispensed, 4 Del. Code, Section 304(a)(2), that the submission of this information is reasonably necessary to ensure compliance with the various specification provisions of the Liquor Control Act and existing Commissioner Rules.

The Commissioner has further found that the potential public safety and law enforcement risk associated with drive-in and walk-up windows, when measured against the nominal convenience they offer consumers, dictates a prohibition on future floor plans that seek to include these design features for the sale of alcoholic liquors.

III. APPLICABILITY:

This rule shall govern the submission of specifications and floor plans by all persons licensed or to be licensed by the Commissioner to import alcoholic liquor or to sell alcoholic liquor for consumption either on or off the premises or both.

IV. PROCEDURE:

Each application for a license to sell alcoholic liquor must be accompanied by a floor plan of the premises to be licensed. The plan shall be reviewed by the Commissioner and approved only if it conforms with the Liquor Control Act and Commissioner Rules.

The floor plan must be submitted in duplicate (two copies) and must include, at a minimum, the following:

- A. Detailed interior and exterior dimensions of the premises.
- B. Clearly indicate all fixtures and equipment, including draft systems, counters, shelving, tables, chairs, bars (if applicable), male restroom, and female restroom.
- C. Detailed interior and exterior dimensions of any other floors, basements, attached rooms, or adjoining structures of any type, if used or planned to be used, for the sale or storage of alcoholic liquor. If applying for a restaurant license, include areas designated for entertainment at any time.
- D. Clearly indicate all entrances and exits of the establishment, as well as any and all connecting halls, doors, or windows that would permit communication or access between licensed and unlicensed areas. This requirement also includes connected or attached living quarters.

All proposed alterations to existing licensed establishments shall comply with the aforementioned requirements and, in addition, follow the provisions of Rule 42.1 before submission to the Commissioner for consideration.

V. PROHIBITION ON DRIVE-IN AND WALK-UP WINDOWS:

It is the finding of the Commissioner that the use of drive-in and walk-up windows or counters by establishments licensed for off-premises consumption present substantial risks to public safety and law enforcement personnel that outweigh the convenience they offer consumers.

Specifically, the Commissioner finds the following risks associated with drive-in and walk-up windows:

- A. Licensee compliance with proper identification procedures and detection of intoxicated patrons is encumbered by the presence of glass partitions, increased distance, angle of view (between the window and parked vehicle), poor lighting, and automobiles.
- B. Law enforcement surveillance personnel cannot adequately view patrons sitting in automobiles for the purpose of assessing age and condition of sobriety.
- C. The danger to law enforcement personnel is substantially increased when suspected liquor law violators are in a motor vehicle. The potential flight of violators also constitutes an increased risk to the public.
- D. The practice of drivers purchasing alcoholic liquor without leaving their vehicle creates a public perception that tends to frustrate the state's goal of promoting highway safety and reducing drunk driving.

The Commissioner, therefore, will not accept or approve an application for an alcoholic liquor

license, or a request for an alteration in the case of an existing license, wherein the accompanying floor plan includes either a drive-in or walk-up window or counter; however, this prohibition shall not apply to the transfer of ownership in any of the forms covered by Rule 3 or renewal of an existing license.

VI. SEVERABILITY:

~~If any provision of this Rule shall be declared invalid, the remaining portions of this Rule shall remain valid and effective.~~

VII. EFFECTIVE DATE:

~~This Rule shall become effective upon its approval by the Commissioner.~~

RULE NUMBER 42.1

CONSTRUCTION, RENOVATION, EXTENSION OF PREMISES
TO INCLUDE PATIOS: PROCEDURES, STANDARDS AND FEES

A. Purpose and Scope. Licenses issued under the provisions of Title 4, Delaware Code (Liquor Control Act) are approved based upon the physical plan as presented in the initial application. Under the provisions of Rule 42 any and all alterations to the licensed premises must be presented and approved by the Commissioner prior to execution.

This rule provides procedures, standards and fees for use permits and enforcement inspection under Rule 42.

B. Definitions.

1. "Premises" shall mean the building or buildings identified by a single address number or lease space number, to which a license to sell alcoholic liquors for consumption "on" or "off" has been issued by the Commissioner, but shall not include the surrounding grounds, parking lot, ancillary structures, contiguous water, still or moving, or piers, floating docks or buildings, patios covered or uncovered, or any other structure, modular or mobile home attached or connected to the licensed establishment by electrical, water, sewer or heating/air conditioning systems.

2. "Patio" shall mean deck or porch, covered, uncovered, raised or at grade, and must be attached to, and contiguous with the licensed premises.

3. "Wet Bar" is any fixed or portable, permanent or temporary, point of service for sale, delivery or service of alcoholic beverages.

C. Patio Permit

An extension of premises patio permit may be issued, and valid during the term of the basic license, providing the following procedures are followed and said extension is approved by the Commissioner.

D. Procedures

For all construction and/or renovation:

1. Submit to the Commissioner a letter of intent including:

(a) Detailed floor or construction plans (2 sets) showing dimensions, point of contact with the licensed premises, elevation and identification of access and egress, ~~service/wet bars, seating and table arrangements, storage, restrooms, parking and fencing.~~ In the event that the applicant is for a restaurant license, include the areas utilized for entertainment, either permanent or temporary;

(b) The total square footage of the extended premises;

(c) Approval from the County and municipality appropriate political

subdivision;

~~(d) Approval from the Department of Highways and Transportation, State of Delaware, if vehicular traffic flow is involved.~~

~~(e) Copy of "Public notice" signs, which must be a minimum of 18 x 24 inches and clearly identify the planned use of the extension of premises. These intent signs must be posted conspicuously on the licensed premises from the date the intent letter is filed to the date the approved construction is completed;~~

~~(f) If the extension is to be an outside patio, a listing of all home owners within a radius of .1 (tenth) of a mile may be required by the Commissioner who may also require notification to such home owners;~~

~~(g) Certification by the State Fire Marshal showing maximum patron capacity of the extension;~~

~~(h) Intended construction start and finish dates;~~

~~(ie) Filing Fee (non-refundable).~~

2. Notice of an extension of the licensed premises must be made in accordance with 4 Del.C. §524. The Commissioner will review the intent plans, and if no protest is received within ~~30~~ calendar days the protest period, may issue a construction approval to begin construction. Any change in plans must be submitted to the Commissioner for approval, accompanied by a filing fee.

3. In the event a protest is received, a public hearing will be scheduled to hear the protest.

4. When construction is completed, the Commissioner shall be notified for final enforcement-inspection of the site, ~~which shall be accomplished within 3 working days after receipt of notice.~~

5. Upon final inspection, approval, and upon payment of the non-refundable inspection fee, and patio permit fee, if applicable, the Commissioner shall authorize use as an extension of premises. ~~In the case of any patio, a 90 day temporary patio use permit shall be issued. If reinspection is necessary, each additional inspection will incur a fee, one-half of the original fee.~~

~~6. If, during the 90 day temporary patio use period, any legitimate protest is received, the temporary permit shall be rescinded, and the patio closed, pending a public hearing.~~

~~7. Upon the completion of 90 days unprotested patio use, the temporary permit will be changed to annual, with the expiration date the same as the basic license.~~

E. Fees

1. Filing Fee: \$25.00

2. Enforcement inspection fees:

- | | |
|------------------------------|-------------|
| a. Up to 2500 square feet | \$100.00 |
| b. 2501-7500 square feet | \$200.00 |
| c. 7501-10,000 square feet | .03/sq. ft. |
| d. 10,001-15,000 square feet | .04/sq. ft. |
| e. over 15,000 square feet | .05/so. ft. |

3. Patio use permit fees: Biennial fee of \$1,000.

a. up to 10,000 sq. feet. \$225.00

b. 10,001-15,000 sq. feet \$425.00

c. over 15,000 sq. feet \$.05/sq. ft.

4. Fee for a variance to the standards set forth in subsection F below is a biennial fee of \$100 per variance

F. Standards for Patios

1. ~~Noise—The Noise Regulations of the State of Delaware, as authorized by the Department of Natural Resources of Environmental Control, will be applied to all licensed premises. (Attached to the Rule is a copy of the applicable noise regulations.)~~

2. No live entertainment on licensed patio.
- ~~23.~~ No external speakers or amplifiers on licensed patio.
- ~~34.~~ No audible paging system on licensed patio.
- ~~45.~~ No wet bar on licensed patio.

G. Variances

The Commissioner may authorize variances for good cause shown to the inspection standards for individual patio requests.

H. Severability

~~If any provision of this Rule shall be declared invalid, the remaining portions of the Rule shall remain valid and effective.~~

I. Effective Date

~~This Rule shall become effective on February 1, 1989.~~

RULE NUMBER 43

A RULE GOVERNING EMPLOYEES OF IMPORTER-SUPPLIER OR
WHOLESALE LICENSEES

No employee, officer, director, or stockholder, member, owner or partner (nor the spouse thereof) of a wholesaler or supplier~~importer~~ may at any time serve as an officer or director, and/or be employed in any capacity, with or without compensation by the holder of a license of any other type.

Nothing herein shall limit the right of ~~as an~~ officer, director, stockholder, member, owner or partner (and the spouse thereof) of a wholesaler or ~~importer~~ supplier to serve as an officer or director of a club which is not operated for profit.

Effective: January 1, 1969

RULE NUMBER 44.

A RULE GOVERNING FINANCIAL INTERESTS
IN VARIOUS LICENSEES

1. The terms "importer," "manufacturer," and "retailer" as used in this rule shall include (in addition to the definitions given in 4 Del. C. §101) all persons with an interest in the business of importing, manufacturing or retailing, whether as a sole proprietor thereof, a partner, a director or officer or stockholder or member of a corporation, or as an employee of any such business.

2. No manufacturer or importer of alcoholic liquor shall have any financial interest, direct or indirect, in any business holding a license for the retail sale of alcoholic liquor.

3. No manufacturer or retailer of alcoholic liquor shall have any financial interest, direct or indirect, in any business holding a license for importing alcoholic liquor.

4. Nothing contained in this Rule shall prohibit any person from owning qualifying or non-income producing shares held as a condition of membership in any non-profit social organization or bonds or debentures issued by such organization to the members thereof.

~~5. No importer or retailer of alcoholic liquor shall be the owner of, either directly or indirectly, more than five per cent of the capital stock of any manufacturer. The amount of any such capital stock owned shall be reported in writing to the Commissioner.~~

Effective: February 1, 1960

RULE NUMBER 45

A RULE PROHIBITING INDIVIDUALS, OTHER THAN EMPLOYEES,
ON PREMISES OF TAVERNS, TAPROOMS AND STORES DURING
CERTAIN HOURS

(a) Unless previously authorized in writing by the Commissioner, it is forbidden for any holder of a tavern or taproom license to permit any individuals, other than employees, to enter or remain on the premises to which such license pertains between 2:00 A.M. and 9:00 A.M. of any day that sales of alcoholic liquors are permitted, and in the case of holidays, as defined in 4 Del. C. Sec. ~~709747~~ (ed), from 2:00 A.M. of the day a holiday begins and 9:00 A.M. of the first day thereafter on which the sale of alcoholic liquors may be resumed.

(b) Unless previously authorized in writing by the Commissioner, it is forbidden for any holder of a license pertaining to premises on which the sale of alcoholic liquors is solely permitted for consumption off said premises, to permit any individuals, other than employees and employees of a licensed Delaware wholesaler, to enter or remain thereon between 1:01 A.M. and 9:00 A.M. of any day that sales of alcoholic liquors are permitted, and in the case of holidays, as defined in 4 Del. C. Sec. ~~747(e)~~, 709(d) from 1:01 A.M. of the day a holiday begins and 9:00 A.M. of the first day thereafter on which the sale of alcoholic liquors may be resumed except that individuals are permitted to enter on Sundays after noon and before 8:00 p.m. unless such times are more restrictive as permitted by City ordinance.

Effective: April 9, 1970

RULE NUMBER 46

A RULE GOVERNING THE CONTRACTUAL RELATIONSHIPS
BETWEEN SUPPLIERS AND WHOLESALERS FOR THE
DISTRIBUTION OF ALCOHOLIC BEVERAGES

PREAMBLE

Historically, in Delaware the distribution of particular brands of alcoholic beverages has been accomplished through dealings between an out-of-state supplier (i.e., distiller, vintner, brewer, manufacturer, rectifier or other business entity) licensed to supply alcoholic beverages into Delaware and one Delaware wholesaler (also sometimes referred to as an importer or distributor) licensed to sell and distribute alcoholic beverages to Delaware retailers. These exclusive relationships between suppliers and wholesalers have, through the years, proven to be an efficient and economical means of distribution in Delaware. Until recently such exclusive relationships had been utilized to the virtual exclusion of other methods of distribution. Today, exclusivity still remains the preferred method of distribution for the vast majority of brands being sold in Delaware.

Over the years, in reliance on the suppliers' custom and practice of establishing and maintaining exclusive distribution relationships, Delaware wholesalers have made substantial investments of time and money in efforts to promote and sell the suppliers' brands. As early as 1959, the Commissioner realized that some safeguards were necessary to protect wholesalers from arbitrary, discriminatory or otherwise unfair termination of the supplier/wholesaler relationship by national or international suppliers wielding far greater economic power than the local wholesalers. The Commissioner realized then, as ~~the Commissioner~~ does today, that should such abusive

practices be permitted to occur, the adverse impact could be felt well beyond the affected wholesaler. As a result of ~~its~~the Commissioner's concerns, the Commissioner promulgated the original version of Rule 46 in 1959. The Rule was substantially revised in 1981 in an effort to provide more detailed criteria to govern the supplier/wholesaler relationship.

It is the Commissioner's view that the Rule has effectively regulated the relationships between out-of-state suppliers and Delaware wholesalers during much of this decade. Nevertheless, because of changes which have been occurring within the industry itself, and because the Commissioner has had several recent opportunities to review the Rule in intricate detail in differing contexts, the Commissioner~~#~~ has become convinced that certain issues must be addressed by means of the promulgation of a new Rule 46

Specifically, over the last several years the supplier tier of the beverage alcohol industry has experienced widespread consolidation on a national and international scale. In several instances, this phenomenon has had a significant effect on supplier/wholesaler relationships in Delaware. Therefore, Rule 46 is being revised to recognize and address equitably the interests of both parties in such situations.

Another recent change affecting supplier/wholesaler relationships in Delaware has been the interest expressed by several suppliers in implementing systems of "dual distribution" (i.e., distribution of a particular brand or brands of alcoholic beverages by more than one wholesaler in the same geographic area). As a result, Rule 46 is being revised specifically to address issues related to this method of distribution.

Experience has also convinced the Commissioner that Rule 46 should provide suppliers with the ability to terminate an unwanted distribution relationship even in circumstances where the "good cause" requirements of the Rule cannot, be satisfied. Providing this flexibility is necessary in order to allow suppliers to adapt their systems of distribution to changing market conditions or otherwise to respond to legitimate business considerations. Therefore, the Rule is also being revised to allow for the termination or transfer of distribution rights even in those instances where "good cause" does not exist provided that the terminated wholesaler receives reasonable compensation from the supplier in recognition of its efforts to promote and sell the supplier's brands.

Finally, this new Rule attempts to define more clearly the "good cause" criteria which must be satisfied in order to permit the uncompensated termination or transfer of distribution rights from one wholesaler to another.

For the reasons stated and pursuant to ~~its~~the Commissioner's statutory authority, the Commissioner promulgates new Rule 46 in an effort to strike an equitable balance between the sometimes conflicting interests of out-of-state suppliers and Delaware wholesalers, as well as to allow, to the extent practicable, business parties to determine the nature and the extent of their contractual relationships free from governmental intervention. In so doing, the Commissioner intends to further the interests of the State and its people in maintaining a healthy, efficient and competitive alcoholic beverage industry - one in which consumers are assured a wide range of products at reasonable prices.

PROCEDURES AND STANDARDS

A. Requirements for Importing Alcoholic Beverages Into Delaware

1. No out-of-state supplier of alcoholic beverages shall ship or caused to be shipped into Delaware any alcoholic beverages unless all of the following requirements have been satisfied:

a. It shall have obtained from the Commissioner an Out-of-State Supplier's license as required by 4 Del.C. sec. 501;

b. It shall submit the following information to the Commissioner and to each affected wholesaler in writing:

1) the name and address of each licensed wholesaler in Delaware with which it has contracted;

2) the brand or brands of alcoholic beverages which it intends to distribute in

Delaware;

3) a statement as to whether the distribution rights being conferred on each wholesaler are exclusive; and

4) if in writing, a copy of the distribution contract, between it and the licensed wholesaler(s);

c. It shall ship such alcoholic beverages only to a wholesaler or wholesalers licensed by the Commissioner; and

d. It shall agree to comply with all applicable requirements of this Rule. (Noncompliance with the requirements of subsection A.1. prior to shipping alcoholic beverages into the State shall subject the supplier to the imposition of such administrative sanctions as the Commissioner deems warranted.)

2. No wholesaler licensed by the Commissioner shall order or receive any alcoholic beverages from an out-of-state supplier which has not complied with the requirements contained in subsection A.1. of this Rule.

B. General Principles

1. A licensed supplier having a contract (this term is also intended to include all agreements, understandings or other arrangements, whether written or oral) with a licensed wholesaler for the distribution in Delaware of a brand or brands of alcoholic beverages, which brand or brands have been recorded with the Commissioner as required by subsection A.1.b. of this Rule, may terminate the distribution rights and transfer such rights to another licensed wholesaler upon the voluntary agreement of both wholesalers (i.e., a voluntary termination and transfer). In the event of such a voluntary termination and transfer, the supplier shall provide written notice of that fact to the Commissioner indicating that the affected wholesalers have both agreed to the termination and transfer. A copy of the supplier's notification letter to the Commissioner shall be provided to both wholesalers.

2. In the event that a licensed wholesaler does not agree to the termination or transfer of its distribution rights (i.e., an involuntary termination or transfer), the supplier may terminate or transfer said rights only in accordance with the applicable provisions of this Rule.

3. A licensed supplier already supplying a brand or brands of alcoholic beverages in Delaware by means of a single wholesaler may commence the "dual distribution" of such product(s) only after compliance with the applicable provisions of this Rule.

4. A licensed supplier which seeks to introduce a new brand or brands of alcoholic beverages into Delaware may distribute such products through more than one licensed wholesaler provided that by so doing it does not violate any provision of an applicable distribution contract between it and any licensed wholesaler, and that it satisfies the requirements contained in subsection A.1. of this Rule.

C. Contracts

1. Contracts involving the distribution of alcoholic beverages in Delaware between a licensed out-of-state supplier and a licensed wholesaler may be written or oral.

2. No contract for the distribution of alcoholic beverages shall be supported by the exchange of \$100 or more.

3. All contracts subject to this Rule shall continue in effect until voluntarily terminated or until any involuntary termination, transfer or substantial modification of the distribution rights granted by such contracts has been approved by the Commissioner.

4. Every contract for the distribution of alcoholic beverages in Delaware between a licensed out-of-state supplier and a licensed wholesaler shall contain, or be deemed to contain, all of the provisions of this Rule.

D. Procedure for Involuntary Termination or Transfer

1. Any licensed supplier which desires to terminate involuntarily the distribution rights of a licensed wholesaler or to transfer such rights from one licensed wholesaler to another shall submit a

written request to the Commissioner at least sixty days prior to the proposed termination or transfer date.

a. Upon written request, a copy of which shall be provided to the affected wholesaler, the sixty-day notice provision may be waived by the Commissioner if the reason for the requested termination or transfer is the insolvency of the wholesaler, the occurrence of an assignment for the benefit of the wholesaler's creditors, the bankruptcy of the wholesaler, the dissolution or liquidation of the wholesaler, the cancellation, revocation, nonrenewal or suspension for more than thirty consecutive days of the wholesaler's license, or, if the supplier can otherwise establish to the satisfaction of the Commissioner that compliance with the sixty day notice requirement would cause it to suffer irreparable harm.

b. The requirement of this section that the supplier provide the Commissioner with a written request to terminate or transfer distribution rights is applicable to, and includes, those circumstances whereby the supplier has obtained the rights to supply such alcoholic beverages in Delaware by means of a merger, purchase of stock, purchase of assets, or other acquisition, or by otherwise becoming a new regional or national supplier of such products. Any supplier obtaining such rights to supply alcoholic beverages in Delaware does so subject to the existing distribution arrangement and rights existing in Delaware with respect to such beverages.

2. The written request to terminate or transfer distribution rights required by subsection D.1. shall include all of the following information:

a. The name and address of the existing wholesaler from which the supplier seeks to withdraw the distribution rights, and the name(s) and address(es) of the wholesaler(s) upon which the distribution rights are sought to be conferred;

b. The reason and basis for the request; and,

1) In the event that good cause is relied upon for such termination or transfer, a summary of the facts giving rise to the assertion of good cause; or

2) In the event that good cause is not the basis for the request, the agreement to pay compensation and to abide by arbitration, if necessary, as provided by this Rule, together with a representation that the request does not violate any of the terms of the distribution agreement with the existing wholesaler.

3. If good cause is the basis for the request to terminate or transfer distribution rights, the supplier shall provide a copy of the notice required by subsection D.2. by certified mail, return receipt requested, to any wholesaler affected by its request. Any adversely affected wholesaler may oppose the request by sending written notice of its opposition to the Commissioner by certified mail, return receipt requested, within twenty days after receipt of its copy of the supplier's request. A copy of the notice of opposition shall also be sent to the supplier and any other affected wholesaler(s). The failure to file a timely notice of opposition with the Commissioner shall waive the wholesaler's right to oppose the request to terminate or transfer distribution rights. If the Commissioner receives timely notice of opposition to a request to terminate or transfer distribution rights for good cause, ~~the~~ the Commissioner shall hold a hearing to consider the request and the opposition thereto.

4. If good cause is not the basis for the request to terminate or transfer distribution rights, the supplier shall provide a copy of the notice required by subsection D.2. by certified mail, return receipt requested, to any wholesaler affected by its request. Following the issuance and receipt of such notice, the parties shall comply with the provisions contained in subsection E. of this Rule.

E. Reasonable Compensation

1. Procedure for determining compensation

a. A supplier may terminate or transfer distribution rights from an existing wholesaler without good cause upon the payment to the existing wholesaler of reasonable compensation for the value of the wholesaler's business related to the terminated or transferred brand or brands. For purposes of determining reasonable compensation under this Rule, the value of the wholesaler's business shall be deemed to be the inventory at laid-in cost of the terminated or transferred brand or

brands and its associated good will. "Associated good will" is defined as 1.0 times the wholesaler's average annual gross profits on the terminated or transferred brand or brands for the last three fiscal years or such lesser period during which the brand or brands have been distributed by the terminated wholesaler. For purposes of this Rule "gross profits" shall mean selling price less F.O.B., taxes and freight.

b. If the contract between a supplier and the existing wholesaler from which the supplier seeks to withdraw the distribution rights provides for an amount of compensation greater than that provided for by this Rule, the supplier shall be required to compensate the existing wholesaler in that greater amount prior to terminating or transferring such rights.

2. Neutral arbitrator

a. In the event that a supplier and its existing wholesaler are unable to agree on the amount of reasonable compensation to be paid by the supplier in accordance with subsection E.1. within twenty days after the wholesaler receives a copy of the supplier's request to terminate or transfer distribution rights, as required by subsection D.4., the dispute shall be submitted to a neutral arbitrator selected by the parties. If they cannot agree on an arbitrator within an additional twenty days, upon the request of either party, the arbitrator shall be appointed by the Commissioner, ~~through its Executive Secretary.~~

b. By becoming a party to any distribution contract governed by this Rule, such party agrees in advance to proceed to arbitration in accordance with the provisions of this Rule and to recognize the arbitrator as a subordinate designated by the Commissioner to conduct a hearing on the issue of reasonable compensation in accordance with the applicable provisions of the Administrative Procedures Act, 29 Del. C. ch..101.

1) Upon agreement of the parties, the arbitrator may conduct an informal conference in lieu of a formal hearing in accordance with 29 Del. C. sec. 10123.

2) In the case of an informal hearing, as in the case of a formal hearing, a record from which a verbatim transcript can be prepared shall be made.

c. The written decision of the arbitrator shall be submitted to the Commissioner which shall issue a final order in accordance with the applicable provisions of the Administrative Procedures Act.

d. The costs of arbitration shall be borne equally by the parties.

3. Effective date of termination or transfer

a. Any termination or transfer of distribution rights for which compensation is required under this Rule shall not be effective and shall not be permitted until the supplier has paid the required compensation to the wholesaler which is having its rights terminated or transferred, unless the supplier posts a bond in the amount of the required compensation, as determined by the final order of the Commissioner.

b. A supplier ~~may~~ may post a bond in the amount of the required compensation during the pendency of an appeal taken by any party affected by the compensation decision. Upon posting of the bond, the termination or transfer of distribution rights may take place.

F. Good Cause for Involuntary Termination or Transfer

1. Notwithstanding the provisions of the distribution contract between the parties, when, for good cause, a licensed supplier seeks to withdraw involuntarily distribution rights for alcoholic beverages already being sold in this State from a licensed wholesaler by termination of the relationship, transfer of brands or otherwise, and to confer those distribution rights on another licensed wholesaler, the Commissioner shall not approve the request unless the supplier establishes that "good cause", as defined in this Rule, exists to permit such termination or transfer as a result of the acts or omissions of the existing wholesaler.

2. Because good cause can only be established based upon the acts or omissions of the existing wholesaler, it is not a sufficient basis that a supplier has obtained the rights to supply such alcoholic beverages in Delaware by means of a merger, purchase of stock, purchase of assets, or

other acquisition, or by otherwise becoming the new regional or national supplier of such products. Any supplier obtaining such rights does so subject to the existing distribution relationship in Delaware for such alcoholic beverages.

3. The term "good cause" as used in this Rule shall include:

a. The failure or refusal of the wholesaler to comply substantially with a material provision of the distribution contract (including any provision establishing standards of performance), which provision is essential, fair and reasonable, after having received written notice of such failure from the supplier and having failed within sixty days thereafter to correct substantially such deficiency; provided, however, that such notice and opportunity to correct the deficiency is not required when the deficiency results from a licensed wholesaler's (i) felony conviction, (ii) fraudulent conduct, (iii) sales of the supplier's brands outside of its agreed upon sales territory, or (iv) failure to pay and continued failure to make payment to the supplier after receipt of written notice of the delinquency and demand for payment within the period of time agreed upon by the parties or ten business days, whichever is greater.

b. In the absence of any express provision in the distribution contract establishing standards of performance, the failure of the wholesaler to meet reasonable and fair standards of performance based upon the custom and practice of the industry, after having received written notice of such failure from the supplier and having failed within sixty days thereafter to correct substantially such deficiency; provided, however, that such notice and opportunity to correct the deficiency is not required when the deficiency results from a licensed wholesaler's (i) felony conviction, (ii) fraudulent conduct, (iii) sales of the supplier's brands outside of its agreed upon sales territory, or (iv) failure to pay and continued failure to make payment to the supplier after receipt of written notice of the delinquency and demand for payment within the period of time agreed upon by the parties or ten business days, whichever is greater.

c. The insolvency or bankruptcy of the wholesaler;

d. The dissolution or liquidation of the wholesaler's business;

e. The loss for more than thirty consecutive days by the wholesaler of any federal or state license necessary to carry out the provisions of the distribution contract between the parties whether by revocation, cancellation, failure to renew, suspension, or otherwise;

f. The assignment, transfer or sale of the ownership or substantial assets of the wholesale licensee's business whenever the wholesaler to be substituted is financially unable to assume the obligations under the distribution contract, or lacks the business experience or qualifications necessary to protect the legitimate interests of the supplier. The burden of establishing such inability shall be upon the supplier.

G. Dual Distribution

1. The terms "dual" and "dualing" as used in this Rule mean the distribution of the same brand or brands of alcoholic beverages in Delaware by more than one wholesaler. The term "dual wholesaler" identifies those wholesalers handling the brand or brands being dual.

2. A supplier may supply a new brand or brands of alcoholic beverages in Delaware by dualing such brand or brands provided that no provision of any applicable distribution contract prohibits ~~dualing~~dualing the product(s), and further provided that the supplier complies with the requirements of subsection A.1. of this Rule.

3. A supplier which is already supplying a brand or brands of alcoholic beverages in Delaware as a result of a distribution relationship with one wholesaler may confer dual distribution rights to the product(s) upon one or more additional wholesalers provided that no provision of the original distribution contract prohibits dualing, and further provided that the supplier complies with the requirements contained in subsection G.4. of this Rule.

4. If any supplier which is already supplying a brand or brands of alcoholic beverages in Delaware as a result of a distribution relationship with one wholesaler desires to dual such product(s), such supplier shall provide written notice to the Commissioner and all affected wholesalers at least sixty days prior to the proposed start of the dualing. Such written notice shall

contain all of the following:

a. The name of the brand or brands which it seeks to dual and the name and address of the wholesaler selling the product(s) at the time of the request;

b. The names and addresses of those wholesalers through which it seeks to dual the brand or brands;

c. A representation that the request to dual is based upon a valid bona fide business reason or reasons of the supplier, and a description of the business reason or reasons giving rise to the request;

1) Reasons that do not constitute "valid bona fide business reasons" include, but are not limited to, the desire to avoid the requirement of establishing good cause for a termination or transfer of distribution rights; the desire to avoid paying compensation for a termination or transfer of distribution rights; any other circumstances that cause it to appear to the Commissioner that the request to dual is merely an attempt to circumvent any of the provisions of this Rule.

d. A representation that the distribution contract with the existing wholesaler of the brand or brands sought to be dualized permits it to dual such products; and

e. A representation that it will offer the dualized product(s) upon the same terms and conditions to every dualized wholesaler. No special terms, discounts or conditions shall be afforded to one wholesaler which are not afforded to all dualized wholesalers.

5. Any existing wholesaler which is affected by a supplier's request to begin dual distribution of a brand or brands may oppose the request by sending written notice of its opposition to the Commissioner by certified mail, return receipt requested, within twenty days after its receipt of a copy of the supplier's request. A copy of the notice of opposition shall also be sent to the supplier and every other affected wholesaler. The failure to file a timely notice of opposition with the Commissioner shall waive the wholesaler's right to oppose the supplier's request to dual its product(s).

6. If the Commissioner receives a timely notice of opposition to a supplier's request to begin the dual distribution of a brand or brands, ~~the Commissioner~~ shall hold a hearing to consider the request and the opposition thereto. The supplier shall not be permitted to begin the dual distribution of its product(s) until such time, following the hearing, as the Commissioner determines that it has complied with the requirements of this Rule and approves the request.

H. Severability

~~If any part of this Rule is held to be unconstitutional or otherwise contrary to law, then it shall be severed and the remaining portions shall remain in full force and effect.~~

I. Effective Date

~~The effective date of this Rule, as revised, shall be November 1, 1989.~~

RULE NUMBER 47

A RULE PERTAINING TO THE PLAYING OF BINGO IN CLUBS

REPEALED

Approved on the 10th day of November, 1994

Effective Date: December 15, 1994

RULE NUMBER 48

A RULE REQUIRING APPLICATIONS TO BE ON FORMS

~~APPROVED BY THE COMMISSIONER AND SETTING FORTH
THE GUIDELINES FOR APPLICATIONS FOR REHEARING.~~

A. FORMS

~~Unless the Commissioner should otherwise determine, every application for a license or renewal thereof, shall be in the form, including the payment of fees, required by the Commissioner and/or the provisions of the Liquor Control Act. If the application is not in the form, including the payment of fees, required by the Commissioner and/or the Liquor Control Act, the Commissioner may refuse to hear said application until it is in the proper form, including the payment of fees. If the application is not in the proper form, including the payment of fees, the Commissioner may consider refusal of the application for a license in that this may be evidence of the applicant appearing to be financially irresponsible under the grounds set forth in 4 Delaware Code, Section 543 (b) (3).~~

B. PETITIONS FOR REHEARING ON APPLICATIONS

~~If the application for a license has been denied by the Commissioner, the applicant may file a petition for a rehearing with the Commissioner on or before the seventh day from the date of the written decision of the Commissioner denying the application. The petition for rehearing will be placed by the date it is filed with the Commissioner in the chronological order of hearing new applications. The application for rehearing for purposes of Rule No. 41 shall be treated as a subsequent application requiring the payment of fee required by Rule No. 41. Should any other application be filed with the Commissioner prior to the date of filing the application for rehearing and said other application affects the same geographic area as the geographic area involved in the application for rehearing, the said other application shall be heard and may be determined before the application for rehearing. The Commissioner may refuse to hold a hearing on the petition unless it is satisfied the petition refers to or presents new evidence of a substantial nature.~~

EFFECTIVE: APRIL 22, 1974

RULE NUMBER 49

A RULE REQUIRING A LEASE TO BE FILED WITH THE COMMISSIONER

Each application for a license for the sale of beer, wine, and spirits must be accompanied by a lease for the premises, unless owned by the applicant, which must provide landlord's expressed permission for the sale of alcoholic liquors on the premises. In the event that a final order from a court of competent jurisdiction provides for possession of the premises to be awarded to the landlord, the Commissioner may revoke the license fourteen (14) days after a proposed revocation order is sent to the licensee at the last address provided to the Commissioner.

EFFECTIVE DATE: OCTOBER 24, 1974

RULE NUMBER 50

A RULE REGARDING APPROVAL OF TRADE NAMES

No licensee shall use or operate under any trade name unless approved by the Commissioner.

Effective: February 1, 1960

RULE NUMBER 51

A RULE REQUIRING THE BIENNIAL RENEWAL OF WHOLESALE, RETAIL, AND ANNUAL GATHERING LICENSES

Background

~~On July 1, 1990, the law requiring the annual renewal of licenses was changed to a biennial requirement (once every two years). As a result, each licensee, based on location, will be designated as either an even or odd year applicant for license renewal purposes.~~

~~In order to arrange licensees into the even/odd year system, it will be necessary to initially renew all wholesale licenses and all retail licenses in New Castle County, Sussex County, and the City of Wilmington for periods of time that are less than twenty-four months and at a prorated fee. All Kent County retail licenses and all gatherings will be for two years from the date of their next renewal and paid at the full fee.~~

~~Various sections of this rule have been identified as transitional in nature and should be followed only until the required action and time period have been satisfied. The transitional procedures in this order are designed to phase all licensees into a two (2) year renewal system with a relatively equal number of renewals in each system.~~

Purpose

~~The purpose of this rule is to establish a procedure for the biennial renewal (every two years) of alcoholic beverage licenses pursuant to Chapter 5, Title 4 of the Delaware Code.~~

~~a. Wholesalers, annual gatherings, Sussex County retailers, and the City of Wilmington retailers shall renew their licenses during even-numbered years.~~

~~b. Kent County and New Castle County shall renew their licenses during odd-numbered years.~~

~~c. All licensees are required to file an application for the renewal of their license three months prior to its expiration date.~~

I. WHOLESALE LICENSES (Even-Numbered Years)

Transitional Procedure:

~~All wholesalers shall apply for the renewal of their license in the form required by the Commissioner on or before January 1, 1991, which license, if approved, will be effective for one year from April 1, 1991, through March 31, 1992.~~

Permanent Procedure:

~~Effective January 1, 1992, all All wholesalers must apply for the renewal of their license in the form approved by the Commissioner on or before January 1 of each even-numbered year. All licenses issued by the Commissioner to wholesalers shall be for a two-year period beginning April 1 of each even-numbered year and ending March 31 of the following even-numbered year.~~

II. BIENNIAL GATHERING LICENSES (Even-Numbered Years)

Transitional Procedure:

~~All applications for the renewal of biennial gathering licenses must be submitted by October 1, 1990, and, if approved, will be effective from January 1, 1991 to December 31, 1992.~~

Permanent Procedure:

~~Effective October 1, 1992, all All applications for the renewal of biennial gathering licenses must be submitted in the form required by the Commissioner on or before October 1 of each even-numbered year. All biennial gathering licenses issued by the Commissioner shall be for a two-year period beginning January 1 of each odd-numbered year and ending December 31 of the following~~

even-numbered year.

III. RETAIL LICENSES - SUSSEX COUNTY (Even-Numbered Years)

Transitional Procedure:

~~All licensees in Sussex County shall apply for the renewal of their license in the form required by the Commissioner on or before July 1, 1991, which license, if approved, will be effective for one year from October 1, 1991, through September 30, 1992.~~

Permanent Procedure:

~~Effective July 1, 1992, all~~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 of each even-numbered year. All licenses issued by the Commissioner to locations in Sussex County shall be for a period of two years beginning October 1 of each even-numbered year and ending September 30 of the following even-numbered year.

IV. RETAIL LICENSES - CITY OF WILMINGTON (Even-Numbered Years)

Transitional Procedure:

~~All licensees in the City of Wilmington shall apply for the renewal of their license in the form required by the Commissioner on or before October 1, 1990, which license, if approved, will be effective for eighteen months from January 1, 1991, through June 30, 1992.~~

Permanent Procedure:

~~Effective April 1, 1992, all~~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 of each even-numbered year. All licenses issued by the Commissioner to locations in the City of Wilmington shall be for a period of two years beginning July 1 of each even-numbered year and ending June 30 of the following even-numbered year.

V. RETAIL LICENSES - KENT COUNTY (Odd-Numbered Years)

Transitional Procedure:

~~All licensees in Kent County must apply for the renewal of their license in the form required by the Commissioner on or before July 1, 1991, which license, if approved, will be effective for two years from October 1, 1991, through September 30, 1993.~~

Permanent Procedure:

~~Effective July 1, 1993, all~~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 of each odd-numbered year. All licenses issued by the Commissioner to locations in Kent County shall be for a period of two years beginning October 1 of each odd-numbered year and ending September 30 of the following odd-numbered year.

VI. RETAIL LICENSES - NEW CASTLE COUNTY (Odd-Numbered Years, A to K) .

~~Outside~~Retail licensees in New Castle County outside of the City of Wilmington whose applicant name (corporate, partnership, or proprietary name, and not trade name) starts with an alphabetical letter of "A" to "k":

Transitional Procedure:

~~All licenses in New Castle County (A to K) must apply for the renewal of their license in the form required by the Commissioner on or before April 1, 1991, which license, if approved, will be effective for twenty-one months from July 1, 1991, through March 31, 1993.~~

Permanent Procedure:

~~Effective January 1, 1993, all~~ retail licensees (A to K) in New Castle County must apply for the renewal of their license in the form required by the Commissioner on or before January 1 of each odd-numbered year. All licenses issued by the Commissioner to locations in New Castle County (A to K) shall be for a period of two years beginning April 1 of each odd-numbered year and ending

March 31 of the following odd-numbered year.

VII. RETAIL LICENSES - NEW CASTLE COUNTY (Odd-Numbered Years, L to Z)

Retail licensees in New Castle County outside~~Outside~~ of the City of Wilmington whose applicant name (corporate, partnership, or proprietary name, and not trade name) starts with an alphabetical letter of "L" to "Z":

Transitional Procedure

All licenses in New Castle County (L to Z) must apply for the renewal of their license in the form required by the Commissioner on or before April 1, 1991, which license, if approved, will be effective for two years from July 1, 1991, through June 30, 1993.

Permanent Procedure

~~Effective April 1, 1993, all retail licensees (L to Z) in New Castle County~~ must apply for the renewal of their license in the form required by the Commissioner on or before April 1 of each odd-numbered year. All licenses issued by the Commissioner to locations in New Castle County (L to Z) shall be for a period of two years beginning July 1 of each odd-numbered year and ending June 30 of the following odd-numbered year.

VIII. PENALTY FOR FAILURE TO FILE APPLICATIONS AS REQUIRED

A. Fine

Any licensee who does not timely file the application for renewal as required by Section A or Section B of this Rule, or does not file the application for renewal in the form (including the fee) required by the Commissioner, or both, shall pay a fine as outlined in Rule 71 implementing the voluntary fine assessment plan:

1. First violation, ~~\$400-250~~ fine and administrative costs.

2. Second violation, ~~\$250-500~~ fine and administrative costs.

3. Any application for renewal received after three (3) calendar months from the time required in Section A or Section B of 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 and the matter shall be heard by the Commissioner.

B. Collection of Fine and Right to Hearing

The fine shall be collected as outlined in Rule 71, III Procedure. If a licensee chooses a hearing before the Commissioner, then Rule 71, IV penalties and administrative costs, will be implemented.

C. Non-Renewal of License until Fine is Paid

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

D. Meaning of "Timely Filing"

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.

IX. THIS RULE DOES NOT AFFECT REVOCATIONS, CANCELLATIONS, SUSPENSIONS OR FINES

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 two years. Further, nothing in this Rule shall prohibit a licensee from surrendering the license or allowing it to expire.

~~X. Approved and effective on October 1, 1990.~~

A RULE REQUIRING THE ~~ANNUAL~~ BIENNIAL RENEWAL OF SUPPLIER'S LICENSES

I. 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., §501(x); however, any supplier applicant seeking a license to import ~~two hundred fifty (20050)~~ 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 fifty (20050)~~ cases or less per year apply for a license to import over ~~two hundred fifty (20050)~~ cases, he/she will be required to pay the full ~~\$1,000.00~~~~\$500.00~~ application processing fee.

II. Purpose

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

Before any person sells any alcoholic liquor intended for importation into this state, ~~the person~~he shall procure from the Commissioner a supplier's license in the form ~~to be~~ prescribed by the Commissioner and shall pay ~~therefor~~ ~~an~~ ~~a~~ ~~biennial~~ ~~annual~~ fee in the amount of ~~\$100.00~~~~\$25.00~~ to be permitted to sell not more than ~~two hundred fifty (20050)~~ cases of alcoholic liquor for importation into the state during the calendar year or ~~a~~ ~~biennial~~ ~~an~~ ~~annual~~ fee in the amount of ~~\$1,000.00~~~~\$250.00~~ to be permitted to sell more than ~~fifty~~ ~~two hundred (20050)~~ cases of alcoholic liquor for importation into this state during the calendar year.

III. Procedure

A. ~~On August 15, or the next business day of each calendar year, the Delaware Alcoholic Beverage Control Commissioner will mail an application renewal form to all licensed suppliers. 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 of each odd numbered year. All licenses issued by the Commissioner to Suppliers (A to K) shall be for a period of two years beginning January 1 of each even-numbered year and ending December 31 of the following odd-numbered year.~~

B. ~~All suppliers shall apply for the renewal of their license in the form required by the Commissioner on or before October 1 of each calendar year. 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 of each even numbered year. All licenses issued by the Commissioner to Suppliers (L to Z) shall be for a period of two years beginning January 1 of each odd-numbered year and ending December 31 of the following even-numbered year.~~

C. ~~On or before the first day of the month preceding the annual expiration date, December 31, of the supplier's license, the Commissioner shall render its decision upon each renewal for the supplier's license properly and completely made to the agency in compliance with III-B above.~~

D. ~~If the supplier fails to comply with III-B above, but renews its license prior to December 31, it will be subject to late renewal penalties as outlined in Section IV of this rule.~~

DE. ~~If the~~ 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.

E. ~~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.

F. 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., Chapter 11.

G. Suppliers who allow their license to expire shall be required to file a complete application, including the ~~\$500.00~~ \$1,000.00 processing fee, before being issued a new license unless they apply for a license to ship two hundred fifty (20050) cases or less per year.

IV. Penalty for Failure to File Applications as Required

A. Fine:

Any supplier who does not timely file an application for renewal as required by III-A or III-B, 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 71 implementing the voluntary fine assessment plan.

1. First Violation:

~~\$100.00~~ \$250.00 fine and administrative costs.

2. Second Violation:

~~\$250.00~~ \$500.00 fine and administrative costs.

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.

B. Collection of Fine and Right to Hearing:

The fine shall be collected as outlined in Rule 71, III, Procedure. If a licensee chooses a hearing before the Commissioner, then Rule 71-IV, Penalties and Administrative Costs, will be implemented.

C. Non-Renewal of License Until Fine is Paid:

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

D. Meaning of "Timely Filing"

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.

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 year. Further, nothing in this rule shall prohibit a licensee from surrendering the license or allowing it to expire.

V. Severability

~~If any part of this rule is held to be unconstitutional or otherwise contrary to law, then it shall be severed and the remaining portions shall remain in full force and effect.~~

VI. Effective Date

~~This rule shall be effective on September 1, 1993.~~

RULE NUMBER 52

A RULE PROHIBITING THE USE OF SERVICE COUNTER IN HOTELS AND RESTAURANTS BY MINORS.

Minors are forbidden to sit or stand at a service counter where alcoholic beverages are sold, served or dispensed in a hotel or restaurant except in a Multi-purpose Sports Facility.

Effective: ~~July 1, 1961~~

RULE NUMBER 53

WITNESSES AND EVIDENCE

All witnesses shall be sworn in all proceedings hereunder. The rules of evidence applicable to the Superior Court of the State of Delaware shall be followed insofar as practicable, provided, however, that evidence will be considered by the Commissioner which, ~~is in the Commissioner's~~ opinion, possesses any probative value commonly accepted by reasonably prudent ~~men~~ persons ~~is in~~ the conduct of their affairs. The Commissioner may, in ~~the Commissioner's~~ discretion, disregard the customary rules of evidence and legal procedures.

Effective: ~~October 1, 1964~~

RULE NUMBER 54

A RULE REGARDING REMOVAL OF ALCOHOLIC LIQUORS
FROM LICENSED PREMISES
DURING HOURS PROHIBITED FOR SALE

No holder of any license, ~~except the holder of a Ships Chandler License,~~ shall remove or permit the removal of alcoholic liquor from the licensed premises during the times when sale or delivery thereof is prohibited for sale under Section 709, Chapter 7, Delaware Code of 1953. This Rule shall not apply to any person properly removing a bottle of alcoholic liquor, other than beer, with partially consumed contents from a hotel, restaurant, motorsports speedway, club, dinner theater, caterer, or horse racetrack licensed pursuant to 4 Delaware Code, Section 512.

~~Violation of this Rule by any licensee shall be sufficient cause for suspension or cancellation of that license.~~

Effective Date: ~~This Rule shall be effective immediately.~~

RULE NUMBER 55

A RULE PROHIBITING SALES OR REMOVAL OF ALCOHOLIC
BEVERAGES FROM PREMISES WHILE LICENSE IS SUSPENDED.

In a case where the Commissioner for any violation suspends the license of a licensee, said licensee must, under no circumstances ~~make~~ make any sales or in any manner dispose of the liquor in the licensee's possession during the period of suspension. In the event that it appears that a sale or any disposition of liquor has been made, said licensee shall be cited to appear before the Commissioner for a hearing and if found guilty, ~~his~~ the licensee's license shall be revoked.

~~Furthermore, when a license has been suspended it is required that the exact inventory which was on the premises at the time of suspension shall be on the premises when the license is reinstated. Before the license is reinstated an inspector of the Delaware Alcoholic Beverage Control Commissioner shall take physical inventory to determine that nothing has been removed.~~

Effective: March 7, 1962

RULE NUMBER 56, AS AMENDED

A RULE DEFINING CASH

~~For the purpose of properly, controlling the manner in which alcoholic liquors are sold by licensees of this Commissioner and pursuant to the power granted to the Commissioner by 4 Delaware Code, Chapter 3, Section 304 (1) and (2) and 4 Delaware Code, Chapter 3, Section 309, the following rule is hereby adopted and approved:~~

~~No sale of alcoholic liquors by any licensee of this Commissioner shall be made except for cash.~~

~~For the purpose of this rule the word "cash" shall mean:~~

~~In the case of a Package Store, Restaurant-OFF License, Hotel-OFF License, Taproom-OFF License and Club-OFF License, payment in cash, in currency, a valid check of a banking institution (operating in the State of Delaware) or nationally known or local bank credit or debit cards, before any alcoholic liquor is permitted to leave the premises;~~

~~In the case of a Tavern or Taproom, payment in cash or currency upon delivery of drinks to table or service counter;~~

~~In the case of a Restaurantan on-premises licensee other than Hotels, Clubs or Caterers, payment upon the completion of service and before the patron leaves the premises by cash, check, currency or nationally known or local bank credit or debit cards; except in cases where the restaurant-licenee has its own credit card system and the charge of alcoholic liquors has been in conjunction with the service of full course meals to each person being served and/or consuming the alcoholic liquors, this may be accepted as cash;~~

~~In the case of a Hotel, payment upon completion of stay or service by cash, currency, valid check or by nationally known or local bank credit or debit cards. In the case where a Hotel has its own credit system, this may be accepted as cash;~~

~~In the case of a Caterer, payment upon the completion of service and before the patron leaves the premises by cash, check, currency or nationally known or local credit or debit cards; this may be accepted as cash;~~

~~In the case of Clubs where provision is made in their Rules or By-Laws for members to have charge accounts, payments by cash, currency or check within sixty (60) days with all accounts of the previous month being settled in full by the last day of the following month;~~

~~In the case of a Ships Chandler, payment by cash, currency or check within sixty (60) days with all accounts of the previous month being settled in full by the last day of the following month.~~

~~EFFECTIVE: FEBRUARY 24, 1977~~

RULE NUMBER 57

A RULE IN REGARDS TO PUBLICATION OF INTENT TO APPLY FOR LICENSE APPLYING TO MANUFACTURERS IN OR IMPORTERS OF ALCOHOLIC LIQUOR IN THE STATE OF DELAWARE

~~Any person proposing to manufacture in or import alcoholic liquor into the State of Delaware, shall comply with all of the publication requirements as set forth in 4 Del. C., Section 524.~~

~~Furthermore, any holder of a license to manufacture in or import alcoholic liquor into the State of Delaware, who wishes to change the location of his wholesale place of business or his warehouse from one location to another, or who wishes to open an additional place of business or another~~

warehouse, shall be required to advertise this fact in accordance with the requirements of 4 Del. C., Section 524.

Effective: January 9, 1963

RULE NUMBER 58

THE RULE DESCRIBING THE PLACE AND MANNER IN WHICH ALCOHOLIC LIQUOR IS TO BE SOLD AT RACE TRACKS

~~Any holder of a license to sell beer and /or spirits and wine at any race track is prohibited from selling it except in the following prescribed manner:~~

~~1. (a) Alcoholic liquor may be sold only at such places within the public area at the track as are authorized by the Delaware Alcoholic Beverage Control Commissioner.~~

~~(b) Alcoholic liquor shall not be sold in a glass, can or bottle, except in the dining room area of the club house. Spirits and wine must be sold in crushable, transparent plastic containers, other than in the dining room area of the club house. All beer must be sold in crushable plastic or paper containers with the word "beer" printed thereon in ink, other than in the dining room area of the club house.~~

~~(c) Stands or bars where alcoholic liquor is sold shall be clearly segregated and partitioned off from other concession areas. No other commodity shall be sold or dispensed therein. Such stands, storage facilities for alcoholic liquor and proposed inventory control records shall be approved by the Commissioner prior to the use of such items.~~

~~(d) All storage facilities at serving bars or counters shall be kept locked at all times when not attended.~~

~~2. All rules and regulations of the Commissioner and all provisions of the Liquor Control Act as amended specifying the time and the manner in which alcoholic liquor may be sold, served or dispensed in a restaurant and regulating the business conducted therein, shall apply to and govern all establishments licensed as race tracks and the persons in charge thereof, insofar as the same may be applicable thereto. However, a race track licensee shall not be bound by the two-meal and menu requirements of Rule 19 of this Commissioner.~~

~~3. Any food concessionaire dispensing food at a horse race track licensed by this Commissioner who desires to sell alcoholic liquor on Sundays in accordance with 4 Del., C., Sections 717 (g) and 717A of the Liquor Control Act shall file an application in the form required by the Commissioner for such privilege.~~

RULE NUMBER 59

A RULE LIMITING THE QUANTITIES OF ALCOHOLIC BEVERAGES TO BE PURCHASED BY IMPORTERS.

~~Rule 59 is repealed in its entirety.~~

~~EFFECTIVE DATE: November 1, 1986.~~

RULE NUMBER 60

A RULE CONCERNING ISSUANCE OF TEMPORARY LICENSES TO RESTAURANTS AND HOTELS

~~Temporary licenses may be issued to restaurants and hotels~~applicants for an on-premises

license upon submission of properly filed application forms.

Temporary licensees shall be required to make all purchases of alcoholic liquor on a C.O.D. basis.

The denial of a permanent license by the Commissioner, after a hearing, shall automatically revoke the temporary license.

The filing of a timely protest may, in the discretion of the Commissioner, result in the revocation of the temporary license.

~~A showing of financial responsibility shall be required before issuance of a temporary license and a financial statement shall be filed within thirty days after the issuance of a temporary license.~~

The license fees for the three-month temporary licenses and a Sunday license shall be one-half of the annual fee for such licenses. No portion of such temporary license fees shall be refunded upon the surrender or revocation of the temporary license.

Temporary licenses shall be surrendered to the Commissioner within ten days of approval of the application for a permanent license.

~~Temporary licensees are required to comply with all applicable laws of the State of Delaware and regulations of the Delaware Alcoholic Beverage Control Commissioner.~~

EFFECTIVE: July 7, 1977

RULE NUMBER 61

A RULE GOVERNING COVER CHARGES AND MINIMUM CHARGES BY LICENSED ESTABLISHMENTS

A. ~~Any hotel, restaurant, club, food concessionaire at a horse racetrack, dinner theater, bowling alley, caterer or taproom~~non-premises licensee licensed for the sale of alcoholic beverages shall be permitted to charge a cover charge at any time live entertainment is actually being provided by the licensee, provided that any licensee charging a cover charge shall prominently display the fact that a cover charge is being made, ~~both at the entrance to the premises and upon the licensee's menu.~~ Payment of the cover charge shall entitle the patron to admission to the premises and observance of the entertainment being offered only.

B. Any of said licensees may also impose a minimum charge upon the following conditions:

1. The charge shall be only for food or non-alcoholic beverage to be sold, and such food or non-alcoholic beverage must be provided on the patron's choice and request from the regular menu or the usual offering in the establishment.

2. The amount of the minimum shall not be changed more than once daily.

3. The amount of the minimum charge must be prominently displayed at the entrance to the premises and upon the menu, and the fact that such a charge is made must be part of any advertisement of the licensee.

A minimum charge shall be distinguished from a cover charge. Upon payment of the minimum charge, the customer shall be entitled to food or non-alcoholic beverage in an amount of equal value to the charge paid.

C. Effective Date:

~~This rule shall be effective on July 1, 1984.~~

RULE NUMBER 62

A METHOD FOR DETERMINING MINIMUM DISTANCES BETWEEN ESTABLISHMENTS.

In computing the distance, pursuant to 4 Del. C., ~~Chap. 5, §543, from between~~ a proposed

establishment ~~to~~ and a licensed establishment of the same type by accessible public road or street, the measurements shall be taken as follows:

1. The measurements shall begin and end at that part of the individual establishment which is available to the public and closest to the other establishment. In general, one would start measuring at the front corner of both the existing and the proposed establishment nearest to the ~~existing other~~ licensed establishment of the same type. In multiple purpose buildings, in which a liquor establishment is not the primary use, the measurement shall be made from the portion of the building used for the ~~existing~~ licensed establishment, and the measured distance shall include corridors, etc., when necessary to reach the nearest accessible public road or street.

2. Straight lines shall then be drawn from these terminal points, and at right angles thereto, to the center of the adjoining means of ingress and egress.

3. The lines shall then continue to follow ~~the~~ center lines of regular or established traffic patterns (pedestrian or vehicular) until a public road or street is reached at its center line. The lines shall be drawn to the center of the nearest regular or established traffic pattern for vehicular traffic.

4. The lines shall continue on the center lines of public roads or streets until they meet.

5. Except where impracticable lines shall be drawn at right angles to each other and shall be straight.

6. In all cases, the shortest distance ~~from a proposed establishment to a licensed establishment~~ shall be used as the distance between the two, and said shortest distance shall be measured only by accessible public road or street and the Commissioner may consider motor vehicle traffic directions, patterns and barriers and pedestrian traffic patterns.

~~EFFECTIVE: July 7, 1977~~

RULE NUMBER 63

A RULE CLARIFYING THE ADVERTISING REQUIREMENTS FOR SECTION 524, 4 DELAWARE CODE

For the purpose of clarifying Section 524, 4 Delaware Code, ~~the Delaware Alcoholic Beverage Control Commissioner adopts the following:~~

~~One~~ one of the notices shall appear in a Delaware daily or weekly newspaper circulated within a five-mile radius of the premises to which the license is to apply. The other notice shall appear in any other Delaware newspaper circulated within the county in which the license is to apply.

~~This rule shall be effective on July 1, 1984.~~

RULE NUMBER 64

A RULE GOVERNING TIME WITHIN WHICH TO PAY A FINE; PENALTY FOR FAILURE TO PAY A FINE APPEAL.

TIME WITHIN WHICH TO PAY A FINE

A. Whenever the Commissioner shall impose a fine on a licensee as authorized by the Liquor Control Act, as amended, or the Rules of this Commissioner, that licensee shall have thirty

days from the date of the written decision setting forth the fine to pay the fine in full to the Commissioner, counting the date of the written decision as the first day. The thirty-day period shall apply to all fines unless otherwise provided by the Commissioner. The Commissioner may, ~~on its own~~ sua sponte or on application of a licensee subject to a fine, increase or decrease the period of time within which a fine is to be paid.

FAILURE TO PAY A FINE

B. If a licensee has been ordered by the Commissioner to pay a fine and has failed to pay the fine in full to the Commissioner by the deadline set by this Rule or by the Commissioner, the licensee shall be immediately cited for a violation of this Rule.

APPEALS

C. The provisions of this Rule shall not apply to a licensee who has appealed from the decision of the Commissioner so long as the appeal is pending. Unless the fine is increased or decreased by order of the Commissioner, the licensee who is still required to pay a fine after an appeal is finalized, shall have fourteen days from the date the appeal is finalized to pay the fine in full to the Commissioner, counting the date the appeal is finalized as the first day.

Effective: JULY 7, 1977

RULE NUMBER 65

BOWLING ALLEY LICENSEES

Pursuant to 4 ~~Del. C. X~~§512 (f), the Delaware Alcoholic Beverage Control Commissioner is empowered to issue licenses for the sale of alcoholic beverages to the operators of bowling alleys for consumption on the bowling alley premises.

1. For the purposes of the Liquor Control Act, a bowling alley is defined as any bowling alley operation having ten bowling lanes ~~in use for a period of at least six months.~~

2. The licensed area of the bowling alley encompasses the entire bowling alley premises including the concourse and lane areas.

3. ~~Pursuant to 4 Del. C. §713 (a)(1), no person shall sell any alcoholic liquor to any individual who has not reached the age of 20 years.~~

4. ~~Pursuant to 4 Del. C. §714, no holder of a license for the sale of alcoholic beverages in a bowling alley operation shall sell alcoholic beverages between the hours of 1:00 a.m. and 9:00 a.m. The sale of alcoholic liquor shall be permitted in a licensed bowling alley on every day of the year; provided that no such licensee shall be required to be open to sell alcoholic liquors on any of the holidays specified in subsection (e) of this section.~~

5. (a) ~~Alcoholic liquor may be sold only at such places within the public area at the bowling alley as are authorized by the Delaware Alcoholic Beverage Control Commissioner.~~

(b) ~~Alcoholic liquor shall not be sold in a glass, can or bottle. Spirits and wine must be sold in crushable, transparent plastic containers. All beer must be sold in crushable plastic or paper containers with the work "beer" printed thereon in ink.~~

(c) ~~The dispensation of alcoholic beverages must be at a counter separate from the counter from which food and/or snacks are dispensed. Stands or bars where alcoholic liquor is sold shall be clearly segregated and partitioned off from other concession areas. No other commodity shall be sold or dispensed therein. Such stands and storage facilities for alcoholic liquor shall be approved by the Commissioner prior to their use.~~

64. ~~The provisions of File 22 shall apply to bowling alleys. In addition, all~~ storage facilities at serving bars or counters shall be kept locked at all times when not attended.

~~7. All rules and regulations of the Commissioner and all provisions of the Liquor Control Act as amended specifying the time and the manner in which alcoholic liquor may be sold, served or dispensed in a restaurant and regulating the business conducted therein, shall apply to and govern all establishments licensed as bowling alleys and the persons in charge thereof, insofar as the same may be applicable thereto. However, a bowling alley licensee shall not be bound by the two-meal and menu requirements of Rule 19 of this Commissioner.~~

~~8. The provisions of Rule 21, with the exception of sections (c) and (g) shall apply to bowling alleys.~~

~~9. The fee for a bowling alley license will be \$225.00.~~

~~10. The fee for a bowling alley license to sell alcoholic liquor on Sundays will be \$200.00.~~

EFFECTIVE: ~~DECEMBER 20, 1980~~

RULE NUMBER 66

ON-PREMISES AND OFF-SITE CATERERS

A. On-Premises Caterers.

Pursuant to 4 Del. C. §512 (g)(1), any caterer as defined by 4 Del. C. §101 (68) may apply for a license to purchase alcoholic beverages and keep and sell such alcoholic liquors either by the glass or by the bottle for consumption on any portion of the premises of the caterer approved by the Commissioner for that purpose.

1. Caterers are empowered to sell alcoholic beverages pursuant to a license issued by the ~~Delaware Alcoholic Beverage Control~~ Commissioner only while providing the food and beverages at social gatherings held on the caterers' licensed premises. At least sixty (60) percent of the caterer's gross receipts must come from the sale of food.

2. The sale of alcoholic beverages shall only be allowed at events such as weddings, dinners, benefits, banquets, or other similar events for consideration pursuant to a written contract setting forth the price per person at the catered event, except that a cash bar may be utilized in conjunction with the catered event.

3. Persons not of sufficient age to consume alcoholic liquors shall be allowed and permitted to be on the licensed premises of the caterer so long as all of the other provisions of the Liquor Control Act and the rules of this Commissioner are being complied with.

4. ~~Rules 2, 3, 9, 21, 22, 27, 28, 30, 31, 34, 37, 38, 40, 41, 42, 44, 48, 49, 50, 53, 54, 55 and 56 shall apply to caterers in their entirety.~~

EFFECTIVE: ~~FEBRUARY 24, 1977~~

B. Off-Site Caterers

Pursuant to 4 Del. C. §512 (g)(2), any off-site caterer may apply for a license to purchase alcoholic beverages and keep and sell such alcoholic liquors either by the glass or by the bottle for consumption on any portion of off-site premises approved by the Commissioner for that purpose.

1. Off-site Caterers are empowered to sell alcoholic beverages pursuant to a license issued by the Commissioner only while providing the food and beverages at social gatherings held at off-site premises approved by the Commissioner. At least sixty (60) percent of the caterer's gross receipts must come from the sale of food.

2. The sale of alcoholic beverages shall only be allowed at events such as weddings, dinners, benefits, banquets, or other similar events for consideration pursuant to a written contract setting forth the price per person at the catered event, except that a cash bar may be utilized in conjunction with the catered event.

3. Persons not of sufficient age to consume alcoholic liquors shall be allowed and permitted to be on the licensed premises of the caterer so long as all of the other provisions of the Liquor

Control Act and the rules of this Commissioner are being complied with.

4. Each off-site catered event must be approved by the Commissioner no later than 20 days prior to the event. For the Commissioner to approve the location of the event, the following items must be submitted:

- a. An executed contract between the caterer and their client that lists the day, date, and time of the catered event and explicit approval from both the tenant and the landlord/property owner that permits reasonable access to the catered event by members of the DATE or other recognized law enforcement agency to ensure compliance with The Liquor Control Act and the Commissioner's Rules.
- b. A list of all products that will be transported to and sold at the catered event describing the type and amount of each product. This document serves as a waybill that must be present in the vehicle during the transportation of alcoholic beverages to and from the catered event.

RULE NUMBER 67

A RULE CONCERNING THE MANUFACTURE OF WINE

~~Pursuant to 4 Delaware Code, Chapter 5, Section 502, the Delaware Alcoholic Beverage Control Commissioner is empowered to license the manufacture of alcoholic liquor.~~

~~The license to manufacture wine shall be subject to all applicable rules of the Delaware Alcoholic Beverage Control Commissioner and the provisions of the Liquor Control Act as amended found in Title 4 of the Delaware Code, and specific but not limited to, Rules 2, 3, 8, 10, 13, 14, 16, 27, 44, 46, 51 and 54 shall apply to the manufacture of wine. In addition, the licensee shall be subject to the federal requirements published by the Department of the Treasury, Bureau of Alcohol, Tobacco, and Fire Arms.~~

~~Prior to the issuance of a license for the manufacture of wine, the applicant must furnish the following to the Commissioner:~~

- ~~1. A copy of the Certificate of Approval by the Bureau of Alcohol, Tobacco, and Fire Arms for the establishment of a winery;~~
- ~~2. Federal Basic Permit;~~
- ~~3. Federal Label Approval;~~
- ~~4. A copy of all forms required by the federal government in connection with the establishment and operation of a winery;~~
- ~~5. A current, valid, written franchise with a licensed Delaware Importer;~~
- ~~6. Prior price postings in accordance with the Commissioner's requirements which shall be kept current after a license is issued;~~
- ~~7. Initial price postings of the manufactured product;~~
- ~~8. Copies of all bills of lading and invoices must be kept on file.~~
- ~~9. It shall further be required that a license be paid for prior to the licensed year beginning April 1 and extending through March 31;~~
- ~~10. All applications for renewal shall be submitted on or before January 2. All requirements in Rule 51 concerning penalty for failure to file applications timely and in the form required shall be applicable.~~

- ~~11. A minimum production of 500 gallons per licensed year shall be maintained.~~
- ~~12. There shall be no retail sales transacted from the licensed premises, nor shall there be any communicating doors or passageways between the licensed premises and any non-living areas, as well as living quarters.~~
- ~~13. All buyers from out of state shall place their orders for wine on forms supplied by the Commissioner. A copy of the bill of lading showing the type and brand of wine shipped shall be mailed to the Commissioner by the manufacturer shipping such wine out of state, on the day shipment is made.~~
- ~~14. No order for out-of-state deliveries shall be released by the licensee until approval is granted by the Commissioner, which, in no instance, shall be granted prior to the remittance of the applicable tax.~~

EFFECTIVE: September 6, 1979

RULE NUMBER 68

PURCHASE AND SHIPMENT OF ALCOHOLIC LIQUORS AND ETHYL ALCOHOL FOR RELIGIOUS, INDUSTRIAL AND MEDICAL USE: PROCEDURES, STANDARDS AND FEES

A. Purpose and Scope. ~~The purchase, shipment and use of alcoholic liquors an ethyl alcohol for religious, industrial and medical use is authorized by Delaware law. This rule establishes the procedure for purchase, shipment and storage of alcoholic liquor and ethyl alcohol for such use in Delaware.~~

B. Licensing/Permits

~~(1) Alcoholic liquors may be purchased by pharmacists and sold on receipt of a prescription of any physician for medical purposes, without a permit or license from the Commissioner.~~

~~(2) Alcoholic liquors may be purchased by a physician, dentist or veterinarian for professional purposes without a permit or license from the Commissioner.~~

~~(3) Alcoholic liquors may be purchased for professional purposes by a person in charge of Commissioner approved institutions which provide services as a hospital or sanitarium for the care of persons in ill health, or as a home devoted exclusively to the care of aged persons, without a permit or license from the Commissioner.~~

~~(4) Alcoholic liquors may be purchased by any Commissioner approved hospital for the purpose of compounding medicines, without a permit or license from the Commissioner.~~

~~(5) Wine for sacramental purposes may be purchased by any established religious sect or church, as approved by the Commissioner, without a permit or license from the Commissioner.~~

~~(6) Ethyl alcohol may be purchased by any pharmacist, physician, dentist, veterinarian or Commissioner approved research laboratory, without a permit or license from the Commissioner.~~

C. Procedure

~~(1) Any authorized person or institution desiring to purchase, and bring into the State for professional or religious use, any alcoholic liquor in excess of one (1) gallon (.26417 liters per gallon), shall first submit a request in writing to the Commissioner. The request shall contain:~~

~~(a) The name and title of the person requesting the purchase;~~

~~(b) The brand name and type of alcoholic liquor;~~

~~(c) The amount to be purchased;~~

~~(d) The name and address of the out-of-state supplier.~~

~~(e) The name and address of the office, pharmacy or institution to which the alcoholic liquor will be delivered;~~

~~(f) The cumulative total, by gallons, excluding this request, previously purchased during the calendar year.~~

- ~~(g) Method and name of shipper if available;~~
~~(2) Any authorized person or institution wishing to purchase and bring into the State, ethyl alcohol in excess of one gallon shall:~~
~~(a) Request the appropriate order (invoice) form from the Commissioner;~~
~~(b) Complete the order (invoice) form, mailing the vendor and Commissioner copies as appropriate;~~
~~(c) Consider the order (invoice) approved if Commissioner disapproval is not received. The Commissioner shall also notify the vendor of disapproval and cancel the order;~~
~~(d) Resubmit the order (invoice) in compliance with Commissioner directive in each disapproval;~~
~~(e) In all approved orders (invoices) notify the Commissioner upon delivery (receipt), and hold each order "in hand" until released by the Commissioner, after inspection and confirmation of the quantity delivered;~~
~~(f) Not be liable for any tax on approved and received orders (invoices).~~
~~(3) Each shipper of any ethyl alcohol as provided for in (2) above shall:~~
~~(a) Notify the Commissioner of the estimated delivery date;~~
~~(b) Deliver each shipment directly to the vendee, and notify the Commissioner of the delivery on the date delivered;~~
~~(c) Provide the Commissioner with a copy of the bill of lading (way bill) within 72 hours of delivery;~~
~~(d) Not be held liable under Title 4, Del. C., Chapter 7, Section 722(b), providing 2(c) and 3(a) and (c) above are complied with.~~

~~D. Penalties~~

- ~~(1) Any person or institution who interferes with or hinders any investigation of infringements of this rule of the contents of Title 4, Delaware Code, shall be fined or imprisoned under the provisions of Title Delaware Code, Chapter 9, Sections 907 and 910 as appropriate.~~

~~E. Administrative Fees~~

- ~~(1) Each vendee or individual request submitted under the provisions of C. (1) or (2) above shall be accompanied by a non-refundable one-time enforcement fee of \$10.00.~~
~~(2) Any vendee which anticipates processing 5 or more requests under the provisions of C. (2) above may pay a one-time non-refundable enforcement fee of \$50.00 for the calendar year, in lieu of the fee provided for under E. (1) above.~~
~~(3) For the purpose of the annual fee, a period of 1 January - 31 December shall be used, and pro-rata reduction based upon remaining months shall not be allowed.~~
~~(4) Any return release inspection, under C. (2) (e) above, by agents of the Commissioner, for any single order shall incur an additional enforcement fee of \$25 for each inspection trip, such fee payable by the vendee.~~
~~(5) No fees shall be charged for any sacramental wine purchased or ordered in accordance with this rule.~~

- ~~F. Effective Date. This rule shall be effective on 1 July 1983 and the annual fee provision under E. (2) shall be effective on 1 January 1984.~~

RULE NUMBER 69

SEVERABILITY

If any rule of this Commissioner shall be declared invalid by a court of competent jurisdiction, all remaining rules shall remain valid and in full force and effect. If a portion of any rule of the Commissioner shall be declared invalid, the remaining portion of said rule shall remain valid and in full force and effect. This rule shall apply to all rules of the Commissioner, regardless of their dates of enactment.

~~This rule shall be effective on July 1, 1984.~~

RULE NUMBER 70

A RULE PERTAINING TO DRUG ACTIVITIES ON LICENSED PREMISES

I. PURPOSE

This rule implements and clarifies the grant of authority to the Commissioner contained in 4 Del. C., Section 304 (a) (2) to control the time, place, and manner in which alcoholic liquors shall be sold and dispensed. In accordance with this statute, alcoholic liquors shall not be sold or dispensed in any manner inconsistent with Title 4, the Liquor Control Act, or any other law of this state.

By the promulgation of this rule, the Commissioner finds that alcoholic beverages may not be sold in a place that is also used to deliver, possess, or consume illegal drugs, or deliver or possess illegal drug paraphernalia, or illegal hypodermic syringes or needles, or to conspire or solicit such activities.

The Commissioner finds that illicit drug activities on licensed premises encourages additional unlawful behavior including acts of violence. Such conditions interfere with public convenience and lawful access to licensed establishments. The Commissioner, therefore, finds licensees have an obligation to prevent this type of activity on their licensed premises.

The Commissioner recognizes, in promulgating this rule, that illicit drug activities are often conducted surreptitiously and that it would be inappropriate to hold a licensee responsible for such behavior. However, licensees may not ignore or act negligently in policing conditions on licensed premises which would lead a reasonable person to conclude that illegal drug activity is occurring. An affirmative defense is, therefore, provided to the licensee under this rule who takes the prescribed action.

II. APPLICABILITY

This rule shall govern the manner in which all licensees, agents of licensees, and employees of licensees, conduct themselves concerning illegal drug activity on premises licensed by the Delaware Alcoholic Beverage Control Commissioner. ~~As provided in 4 Del. C., Section 561 (b), a violation of this rule may be grounds for a fine, suspension, or cancellation of a license issued pursuant to this Chapter.~~

III. PROHIBITED PRACTICES

No licensee, its agents or employees, shall suffer, permit, or participate in any illegal drug activity on the premises of a licensed establishment, or in a vehicle licensed by the Commissioner, that is prohibited by the Uniform Controlled Substance Act of the State of Delaware, Title 16, Chapter 47, or the Delaware Criminal Code, Title 11, Chapter 5, Sub-Chapter I, of the Delaware Code of 1974 as amended.

It is an affirmative defense to the prosecution of a violation of this rule that the licensee, its agent, or employee, immediately contacted law enforcement officials when said licensee became aware through actual or constructive notice that a violation of 16 Del. C., Chapter 47, or 11 Delaware Code, Chapter 5, Sub-Chapter I, of the Delaware Code of 1974, as amended, had occurred, was occurring, or was about to occur on their licensed premises.

IV. SEVERABILITY

~~If any part of this rule is held to be unconstitutional or otherwise contrary to law, then it shall be severed and the remaining portions shall remain in full force and effect.~~

V. EFFECTIVE DATE

~~The effective date of this rule shall be April 1, 1990.~~

RULE NUMBER 71

A RULE PERTAINING TO VOLUNTARY FINE ASSESSMENT

I. PURPOSE

This rule implements the grant of authority to the Commissioner contained in Title 4, ~~Chapter 9, Section §915~~, of the Delaware Code of 1974, as amended, to create a voluntary fine assessment plan for any licensee who pleads guilty to any violation of the Commissioner's rules.

II. APPLICABILITY

In accordance with 4 ~~Del. Code, Section §915 (1989 Cum. Supp.)~~ agents of the ~~Division of Alcoholic Beverage Control~~ DATE shall have authority to offer a voluntary fine assessment agreement to any licensee who violates any of the Commissioner's rules, ~~except the criminal offenses set forth in Title 4.~~

A. ~~When a licensee chooses to plead guilty to violating a Commissioner rule and pay a voluntary fine under this plan, said licensee shall be deemed to have waived his/her right to and shall forego a hearing in accordance with 29 Del. Code, Section 10125, before the Commissioner and any appeal.~~

~~B. Said licensee shall also be deemed to have waived any right to appeal relating to the offense(s) under both the Liquor Control Act, Title 4 of the Delaware Code, and the Administrative Procedures Act, 29 Del. Code, Chapter 100.~~

~~C. This plan shall not apply to any criminal violations that are filed by the Enforcement Section of the Division with the Commissioner solely pursuant to the Liquor Control Act, Title 4 of the Delaware Code of 1974, as amended.~~

~~D. Any licensee who elects to participate in the voluntary assessment plan shall have the right to withdraw a guilty plea by notifying the Commissioner, in writing, of the decision to withdraw said guilty plea within ten (10) days of the date that the voluntary fine assessment form is executed by the licensee.~~

III. PROCEDURE

A. Licensees cited for a violation of Commissioner rules who accept the investigating agent's offer to participate in the voluntary fee assessment plan shall sign the voluntary fee assessment form.

B. The execution of said form shall constitute an admission of guilt to the violation, and the licensee shall send the appropriate remittance by check or money order to the Commissioner on or before the due date stated on the voluntary fee assessment form unless the licensee withdraws their consent to participate in the voluntary assessment program in writing prior to the due date. In all cases, the due date shall be thirty (30) days from the date of ~~violation~~ signing the voluntary fee assessment form.

C. The Director of ~~the Division of Alcoholic Beverage Control~~ DATE shall establish the form(s) and procedures within ~~the Division of Alcoholic Beverage Control~~ DATE that are necessary to carry out the requirements of this rule.

IV. PENALTIES AND ADMINISTRATIVE COST

A. The schedule of penalties and administrative cost established for violations covered by the voluntary fine assessment plan are as follows:

(i) First Violation:

~~A one-hundred dollar (\$100)~~ two hundred fifty (\$250) dollar fine.

(ii) Second Violation Of the Same Offense Within Two (2) Five (5) Years:

~~A two-hundred and fifty dollar (\$250)~~ five hundred (\$500) dollar fine.

(iii) Third and Subsequent Violations of the Same Offense Within ~~Two (2)~~Five (5)

Years:

A fine of one thousand (\$1,000) dollars or a ~~Mandatory~~ mandatory hearing before the Commissioner with penalties, if any, pursuant to provisions of the Liquor Control Act and, where prescribed, the specific penalty ranges of the violated rule.

(iv) Administrative costs for all voluntary fine assessments shall be added at a rate of 15% of the amount of the fine.

B. The aforementioned schedule of penalties, when used as part of a guilty plea under the voluntary fine assessment plan, shall supersede any provision of any Delaware Alcoholic Beverage Control Commissioner rules that prescribes specific penalties.

~~C. Should any licensee decline the option of using the voluntary fine assessment plan, a "notice of violation" shall proceed to a hearing and, upon a conviction, the Commissioner shall follow the penalty provisions of Title 4, Section 914, of the Delaware Code of 1974, as amended, and, where prescribed, the specific penalty ranges of the violated rule.~~

~~D. Where a licensee chooses to pay a fine under this plan, such licensee shall have waived all rights to the calculation of fines pursuant to Title 4, Section §914, of the Delaware Code, of 1974, as amended.~~

~~E. Failure by a licensee to pay a fine, as agreed, by the due date, as indicated on the voluntary fee assessment form, may result in the licensee being cited for a violation of Rule 64 and a hearing being scheduled before the Commissioner, in accordance with 29 Del. Code, Section 40125. The violation shall be treated as a separate violation to the underlying violation listed on the voluntary assessment form.~~

V. REPORTING

~~The Director of the Division of Alcoholic Beverage Control DATE shall report to the Commissioner on a monthly basis the name, violation(s), fine, and date of all voluntary assessments that are issued.~~

VI. SEVERABILITY

~~If any part of this rule is held to be unconstitutional or otherwise contrary to law, then it shall be severed and the remaining portions shall remain in full force and effect.~~

VII. EFFECTIVE DATE

~~The rule shall become effective on April 1, 1990.~~

RULE NUMBER 72

A RULE PERTAINING TO THE SALE OF
ALCOHOLIC LIQUORS BY ~~PRIVATE COUNTRY CLUBS~~ MULTIPLE ACTIVITY CLUBS

I. History

A. The Commissioner grants multiple activity club licenses to private country clubs that satisfy the definition for this particular class of license (4 Del. C., Section 101 [2428]) and meet the requirements of the Commissioner's rules governing multiple activity clubs (Delaware Alcoholic Beverage Control Commissioner Rules 18 and 24). In addition, many non-profit, charitable organizations are granted gathering licenses pursuant to 4 Del. C., Section 514(b) and Commissioner Rule 35 to sell alcoholic liquors on the grounds and golf courses of private country clubs, outside of the licensed club house. The issuance of both types of licenses is consistent with the intent of the Liquor Control Act, which is to make alcoholic liquors available to members and guests, who are of legal drinking age, under strictly controlled conditions.

B. It is the finding of the Commissioner that the private country clubs licensed to sell

alcoholic liquors in Delaware have established and enforced reasonable rules and guidelines governing the conduct of their members and guests. Responsible and lawful behavior is required of all members and guests. On various occasions, the Commissioner has approved the extension of country club liquor licenses to include areas of the grounds and golf course outside of the normally licensed club house. These events have been held for many years without incident. Several country clubs have now requested approval to expand their liquor license to allow for the sale and consumption of alcoholic liquors on the grounds and golf courses that they operate. Requests have been made to allow the selling of alcoholic liquors from concessionaire stands and mobile golf carts, and to permit the consumption of alcoholic liquors on the entire premises controlled by the country club.

II. Purpose

This rule is promulgated pursuant to the Commissioner's authority to regulate the time, place, and manner in which alcoholic liquors are sold and dispensed (4 Del. C., Section 304). In addition, it is the purpose of this rule to implement and clarify the Commissioner's authority to license a multiple activity club, in this case a private country club, to sell alcoholic liquors for consumption on any portion of the premises approved by the Commissioner [4 Del. C., Section 512 (a)]. In accordance with these statutes alcoholic liquors may be sold or dispensed in a manner consistent with Title 4 of the Delaware Code and Commissioner Rules.

By the promulgation of this rule, the Commissioner finds that alcoholic liquors may be sold and consumed on the grounds and golf courses of private country clubs that have been approved by the Commissioner in accordance with the provisions of this rule.

III. Definition; as used in this Rule

Country club means a privately owned and operated facility that provides social activities and recreation to its members, and operates a golf course. It must also be licensed by the Commissioner as a multiple activity club.

IV. Applicability

This rule shall govern the manner in which private country clubs sell and dispense alcoholic liquors outside of the licensed clubhouse. In addition, all other applicable laws and rules shall apply to all extension of a multiple activity club license.

V. Procedure

A. The Commissioner may approve the sale and dispensing of alcoholic liquors on the grounds and golf courses of privately owned and operated country clubs provided, however, that they comply with the requirements that follow:

(1) Submit to the Commissioner a diagram or plot plan that is drawn to scale and that clearly indicates the area(s) in or on which the sale, dispensing, and consumption of alcoholic liquors is requested;

(2) Submit to the Commissioner a copy of the club's rules that govern the conduct of its' members and guests;

(3) Submit to the Commissioner a written plan detailing the procedures it will follow to insure responsible and moderate consumption of alcoholic liquors on its premises;

(4) Submit to the Commissioner proof that its' employees who serve, handle or manage the service of alcoholic liquors have successfully completed a Commissioner approved responsible beverage server training program.

B. The Commissioner may deny an application to extend a multiple activity club license if the applicant fails to provide for the responsible sale, handling, and consumption of alcoholic liquors or the extension of such a license is otherwise found to be adverse to the best interest of the public, adjoining property owners or the clubs members and guests. In addition, the Commissioner may

revoke the extension of a country club's multiple activity club license for just cause.

C. The Commissioner may grant an extension of a country club's multiple activity license to permit consumption of alcoholic liquors on golf courses and grounds, provided that it is lawfully purchased on the premises. In addition, the Commissioner may approve the sale of alcoholic liquors from golf carts and concessionaire stands on the golf course provided that all alcoholic liquors are securely stored when not being offered for sale.

~~D. Gathering licenses may not be issued for any area of a country club that is part of its licensed premises, including any portion of the premises to which its liquor license has been extended.~~

~~E. The Executive Secretary may grant the extension of a multiple activity club license held by a country club subject to the ratification of the Commissioner at its next regularly scheduled hearing. There shall be no additional fee for the extension of a country club license.~~

VI. Severability

~~If any provision of this Rule shall be declared invalid, the remaining portion of this Rule shall remain valid and enforceable.~~

VIII. Effective Date

~~This Rule shall be effective on October 1, 1991.~~

RULE NUMBER 73

STANDARDS FOR SERVER TRAINING PROVIDERS

1. Purpose and Applicability:

This Rule shall govern the training curricula, examination, and certification standards for all Commissioner-approved server training courses.

2. Training Standards and Curricula:

Server training programs shall meet the requirements of Title 4, Ch. 12, in order to be approved by the Commissioner.

3. Recognition and Approval Process:

Independent contractors, private individuals, or educational institutions seeking approval to provide server training pursuant to 4 Del. C., Chapter 12, shall proceed as follows:

~~3.1. Submit a letter of intent to the Chief of Enforcement, Division of Alcoholic Beverage Control~~ Director of DATE, and include copies of all training curricula, materials, examinations, and certification cards.

~~3.2. The Chief of Enforcement~~ Director of DATE shall review and evaluate the training program. If the program meets the requirements of this rule and the Liquor Control Act, the ~~Chief of Enforcement~~ Director of DATE shall submit a written report to the ~~Executive Secretary~~ Commissioner supporting the programs conformity to the Liquor Control Act and Commissioner Rules.

~~3.3. The Executive Secretary shall schedule the program application for consideration before the Commissioner at its next regularly scheduled hearing.~~

~~3.4. The Commissioner shall review the request for program certification and the Chief's~~ Director of DATE's recommendation and either approve or deny the application for certification.

4. Training Certification:

4.1. Training certification cards issued by the provider must be approved by the Commissioner and shall display the following information: Trainee's full name, date of birth, expiration date, and instructor's signature.

4.2. All Commissioner-approved server training providers shall administer a Commissioner-approved written examination at the conclusion of each server training class. The minimum passing score for the examination shall be 80 percent. The training provider may only issue a Commissioner-approved certification card to each attendee who obtains a minimum passing score of 80 percent.

4.3. The server training provider shall submit proof of training certification for each person certified by the provider to the ~~DABC Chief of Enforcement~~ Director of DATE within seven working days of the date of certification. The proof of certification shall list the following information for each trainee: Full name, date of birth, ~~social security number~~, and date trained.

4.4. No Commissioner-approved server training provider shall knowingly issue a server training certification card to any individual who has not successfully completed the provider's training course as approved by the Commissioner.

4.5. The Commissioner may suspend or revoke the training privileges of any server training provider who violates the provisions of this rule or the Liquor Control Act.

~~5. Severability:~~

~~If any part of this Rule is held to be unconstitutional or otherwise contrary to law it shall be severed and the remaining portions shall remain in full force and effect.~~

~~6. Effective Date:~~

~~This rule shall be effective on May 17, 1997.~~

RULE NUMBER 73.1

SANCTIONS FOR CERTIFIED ALCOHOLIC BEVERAGE SERVERS WHO VIOLATE THE LIQUOR CONTROL ACT OR COMMISSIONER RULES

1. Purpose and Findings

The purpose of this rule is to establish administrative sanctions for certified alcoholic beverage servers who violate the Liquor Control Act ("LCA") or Delaware Alcoholic Beverage Control Commissioner ("Commissioner") rules.

The Commissioner finds that certification cards issued by server training providers are revocable permits under the Liquor Control Act, as licenses, and may be subject to administrative sanctions, including suspension or revocation.

2. Applicability

This rule shall govern administrative sanctions imposed upon certified alcoholic beverage servers who violate the Liquor Control Act or Commissioner rules while performing their duties as commercial servers of alcoholic liquor in licensed establishments.

3. Certification of Training

Any employee of a premises licensed to sell alcohol who has worked for the licensee for at least 30 days for at least 10 hours per week shall take and pass a course certified pursuant to this Rule and maintain the certification as provided in 4 Del.C. §1205. All persons who have been certified by a Commissioner-approved server training provider shall be issued a certification card issued by the provider that must display the following information: Trainee's full name, date of birth, expiration date, and instructor's signature.

3.1. All certified servers are required to carry this card on their immediate person while serving alcoholic beverages in any establishment subject to the provisions of 4 Del. C., Chapter 12.

3.2. No person shall make any false statement or other misrepresentation of fact to obtain a server training identification card.

3.3. No person shall possess, or present to any ~~Enforcement DATE~~ Agent or employee of the ~~Division of Alcoholic Beverage Control~~ Commissioner's office, as proof of program certification, a fictitious, altered, or fraudulently obtained server training identification card.

3.4. No person shall present a fictitious, altered, or fraudulently obtained server training identification card to any licensee of the Commissioner during the process of seeking employment with said licensee.

3.5. No person certified by the Commissioner as a trained alcoholic beverage server shall sell, serve, or promote the sales of alcoholic beverages in a manner not consistent with the rules of the Commissioner or the Liquor Control Act.

3.6. No licensee shall encourage or knowingly permit any employee or staff member or other person under their employ, supervision, or direction, to sell, serve, or promote the sales of alcoholic beverages in any manner not consistent with the Liquor Control Act or rules of the Commissioner.

4. Administrative Procedures

4.1. ~~Enforcement DATE~~ Agents of the ~~Division of Alcoholic Beverage Control~~ may administratively cite any licensee or Delaware certified alcoholic beverage server for violating provisions of the Liquor Control Act or Commissioner rules.

4.2. A certified alcoholic beverage server who violates the Liquor Control Act or Commissioner Rules shall be notified of the alleged violation by the investigating agent as promptly as is possible.

4.3. A Notice of Violation will be mailed "Return Receipt Requested" to the server. The server shall have ten (10) working days after receipt of the notice to request a hearing by the Commissioner.

4.4. Should a certified alcoholic beverage server fail to request a hearing after receiving notice in conformity with 29 Del. C., §10122, the server shall be assessed by the division the sanction listed in Section "5" below which may then be ratified by the Commissioner at ~~its~~ the next regularly scheduled meeting.

4.5. If a server timely requests a hearing before the Commissioner pursuant to 29 Del. C., §10125, he/she shall be placed on the next available agenda before the Commissioner and shall retain the rights set forth in 29 Del. C., §10122.

5. Sanctions

5.1. If the Commissioner finds that a certified beverage server has violated the Liquor Control Act or Commissioner rules, the Commissioner may impose any or all of the sanctions that follow:

5.1.1. Require the server to participate in public service speaking engagements at server training classes presented by the Commissioner. The topic and number of speaking engagements shall be determined by the Commissioner; or

5.1.2. Require the server to re-take the mandatory server training program; or

5.1.3. Suspend the training certification of the alcoholic beverage server for a period determined by the Commissioner.

5.2. Suspension of server training certification shall preclude that person from employment as an alcoholic beverage server in those establishments covered by 4 Del. C., Ch. 12. Any establishment employing a person whose alcoholic beverage training certification has been suspended may be subject to administrative sanctions pursuant to 4 Del. C., Ch. 12.

5.3. The Commissioner may deny server training certification privileges to any person who fraudulently obtains, or attempts to fraudulently obtain server training certification.

6. ~~Severability~~

~~If any part of this rule is held to be unconstitutional or otherwise contrary to law, then it shall be severed and the remaining portions shall remain in full force and effect.~~

7. Effective Date

~~This rule shall be effective on May 17, 1997.~~

RULE NUMBER 74

A RULE PERTAINING TO THE TRANSCRIPTION OF TESTIMONY TAKEN BEFORE THE DELAWARE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER

I. Purpose

The purpose of this rule is to ensure that an accurate and complete record is kept of proceedings before the ~~Delaware Alcoholic Beverage Control Commissioner (Commissioner)~~ and that transcription of the record complies with the Administrative Procedures Act and Liquor Control Act and is prepared in a timely manner for the purpose of appeal.

II. History

~~Prior to the adoption of this rule, it had been the practice of the Commissioner to pay for the transcription of the record of all proceedings where a decision of the Commissioner was appealed to the Superior Court. This practice is not required by the Administrative Procedures Act.~~

III. Authority

~~The Commissioner's authority to adopt this rule is found in the Liquor Control Act.~~

~~The Commissioner shall adopt and promulgate rules and regulations not inconsistent with Title 4 of the Delaware Code of 1974, as amended, or of any other law of the state, and all such rules and regulations shall have the force and effect of law. 4 Del. C., §304 (a)(1).~~

~~In addition, the Commissioner may make any regulation it deems necessary for carrying out Title 4 of the Delaware Code of 1974, as amended, respecting its internal economy and the conduct of its business, and may amend or repeal any such regulation. 4 Del. C., §309~~

~~In the case of license applications [4 Del. C., §541(b)] and any case involving suspension or cancellation of a license [4 Del. C., §562 (a)], the Commissioner is required to make and keep a full and complete record of the hearing; however, the record need not be transcribed unless the matter is appealed to the Superior Court.~~

~~The Commissioner's authority to adopt this rule is also found in the Administrative Procedures Act. Specifically, when adopting, amending, or repealing a regulation, the Commissioner is required to make a record from which a verbatim transcript can be prepared and the expense of preparing any transcript shall be borne by the person requesting it. 29 Del. C., §10117(2)~~

~~When hearing cases including, but not limited to, licensing applications and violations of the Liquor Control Act, the Commissioner is required to make a record from which a verbatim transcript can be prepared at the request and expense of any party. 29 Del. C., §10125(d)~~

~~In promulgating this rule, the Commissioner is bringing its practices and procedures into conformity with the Administrative Procedures Act and those agencies covered by that act pursuant to 29 Del. C., §10161.~~

~~Also, in promulgating this rule, the Commissioner finds that a party to a matter before the Commissioner who files an appeal to the Superior Court or seeks relief from any other court is deemed, in order to comply with the filing requirements, to have requested a full and complete transcript of all testimony in the matter being appealed.~~

IV. Applicability

This rule shall apply to all appeals, including extraordinary writs, contesting any rule or regulation adopted by the Commissioner. It shall also apply to all appeals of any decision, including

extraordinary writs, affecting the denial or issuance of an alcoholic liquor license and the cancellation, suspension, or other administrative sanction imposed on a licensee.

VIII. Procedure

A. Immediately upon filing an appeal of any matter heard before the Commissioner, the appellant shall notify the Commissioner in writing of the need for a transcript.

B. The Commissioner's staff shall make arrangements for the preparation of a transcript. The appellant shall pay the Commissioner's court reporter directly for the expense of transcribing the record and the cost of ~~two~~ four (42) copies.

C. Upon payment, the court reporter shall forward the original transcript and ~~two~~ four (42) copies to the Commissioner.

D. The Commissioner shall certify the transcript and file the original and one (1) copy with the court or the original and two copies with the Appeals Commission, as applicable. One (1) copy shall be retained by the Commissioner and placed in the licensee's file.

E. Failure by the appellant to pay the proper remittance directly to the court reporter will result in the Commissioner being unable to certify and file the transcript with the court or the Appeals Commission.

In summary, the cost of any transcript of record required by the Superior Court, the Appeals Commission or any other court on review of a decision of the Commissioner shall be borne by the party taking the appeal to the Superior Court or any other court. Such appellant shall be responsible for the costs of any transcript(s) required by the court(s), plus the cost of a copy for the licensee's file.

VI. Severability

~~If any part of this Rule is held to be unconstitutional or otherwise contrary to law, then it shall be severed and the remaining portions shall remain in full force and effect.~~

VII. Effective Date

~~This rule shall be effective immediately upon its adoption by the Commissioner.~~

~~This rule is adopted pursuant to 29 Del. C., §10113(b)(2), the Administrative Procedures Act, as a rule of practice and procedure used by the Commissioner.~~

RULE NUMBER 75

A RULE PERTAINING TO THE CLOSING OF PACKAGE STORES, TAVERNS AND TAPROOMS OR ANY OFF-PREMISES LICENSEE

I. Purpose.

The purpose of this rule is to standardize procedures for closings of package stores, taverns and taprooms and any off-premises licensee while ensuring that residents of the neighborhoods in which the licensees operate are still able to make a lawful purchase of alcoholic beverages with reasonable convenience. ~~This rule also incorporates by reference the policy directive issued by the Commissioner on January 6, 1988 which provides that licensees which close for periods of fourteen days or less in any calendar year or which vary their operating hours during a fourteen day period of time are not required to obtain Commissioner approval, provided that proper notice is given to the public.~~

II. Authority.

~~The Delaware Alcoholic Beverage Control Commissioner is authorized pursuant to 4 Del. C. §304(a)(1) and (2) to adopt rules governing the time, place and manner in which alcoholic beverages are sold and dispensed throughout the state.~~

III. Applicability.

This rule shall apply to all package stores, taverns and taprooms as well as other off-premises licensees licensed by the Commissioner.

III.V. Closings for Fourteen Days or Less.

Licensees shall not be required to notify the Commissioner in order to close their establishments for a cumulative period of fourteen days or less in any calendar year or in order to change their hours of operation during such a limited period of time; provided, however, that any licensee which closes for fourteen days or less or temporarily changes its hours of operation shall conspicuously post notice of that fact at all public entrances to the licensed premises.

IV. Closings for More Than Fourteen Days.

A. Procedures.

Whenever a licensed package store, tavern or taproom or other off-premises licensee intends to close for a period of more than fourteen days in any calendar year, or intends to close on specific days which when considered cumulatively amount to a period of more than fourteen days in any calendar year, the following procedure shall be followed:

1. The licensee shall submit a letter of intent to the Commissioner which must include the specific dates during which the licensee intends to be closed and the reasons for which the licensee intends to close. The letter of intent must be filed at least twenty days but not more than sixty days before the first day on which the licensee intends to close.

2. The letter of intent filed with the Commissioner shall be accompanied by certificates of the publishers of two newspapers circulated in the county in which the license operates. From the certificates it shall appear that the licensee has caused to be circulated in such newspapers at least three times within the period of twenty days immediately preceding the filing of the letter of intent with the Commissioner, a notice setting forth the intention of the licensee to close for a period of more than fourteen days in any calendar year, including the specific dates on which the licensee intends to be closed and advising the public of the right to object to the closure by filing a protest with the Commissioner. One of the notices shall appear in a newspaper circulated at the place in the county nearest to the location of the licensed premises.

3. On the same date that the letter of intent is submitted to the Commissioner, the licensee shall send notice by certified mail, return receipt requested, of its intent to close for a period of more than fourteen days in the calendar year, including the specific dates on which the licensee intends to be closed, to all licensed package stores, taverns and taprooms located within one mile of the licensed premises.

4. On the same date that the letter of intent is submitted to the Commissioner, the licensee shall conspicuously post a Public Notice sign at all public entrances to the licensed premises stating the intent to close and specifying the dates during which the licensed premises will be closed. The Public Notice sign shall be a minimum of 18 x 24" in size and shall remain posted at all public entrances to the premises throughout the entire time the establishment is closed.

B. Protests.

1. Within ten days of the filing of the letter of intent with the Commissioner, a protest against the intended closing, signed by at least ten residents of the neighborhood wherein the license operates, may be filed with the Commissioner.

2. In the event such a protest is filed the Commissioner or the Commissioner believes that the closing would deprive the residents of the neighborhood the opportunity to make a lawful purchase of alcoholic beverages with reasonable convenience, the Commissioner shall hold a hearing to consider the sole issue of whether the intended closing of the licensed establishment would deprive residents of the neighborhood of the opportunity to make a lawful purchase of

alcoholic beverages with reasonable convenience.

3. Such a hearing shall be conducted by the Commissioner, ~~at its next regularly scheduled meeting.~~

4. Notice of the hearing, including its time and date and a recital of the protest shall be sent ~~by certified mail~~ to the licensee and to each of the persons who signed the protest; provided, however, that it shall be sufficient to send notice to the attorney of any party represented by legal counsel.

5. A record from which a verbatim transcript can be prepared shall be made of any protested hearing.

6. After hearing all the evidence, if the Commissioner determines that the closing of the package store, tavern or taproom or other off-premises licensee will deprive the protesting neighborhood residents of the opportunity to make a reasonably convenient lawful purchase of alcoholic beverages, the closing shall not be permitted or the requested dates of closing shall be modified as determined by the Commissioner.

7. If the Commissioner determines, after hearing all of the evidence, that the closing will not deprive the protesting neighborhood residents of the opportunity to make a reasonably convenient lawful purchase of alcoholic beverages, then the closing shall be permitted.

~~C. Lack of Protest.~~

~~In the event that no valid protest is timely filed with the Commissioner, the intended closing shall be permitted.~~

~~D. Restrictions.~~

1. Pursuant to the provisions of this rule, no licensee shall close its establishment for a period of more than 150 days cumulatively in any calendar year.

2. Any licensee which closes its establishment in accordance with the provisions of this rule shall still be required to comply with, and adhere to, all applicable provisions of the Liquor Control Act and the Commissioner Rules.

~~VI. Severability.~~

~~If any part of this rule is held to be unconstitutional or otherwise contrary to law, then it shall be severed and the remaining portions shall remain in full force and effect.~~

~~VII. Effective Date.~~

~~This rule shall be effective December 15, 1994.~~

RULE NUMBER 76
A Rule Governing Taxes Paid On Spirits

For the purpose of fulfilling the mandate of the General Assembly in Section 5 of the Act set forth in 1996 Delaware Laws Ch. 488, entitled "An Act To Amend Chapter 5, Title 4 Of The Delaware Code Relating To Taxes On Spirits," the following is provided:

- 1) the tax pay rates established in 1996 Delaware Laws Ch. 488, Sections 1 and 2 shall not expire on December 31, 1999 and shall continue to remain in effect:
- 2) those tax pay rates, now codified at 4 Del. C section 581 (d)(4) and (d)(5), shall remain as specified by statute and as restated herein:
 - (d)(4) For each gallon of spirits containing 25 percent or less of ethyl alcohol by volume, \$2.50.
 - (d)(5) For each gallon of spirits containing more than 25 percent of ethyl alcohol by volume,

\$3.75.

RULE NUMBER 77
A Rule Pertaining to the License of Direct Shippers

I. Purpose

For the purpose of fulfilling the requirements set forth by the General Assembly in section 1 of 72 Del.Laws, c.230, to be codified at 4 Del.C. §526 effective June 1, 2000, this rule is to set forth the applicable license fee for a Direct Shipper and to establish the procedure for collection and payment of taxes and for delivery of orders via a licensed direct shipper.

II. Authority

The Delaware Alcoholic Beverage Control Commissioner is authorized pursuant to 4 Del.C. §304(a)(1) and (2) to adopt rules governing the time, place and manner in which alcoholic beverages are sold and dispensed throughout the State.

III. Applicability

This rule applies to all persons who are licensed as direct by the Commissioner and all licensed wholesalers, licensed retailers, and Delaware residents who deliver or receive sparkling wine, still wine, and/or beer obtained via direct shippers as set forth in 4 Del.C. §526.

IV. License Fee

The license fee for a direct shipper is a biennial fee of one hundred (\$100) dollars. ~~\$250.00, which is an amount that reasonably reflects the costs necessary to defray the expenses of the Commissioner's service and activities in connection with 4 Del.C. §526.~~

V. Taxes

Pursuant to 4 Del.C. §581(e), all persons licensed pursuant to 4 Del.C. §526 shall pay to the State of Delaware, Division of Revenue, the tax on such wine and beer sold to Delaware residents at the rates set forth in 4 Del.C. §581(d). Collection and payment of such taxes shall be in a manner consistent with Title 4 of the Delaware Code and the Commissioner's Rules and Regulations.

VI. Delivery

Wine and beer ordered pursuant to 4 Del.C. §526 will be delivered at the licensee's place of business by a Delaware off-premises retail licensee to a Delaware resident consistent with Title 4 of the Delaware Code and the Commissioner's Rules and Regulations. In order to receive wine or beer from the retail licensee, the Delaware resident will present to the retail licensee a valid Delaware drivers license, with photograph identification, that indicates the resident is 21 years of age or older.

~~VII. Severability~~

~~If any part of this rule is held to be unconstitutional or otherwise contrary to law, then it shall be severed and the remaining portions shall remain in full force and effect.~~

~~VIII. Effective Date~~

~~This rule shall be effective June 1, 2000.~~