

# DEPARTMENT OF SAFETY AND HOMELAND SECURITY

## ALCOHOLIC BEVERAGE CONTROL COMMISSION

Statutory Authority: 4 Delaware Code, Section 304 (4 Del.C. §304)

### PROPOSED

### PUBLIC NOTICE

The Alcoholic Beverage Control Commission proposes to amend Rule 8.1 A Rule Governing the Shipment and Storage of Alcoholic Liquors by Suppliers and Wholesalers. The current rule provides for a 72 hour "at rest" period to allow the Commission to carry out its statutory responsibilities. The Commission proposes to shorten that period to 18 hours.

In accordance with 29 Del.C. §100118(a) final date to receive written comments will be October 1, 2012.

### **RULE 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 Commission on February 1, 1960.

On February 1, 1990, the Commission 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 Commission to repeal the present Rule 10 dated February 2, 1967.

#### II. Purpose

This amended rule is promulgated, in part, pursuant to the Commission'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 Commission for the sale of alcoholic liquor. 4 Del. C., Section 304 (A)(1)(2)

In addition, the Commission has found, pursuant to its 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 Commission 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 Commission Rules and Regulations promulgated thereto.

Specifically, the Commission has found that seventy-two (72) hours is a reasonable "at-rest" period of time to enable the Commission 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 Commission 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.

#### IV. 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 Commission - 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 Commission, 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 Commission 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 Commission or the Delaware licensed importer's license number affixed to the side of the vehicle.

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 Commission.

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 Commission. Such vehicle shall have the proper signs affixed thereto.

E. 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.

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

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

H. Upon the driver's return to the warehouse, 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 Commission at all times.

#### V. 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 Commission.

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

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 Commission Rules at all premises licensed in its name by the Commission.

#### VI. Hours of Delivery

A. Delivery trucks and other vehicles of an importer, licensed by the Commission for the delivery of alcoholic liquor to licensed retail establishments, may leave the warehouse after 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 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 (e).

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(d)]

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 V. (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)~~ eighteen (18) hours.

D. The minimum period of ~~seventy-two (72)~~ eighteen (18) hours "at rest" is required to enable the Commission, or its enforcement officers or agents, to inspect and inventory wholesale warehouses for the purpose of verifying taxes that are required to be paid on alcoholic liquor purchased by importers, pursuant to 4 Del. C., Section 581(a) and Delaware Alcoholic Beverage Control Commission Rule 8.

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

#### VIII. Inspections and Inventories

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

IX. 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.

**16 DE Reg. 252 (09/01/12) (Prop.)**