

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY**  
**OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER**  
Statutory Authority: 4 Delaware Code, Section 304 (4 Del.C. §304)  
4 DE Admin. Code 202

**FINAL**

**ORDER**

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

**SUMMARY OF THE EVIDENCE**

1. Title 4, Section 304 of the Delaware Code authorizes the Alcoholic Beverage Control Commissioner to establish regulations in relation to all powers, duties and functions vested pursuant to the regulation of alcoholic beverages in Delaware.
2. Pursuant to 4 Del. C. § 304, the Alcoholic Beverage Control Commissioner intends to amend 4 DE Admin. C. 202. The regulations are being amended to update the dining seat to bar seat ratio in restaurants from 4:1 to 3:1, and reorganize the format and update minor grammatical items of this rule, specifically regarding a motel.
3. Notice of the proposed regulation change was published in the June 1, 2023 edition of the *Delaware Register of Regulations*, and the public was given thirty (30) days to provide written comment.
4. No public comments were received for this proposed regulation.
5. Having provided the opportunity for public comment on the proposed regulations in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101, et. seq., this is the Commissioner's Order adopting the proposed amended regulation as published previously.

**FINDINGS OF FACT**

1. The Commissioner finds that it is necessary to adopt the proposed regulation as published previously in order to update restaurant seating ratio to 3:1 dining seats to bar seats and update formatting and grammatical items in the rule.

**DECISION AND ORDER TO AMEND THE REGULATION**

For the foregoing reasons, the Commissioner concludes that it is appropriate to amend 4 DE Admin. Code 202 in which the text of the final regulation shall be in the form referenced herein and remain unchanged as initially published in the June 1, 2023 Delaware Register of Regulations, and therefore the regulation shall be adopted in accordance with this Order. The effective date of this Order shall be ten days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** this 27th day of July, 2023 by the Office of the Delaware Alcoholic Beverage Control Commissioner.

The Honorable Jacqueline Paradee Mette, Esq.  
Commissioner

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

**1.0 Purpose and Scope**

This Rule supplements the definition of Hotel, Motel, Dinner Theater and Restaurant contained in the Liquor Control Act, 4 Delaware Code, Section 101 et seq.

**4.0 ~~2.0~~ Hotel and Motel**

~~4.1~~ 2.1 **"Hotel"** means any establishment provided with special space and accommodation, where, in consideration of payment, food and lodging are habitually furnished to travelers.

2.2 **"Motel"** means 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.

4.2 2.3 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 and motel shall be advertised as such. A State or County license to operate the premises as a hotel and motel shall also be issued and in possession of the applicant prior to the issuance of the license and at all times thereafter during the term of the license.

## 2.0 Motel

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

## 3.0 Restaurant

3.1 "Restaurant" means any establishment which is regularly used and kept open principally for the purpose of serving complete meals to persons for consideration, and which has seating at tables for 12 or more persons and suitable kitchen facilities connected therewith for cooking an assortment of foods under the charge of a chef or cook.

3.2 Additional requirements to operate as a restaurant are:

3.2.1 Seats at a bar shall not exceed ~~25%~~ 1/3 of the dining seats.

3.2.2 The service of only such food ~~and victuals~~ as sandwiches or salads shall not be deemed to be the service of "meals".

~~3.1.4~~ 3.2.3 Complete meals shall be available at all hours that any restaurant is open for the sale of alcoholic liquor.

~~3.1.2~~ 3.2.4 There shall also be adequate and sanitary kitchen and dining room equipment, and an approved storage space where alcoholic liquor may be kept.

~~3.1.3~~ 3.2.5 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.

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

## 4.0 Complete Meals - Hotel, Motel, and Restaurant

4.1 The sale of alcoholic beverages by a hotel, motel, or restaurant shall be considered as a supplement to the original purpose of providing food and lodging and furnishing food, respectively.

4.2 "Complete Meals" shall be considered to mean the normal meals provided at breakfast, lunch and dinner, offered from menus consisting of, but not limited to: breakfast foods, soups, appetizers, entrees, salads, vegetables, ~~dessert's~~ desserts, and beverages other than alcoholic.

4.3 Restaurants licensed to sell "Beer Only" and "Wine Only" shall be required to furnish only two out of the four following accompaniments to meals: appetizers, soups, salads and vegetables.

## 5.0 Dinner Theater

5.1 The dinner theater shall serve at least one meal consisting of, but not limited to, appetizers, entrees, salads, vegetables, desserts and beverages other than alcoholic. There shall also be an adequate and sanitary kitchen and dining equipment with an approved storage space where alcoholic liquor may be kept.

5.2 The dinner theater licensee shall supply to the Commissioner the hours during which the licensee shall permit consumption of alcoholic beverages on its premises. In no event shall the dinner theater licensee allow consumption of alcoholic liquors on its premises at times other than in conjunction with meals served at the theatrical performances and during intermissions or at any other time which is not permitted by the Delaware Liquor Control Act. The hours of consumption of alcoholic liquors shall first be approved by the Commissioner before the issuance of a license.

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

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

27 DE Reg. 186 (09/01/23) (Final)