800 Suspension of License; Sanctions and Fines

801 (Formerly Rule 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.

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

802 (Formerly Rule 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 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, the licensee's license shall be revoked.

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

803 (Formerly Rule 73.1) Sanctions for Certified Alcoholic Beverage Servers Who Violate the Liquor Control Act or Commissioner Rules

1.0 Purpose and Findings

1.1 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.

1.2 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.

2.0 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.

3.0 Certification of Training

3.1 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.

3.2 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. Ch. 12.

3.3 No person shall make any false statement or other misrepresentation of fact to obtain a server training identification card.

3.4 No person shall possess, or present to any DATE Agent or employee of the Commissioner's office, as proof of program certification, a fictitious, altered, or fraudulently obtained server training identification card.

3.5 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.

3.6 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.

3.7 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.

4.0 Administrative Procedures

4.1 DATE Agents 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 subsection 5 below which may then be ratified by the Commissioner at 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.

5.0 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.

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

804 (Formerly Rule 71) A Rule Pertaining To Voluntary Fine Assessment
1.0 Purpose

This rule implements the grant of authority to the Commissioner contained in 4 Del.C. §915 to create a voluntary fine assessment plan for any licensee who pleads guilty to any violation of the Commissioner's rules.

2.0 Applicability

2.1 In accordance with 4 Del.C. §915 agents of DATE shall have authority to offer a voluntary fine assessment agreement to any licensee who violates any of the Commissioner's rules.

2.2 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.C. §10125, before the Commissioner and any appeal.

3.0 Procedure

3.1 Licensees cited for a violation of Commissioner rules who accept the investigating agent's offer to participate in the voluntary fine assessment plan shall sign the voluntary fine assessment form.

3.2 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 fine 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 signing the voluntary fine assessment form.

3.3 The Director of DATE shall establish the form(s) and procedures within DATE that are necessary to carry out the requirements of this rule.

4.0 Penalties and Administrative Cost

4.1 The schedule of penalties and administrative cost established for violations covered by the voluntary fine assessment plan are as follows:

4.1.1 First Violation: A two hundred fifty ($250) dollar fine.

4.1.2 Second Violation of the Same Offense Within Five (5) Years: A five hundred ($500) dollar fine.

4.1.3 Third and Subsequent Violations of the Same Offense Within Five (5) Years: A fine of one thousand ($1,000) dollars or a 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.

4.1.4 Administrative costs for all voluntary fine assessments shall be added at a rate of 15% of the amount of the fine.

4.2 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.

4.3 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 4 Del.C. §914.

4.4 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 805 and a hearing being scheduled before the Commissioner. The violation shall be treated as a separate violation to the underlying violation listed on the voluntary assessment form.

5.0 Reporting

The Director of DATE shall report to the Commissioner on a monthly basis the name, violation(s), fine, and date of all voluntary assessments that are issued.

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

805 (Formerly Rule 64) A Rule Governing Time Within Which To Pay A Fine; Penalty For Failure To Pay A Fine

1.0 Time Within Which to Pay a Fine
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, *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.

2.0 Failure to Pay a Fine

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.

3.0 Appeals

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.

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