

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY**  
**OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER**  
**Office of the Alcoholic Beverage Control Commissioner**

**900 Trade Practices for Suppliers, Wholesales, and Retailers**

**Rule 901 (Formerly Rule 46) A Rule Governing the Contractual Relationships Between Suppliers and Wholesalers  
for the Distribution of Alcoholic Beverages**

**1.0 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 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 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

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## TITLE 4 ALCOHOLIC BEVERAGE CONTROL

### DELAWARE ADMINISTRATIVE CODE

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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.

#### 2.0 Requirements for Importing Alcoholic Beverages Into Delaware

- 2.1 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:
  - 2.1.1 It shall have obtained from the Commissioner an Out-of-State Supplier's license as required by 4 **Del.C.** §501;
  - 2.1.2 It shall submit the following information to the Commissioner and to each affected wholesaler in writing:
    - 2.1.2.1 the name and address of each licensed wholesaler in Delaware with which it has contracted;
    - 2.1.2.2 the brand or brands of alcoholic beverages which it intends to distribute in Delaware;
    - 2.1.2.3 a statement as to whether the distribution rights being conferred on each wholesaler are exclusive; and
    - 2.1.2.4 if in writing, a copy of the distribution contract, between it and the licensed wholesaler(s);
  - 2.1.3 It shall ship such alcoholic beverages only to a wholesaler or wholesalers licensed by the Commissioner; and
  - 2.1.4 It shall agree to comply with all applicable requirements of this Rule. (Noncompliance with the requirements of subsection 2.1 prior to shipping alcoholic beverages into the State shall subject the supplier to the imposition of such administrative sanctions as the Commissioner deems warranted.)
- 2.2 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 2.1 of this Rule.

#### 3.0 General Principles

- 3.1 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 2.1.2 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.
- 3.2 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.
- 3.3 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.
- 3.4 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 2.1 of this Rule.

#### 4.0 Contracts

- 4.1 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.
- 4.2 No contract for the distribution of alcoholic beverages shall be supported by the exchange of \$100 or more.
- 4.3 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.
- 4.4 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.

**5.0 Procedure for Involuntary Termination or Transfer**

- 5.1 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.
- 5.1.1 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.
- 5.1.2 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.
- 5.2 The written request to terminate or transfer distribution rights required by subsection 5.1 shall include all of the following information:
- 5.2.1 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;
- 5.2.2 The reason and basis for the request; and,
- 5.2.2.1 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
- 5.2.2.2 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.
- 5.3 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 5.2 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 Commissioner shall hold a hearing to consider the request and the opposition thereto.
- 5.4 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 5.2 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 Section 6.0 of this Rule.

**6.0 Reasonable Compensation**

- 6.1 Procedure for determining compensation
- 6.1.1 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

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**TITLE 4 ALCOHOLIC BEVERAGE CONTROL**  
**DELAWARE ADMINISTRATIVE CODE**

---

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.

- 6.1.2 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.

6.2 Neutral arbitrator

- 6.2.1 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 6.1 within twenty days after the wholesaler receives a copy of the supplier's request to terminate or transfer distribution rights, as required by subsection 5.4, 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.

- 6.2.2 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.

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

6.2.2.2 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.

- 6.2.3 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.

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

6.3 Effective date of termination or transfer

- 6.3.1 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.

- 6.3.2 A supplier 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.

**7.0 Good Cause for Involuntary Termination or Transfer**

- 7.1 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.

- 7.2 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.

- 7.3 The term "good cause" as used in this Rule shall include:

- 7.3.1 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.

- 7.3.2 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.
- 7.3.3 The insolvency or bankruptcy of the wholesaler;
- 7.3.4 The dissolution or liquidation of the wholesaler's business;
- 7.3.5 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;
- 7.3.6 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.

#### **8.0 Dual Distribution**

- 8.1 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 "dualing wholesalers" identifies those wholesalers handling the brand or brands being dualing.
- 8.2 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 the product(s), and further provided that the supplier complies with the requirements of subsection 2.1 of this Rule.
- 8.3 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 8.4 of this Rule.
- 8.4 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:
  - 8.4.1 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;
  - 8.4.2 The names and addresses of those wholesalers through which it seeks to dual the brand or brands;
  - 8.4.3 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;
    - 8.4.3.1 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.
  - 8.4.4 A representation that the distribution contract with the existing wholesaler of the brand or brands sought to be dualing permits it to dual such products; and
  - 8.4.5 A representation that it will offer the dualing product(s) upon the same terms and conditions to every dualing wholesaler. No special terms, discounts or conditions shall be afforded to one wholesaler which are not afforded to all dualing wholesalers.
- 8.5 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

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**TITLE 4 ALCOHOLIC BEVERAGE CONTROL**  
**DELAWARE ADMINISTRATIVE CODE**

---

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).

- 8.6 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.

**Rule 902 (Formerly Rule 13) Labeling, and Standards of Identity and Standards of Fill of Alcoholic Liquors****1.0 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.

**2.0 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.

**3.0 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.

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

**Rule 903 (Formerly Rule 8.1) A Rule Governing the Shipment and Storage of Alcoholic Liquors by Suppliers and Wholesalers****1.0 Purpose**

- 1.1 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.
- 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.** §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. This rule, therefore, implements and clarifies 4 **Del.C.** §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.** §501(f) and all other provisions of Title 4, the Liquor Control Act, and the Commissioner Rules and Regulations promulgated thereto.
- 1.3 Specifically, the Commissioner has found that seventy-two (72) hours is a reasonable "at-rest" period of time to enable the DATE to carry out its statutory duties to inspect and inventory licensed Delaware warehouses.

**2.0 Definitions: As Used in this Rule**

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**TITLE 4 ALCOHOLIC BEVERAGE CONTROL**  
**DELAWARE ADMINISTRATIVE CODE**

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**"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.

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

**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.

**3.0 Procedures**

- 3.1 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.
- 3.2 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.
- 3.3 Vehicles owned by suppliers shall not be used for delivery of alcoholic beverages to retailers in the State of Delaware.
- 3.4 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.
- 3.5 No alcoholic beverages in excess of that ordered shall be carried on the vehicles.
- 3.6 A statement showing the destination of each package of alcoholic beverages shall be furnished the driver and carried by over the route.
- 3.7 Upon the driver's return to the warehouse, the driver 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.

**4.0 Importers' Warehouses**

- 4.1 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.
- 4.2 The person in charge of an Importer's warehouse must be approved by the Commissioner.
- 4.3 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. The person in charge of the importer's warehouse is to be upon the regular salary list or payroll of such Importer.
- 4.4 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.

**5.0 Hours of Delivery**

- 5.1 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 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 o'clock in the morning and no Importer may require a Retailer to accept deliveries prior to nine o'clock in the morning.
- 5.2 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.
- 5.3 There shall be no delivery of beer, spirits, or wine on any holiday specified in 4 **Del.C.** §709 (d).
- 5.4 Deliveries of alcoholic liquor by Importers, or their authorized representatives, to retail establishments, at any time not permitted by this rule is prohibited.

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

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## TITLE 4 ALCOHOLIC BEVERAGE CONTROL

### DELAWARE ADMINISTRATIVE CODE

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- 6.1 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.
- 6.2 Said licensed Delaware warehouse or warehouses must be owned, leased, or operated in accordance with subsection 4.3 of this rule.
- 6.3 All alcoholic liquor delivered to said warehouse or warehouses must be unloaded and physically stored for a period of at least eighteen (18) hours.
- 6.4 The minimum period of eighteen (18) hours "at rest" is required to enable the Commissioner, or DATE, 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. §581(a) and Delaware Alcoholic Beverage Control Commissioner Rule 601.
- 6.5 Variances of the eighteen (18) hour storage requirement may be granted for good cause if formally made in writing and submitted to the Commissioner.

#### 7.0 Inspections and Inventories

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

#### 8.0 Interstate Shipments

- 8.1 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.
- 8.2 The way-bill shall embody these written or printed terms:
  - 8.2.1 The date of its issue.
  - 8.2.2 The name and address of the consignor.
  - 8.2.3 The name and address of the consignee.
  - 8.2.4 A statement as to whether the goods will be delivered to a specified person or to the order of a specified person.
  - 8.2.5 A description of the package, stating the number and contents.
  - 8.2.6 The signature of the carrier or his duly authorized agent.

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

#### **Rule 904 (Formerly Rule 29) Publication of Prices and Post-offs By Importers (a.k.a."Wholesalers")**

##### 1.0 Applicability

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.

##### 2.0 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 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").

### **3.0 Procedures for Providing Notice of Prices, Post-Offs, and Quantity Discounts**

- 3.1 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.
- 3.2 A copy of the monthly price list shall also be filed with 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.
- 3.3 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 any time 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.
- 3.4 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 DATE, and (3) will not harm the public interest.

### **4.0 Procedures for Providing Notice of Prices for New Products**

- 4.1 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:
  - 4.1.1 By mailing a pricing announcement directly to all retail licensees of the trade and DATE by United States mail, or
  - 4.1.2 By inclusion of prices in the monthly price list submitted to the designated publication as heretofore described, or
  - 4.1.3 By including notice thereof in the form of Updated Notification, as described in subsection 3.3 above.
- 4.2 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.
- 4.3 Alternative methods for providing notice of prices for new products may be approved by the Commissioner in the same manner set forth in subsection 3.4 of this regulation.

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**TITLE 4 ALCOHOLIC BEVERAGE CONTROL**  
**DELAWARE ADMINISTRATIVE CODE**

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**5.0 Duty of Wholesalers to Fill Orders**

- 5.1 The procedure and regulations for licensed wholesalers who offer post-offs or quantity discounts to licensed retailers shall be as follows:
- 5.1.1 Licensed wholesalers shall not discriminate among licensed retailers in filling orders for post-offs or quantity discounts.
  - 5.1.2 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.
  - 5.1.3 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.
  - 5.1.4 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.
  - 5.1.5 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.

**6.0 Procedure for Recording the Sale of Alcoholic Liquor by Wholesalers**

- 6.1 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:
- 6.1.1 Name of the wholesaler
  - 6.1.2 Name of the retailer
  - 6.1.3 Date of sale
  - 6.1.4 Quantity of alcoholic liquor sold
  - 6.1.5 Price of alcoholic liquor sold
  - 6.1.6 Brand
  - 6.1.7 Size of container
  - 6.1.8 Date of delivery
- 6.2 The regular price of alcoholic liquor sold at post-off, quantity discount, or discount pursuant to subsection 5.1.4 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.

**7.0 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.

**8.0 Consortium Buying**

- 8.1 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.

- 8.2 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.

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

**Rule 905 (Formerly Rule 14) A Rule Governing Alcoholic Liquors Returned to the Manufacturer by the Importer**

**1.0 Returned Merchandise**

- 1.1 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.
- 1.2 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.
- 1.3 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.
- 1.4 The Importer desiring to make such replacement shall notify the Commissioner, DATE and the Division of Revenue explaining in detail what the Importer desires to do and an inspector of the Commissioner, DATE or the Division of Revenue will arrange with 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 the Importer in turn will make such adjustment between the Importer and the retailers as may seem proper to them.
- 1.5 Replacements will necessarily be subject to the same tax as is ordinarily collected.

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

**Rule 906 (Formerly Rule 31) A Rule Governing The Return Of Alcoholic Liquor to The Seller After It Has Been Received By The Purchaser**

**1.0 Returned Merchandise**

- 1.1 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.
- 1.2 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.
- 1.3 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.
- 1.4 Whenever an Importers license terminates for any reason, the alcoholic liquors shall be disposed of in a manner approved by the Commissioner.
- 1.5 When the business of any licensee is temporarily suspended, the alcoholic liquors shall be stored or disposed of in a manner approved by tie Commissioner.

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**TITLE 4 ALCOHOLIC BEVERAGE CONTROL**  
**DELAWARE ADMINISTRATIVE CODE**

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Effective: February 2, 1967

**Rule 907 (Formerly Rule 43) A Rule Governing Employees of Supplier or Wholesaler Licensees****1.0 Serving as an officer or director and/or being employed**

- 1.1 No employee, officer, director, stockholder, member, owner or partner (nor the spouse thereof) of a wholesaler or supplier 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.
- 1.2 Nothing herein shall limit the right of an officer, director, stockholder, member, owner or partner (and the spouse thereof) of a wholesaler or supplier to serve as an officer or director of a club which is not operated for profit.

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

**Rule 908 (Formerly Rule 2) Prohibited Trade Practices****1.0 Purpose**

- 1.1 The Commissioner has concluded that reasonable marketing techniques are acceptable in the liquor industry.
- 1.2 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.

**2.0 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.

**3.0 Prohibited Practices****3.1 Retail Licensees**

- 3.1.1 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:
  - 3.1.1.1 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.
  - 3.1.1.2 Giving any form of cash (medium of exchange), either directly or indirectly, to any individual, organization, group, or other entity if such contribution is conditional upon the purchase and/or consumption of alcoholic beverages.
  - 3.1.1.3 Selling alcoholic beverages at a price which is less than the seller's cost.
  - 3.1.1.4 Promoting, sponsoring, conducting, or participating in any event that is in any way conditional upon or involves consumption of alcoholic beverages.
  - 3.1.1.5 Offering or selling two (2) or more drinks for the regular price of one.
  - 3.1.1.6 Extending credit except as provided in Rule 301 (Formerly Rule 56).
  - 3.1.1.7 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.
  - 3.1.1.8 Delivering alcoholic beverages to any person who is or who appears to be intoxicated.
  - 3.1.1.9 Soliciting or receiving any items which an importer or supplier licensee is prohibited under subsection 3.2.1.1 or 3.2.1.2 from giving to a retailer.

- 3.1.1.10 Open bars are generally not permitted pursuant to the provisions of 3.1.1.7 above; however, the Commissioner may grant a variance to this section provided that the licensee meets the criteria that follows:
  - 3.1.1.10.1 The licensee must submit a written request to the Commissioner for a variance in this rule for a specific, planned event.
  - 3.1.1.10.2 Admission to the event must be by ticket only and include the place, time, date, and hours of the event.
  - 3.1.1.10.3 The request for a variance must be received by the Commissioner six (6) weeks in advance of the planned event.
  - 3.1.1.10.4 Food of adequate variety and quantity must be offered as part of the package price for a ticket to the event.
  - 3.1.1.10.5 Non-alcoholic beverages must be available and offered as part of the package price of a ticket for the event.
  - 3.1.1.10.6 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.
  - 3.1.1.10.7 All servers of alcoholic liquor and staff at the event must be trained in compliance with the Delaware mandatory server training law.
  - 3.1.1.10.8 Adequate staff must be on site to monitor drinking by patrons and to take action consistent with state law and Commissioner rules.
  - 3.1.1.10.9 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.
  - 3.1.1.11 Engaging in any restraint of trade or commerce of this State as prohibited by 6 **Del.C.** §2103.
- 3.1.2 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:
  - 3.1.2.1 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.
  - 3.1.2.2 Selling alcoholic beverages at a price which is less than the seller's cost.
  - 3.1.2.3 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.
  - 3.1.2.4 Extending credit except as provided in Rule 201 (Formerly Rule 56).
  - 3.1.2.5 Delivering alcoholic beverages to any person who is or who appears to be intoxicated.
  - 3.1.2.6 Soliciting or receiving any items which an importer licensee is prohibited under subsections 3.2.1.1 or 3.2.1.2 from giving to a retailer.
  - 3.1.2.7 Engaging in any restraint of trade or commerce of this State as prohibited by 6 **Del.C.** §2103.
- 3.2 Importer Licensees
  - 3.2.1 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:
    - 3.2.1.1 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.

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**TITLE 4 ALCOHOLIC BEVERAGE CONTROL**  
**DELAWARE ADMINISTRATIVE CODE**

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- 3.2.1.2 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.
  - 3.2.1.3 Requiring any retailer to take and dispose of a certain quota of any alcoholic beverages.
  - 3.2.1.4 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.
  - 3.2.1.5 Engaging in any restraint of trade or commerce of this State as prohibited by 6 **Del.C.** §2103.
  - 3.2.2 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 904 (Formerly Rule 29.)
  - 3.3 Supplier Licensees
    - 3.3.1 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:
      - 3.3.1.1 Any practice which is not permitted by the Federal Alcohol Administration Act
      - 3.3.1.2 Engaging in any restraint of trade or commerce of this State as prohibited by 6 **Del.C.** §2103.
- 19 DE Reg. 775 (02/01/16)**

**Rule 909 (Formerly Rule 77) A Rule Pertaining to the License of Direct Shippers****1.0 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.

**2.0 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.

**3.0 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.

**4.0 License Fee**

The license fee for a direct shipper is a biennial fee of one hundred (\$100) dollars.

**5.0 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.

**6.0 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.

**Rule 910 (Formerly Rule Number 33) A Rule Defining And Regulating The Quantities Of Sales And Methods Of Deliveries Of Certain Off-premises Sales By Licensees**

**1.0 Sales and Deliveries**

- 1.1 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 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 establishment, to a distance, however, of not more than 100 feet from such front entrance. Notwithstanding anything in this Rule to the contrary, for purposes of curbside service, the "premises" of a holder of a license for sale at retail may extend to include a parking spot along the curb of a public street or along the curb of the parking lot if the retail license premises is located in a shopping center or strip mall that is closest to the licensee's front entrance if that licensee does not have access to parking spaces for use by purchasers in accordance with subsection 1.6 of this Rule.
- 1.2 An Importer may sell the variety of alcoholic liquor authorized by his 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.
- 1.3 An Importer licensed for the sale of beer is permitted under 4 Del.C. §101 to sell beer in half-barrel or quarter-barrel containers to the holder of a personal license. Such Importer shall transport the beer so sold from his warehouse to the residence of the purchaser.
- 1.4 4 Del.C. §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.
- 1.5 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.
- 1.6 Curbside service of alcoholic beverages is permitted under the following conditions:
  - 1.6.1 Delivery of the order shall be permitted to a purchaser's vehicle in parking spaces designated by the licensee for curbside service. Under no circumstances may service be provided off premises, as that term is defined in subsection 1.1 of this Rule, except when the licensee has no parking lot spaces for purchasers, curbside service may include a parking space on a public street or roadway or along the curb of the parking lot if the retail license premises is located in a shopping center or strip mall that is closest to the licensee's front entrance.
  - 1.6.2 Curbside delivery shall be completed only by an employee who has completed the State's server training certification at the time the sale occurs.
  - 1.6.3 The employee carrying the curbside delivery order outside the store is at least 21 years of age.
  - 1.6.4 Before placing alcoholic beverages in a vehicle for curbside service, the purchaser shall exit the vehicle to complete the sale transaction (either through the exchange of payment information or to sign a sales receipt) and the employee shall verify: 1) the purchaser's identification, legal age and sobriety; and 2) that the purchaser's identification and credit card match the information provided as part of an order placed by telephone or online. If the employee is unable to verify the information above, the employee shall return the alcoholic beverage order to the store and cancel the purchase.

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**TITLE 4 ALCOHOLIC BEVERAGE CONTROL**  
**DELAWARE ADMINISTRATIVE CODE**

---

1.6.5 The order is placed in the vehicle's trunk, and if there is no trunk, in the vehicle's rear compartment or back seat that is not readily accessible to the driver of the vehicle.

**26 DE Reg. 59 (07/01/22)**

**2.0 Sales of alcoholic beverages in transactions for take-out, curbside, or drive through service by on premise licensees.**

2.1 As used in this Rule:

2.1.1 **"Mixed cocktail"** means a beverage created by combining spirits, as that term is defined in Title 4, with other ingredients, which is made in the restaurant, brewpub, or taproom or other entity with a valid on-premise license that includes serving spirits.

2.1.2 **"Container securely closed"** means a container with a tamper-evident secured lid or cap that is designed to prevent consumption without removal of the lid or cap. The container shall include a label affixed to it, in a conspicuous place, legibly indicating: 1) the name of the licensee; and 2) the words "CONTAINS ALCOHOL." Container securely closed does not include a container with a lid with sipping holes or openings for straws or a container made of paper or polystyrene foam.

2.1.3 **"Tamper evident"** means a seal or tape that, if breached or missing, will indicate the lid or cap has been removed.

2.1.4 **"Drive through service"** means providing a take-out order to a customer who is not required to enter the premises to complete the sale, but it does not include providing a take-out order through a drive-through window pursuant to Section 4.0 of 4 **DE Admin. Code** 703.

2.2 A restaurant, brewpub, tavern, or taproom, or other entity with a valid on-premise license issued pursuant to chapter 5, subchapter II of Title 4 of the Delaware Code may sell alcoholic beverages for take-out, curbside or drive through service if the following requirements are met:

2.2.1 The containers are securely closed.

2.2.2 The order is limited to one 750 ML bottle of wine, 6 servings of beer, and/or mixed cocktails except that taverns shall not include mixed cocktails, sold in a container securely closed. The licensee shall not provide straws with the order.

2.2.3 The order is sold and served by an employee certified as a responsible alcoholic beverage server pursuant to 4 **Del.C.** §1205.

2.2.4 If sold by a restaurant, be sold with the customer's purchase of food that costs at least \$10.

2.2.5 Upon delivery, the employee shall verify the age and level of intoxication of the person to whom the wine, beer and/or mixed cocktails is being delivered, and if the employee is not able to safely verify a person's age or level of intoxication upon delivery, the employee shall cancel the sale of alcoholic beverages.

**Effective: February 1, 1960**

**26 DE Reg. 59 (07/01/22)**