

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

PROPOSED

PUBLIC NOTICE

Rule 705 - Expansion of Outdoor Seating: Procedures, Standards and Fees

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 4 **Del.C.** §304, the Delaware Alcoholic Beverage Control Commissioner proposes to introduce regulations concerning curbside service provided by package stores, expansion of outdoor seating for serving food and drinks by licensees, and containers used for alcohol to-go from restaurants, taprooms and taverns.

In accordance with 29 **Del.C.** §10116, persons wishing to submit written comments, suggestions, briefs, and compilations of data or other written materials concerning the proposed regulations should direct them to the following address:

Wendy Hudson
Deputy Commissioner
Office of the Delaware Alcoholic Beverage Control Commissioner
820 N. French St., 3rd Floor
Wilmington, DE 19801

Comments may also be directed via electronic mail to OABCCrulescomments@delaware.gov. Any written submission in response to this notice and relevant to the proposed regulations must be received by the Delaware Alcoholic Beverage Control Commissioner no later than 4:00 p.m. EST, May 2, 2022.

The action concerning determination of whether to adopt the proposed regulation will be based upon consideration of the written comments and any other written materials filed by the public.

Background

The Delaware Alcoholic Beverage Control Commissioner is authorized by the General Assembly of the State of Delaware, to establish, by rules and regulations, an effective control of the business of manufacture, sale, dispensation, distribution and importation of alcoholic liquors within and into the State of Delaware, including the time, place and manner in which alcoholic liquors shall be sold and dispensed, not inconsistent with Title 4 of the Delaware Code or with any other law of the State. The Commissioner is further authorized to adopt and promulgate rules and regulations not inconsistent with Title 4 or of any other law of the State, and such rules and regulations shall have the force and effect of law; provided, however that no such rule or regulation shall extend, modify or conflict with any law of this State or the reasonable implications thereof; and provided further, however, that such rules and regulations, as established by the Commissioner, shall focus primarily on public safety and the best interests of the consumer and shall not unduly restrict competition within the alcoholic beverage industry.

Further, the Commissioner shall determine and publish standards for: 1) the manner in which stores that sell alcoholic beverages for off-premise consumption are permitted to provide curbside service for customers; 2) the expansion of outdoor seating for purposes of serving food and drink; and 3) takeout alcoholic beverages by restaurants, taprooms and taverns and others with a valid on premise license in Delaware in order to be allowed to exercise the privilege of the sale of alcoholic liquors therein. This includes an update to Rule 1202 to prohibit a minor from participating in curbside delivery transactions.

Last, Section 904(h) of Title 4 of the Delaware Code allows an 18 year old to serve alcoholic beverages. Rule 1201 is updated so that an employee who is between 16-18 years of age must apply for a work permit, for compliance with Section 904.

Summary of Proposal

In January 2022, the Delaware General Assembly passed House Bills 289 and 290. These bills permit curbside service for package stores, takeout alcohol sales by restaurants, taprooms and taverns and others with a valid on-premise license following specific guidelines, and an expansion of outdoor seating for serving food and drinks. The Governor signed both bills in February 2022, and they became effective immediately.

The proposed Rules implement these changes by providing standards for the industry to follow. Specifically, proposed Rule 705 outlines the procedure for licensees to seek permission from the Alcoholic Beverage Control Commissioner to expand

outdoor seating for serving food and drinks. In addition, changes to existing Rules 910 and 1202 clarify the manner in which a restaurant, taproom or tavern, or other licensees with valid on-premises licenses, may provide takeout orders of alcoholic beverages, and provides guidelines for curbside service by package stores to provide assistance to its customers. Last, Rule 1201 is updated to reflect a change in the minimum age as 18 years old, formerly 19 years old, for compliance with updates to Section 904, Title 4.

Statutory Authority 4 Del.C. §304.

4 Del.C. §304 enables the Delaware Alcoholic Beverage Control Commissioner to adopt and promulgate rules and regulations not inconsistent with Title 4 of the Delaware Code and all such rules and regulations shall have the force and effect of law; provided, that no such rule or regulation shall extend, modify or conflict with any law of the State of Delaware or the reasonable implications thereof.

Rule 705 - Expansion of Outdoor Seating: Procedures, Standards and Fees

1.0 Purpose and Scope

- 1.1 Licenses issued under the provisions of Title 4, Delaware Code (the Delaware Liquor Control Act) are approved based upon the physical plan as presented in the initial application. Under the provisions of 4 DE Admin. Code 703, all alterations to the licensed premises must be presented and approved by the Commissioner prior to execution of construction, renovation, or modification.
- 1.2 This rule provides procedures, standards, and inspection requirements.

2.0 Definitions

"Expansion of Outdoor Seating" includes the surrounding grounds, sidewalk and parking lot immediately adjacent to the building or buildings identified by a single address number or lease space number, to which a license to sell alcoholic liquors for consumption has been issued by the Commissioner. It does not mean the building or buildings to which a license to sell alcoholic liquors for consumption "on" or "off" has been issued by the Commissioner, nor does it include ancillary structures, contiguous water, still or moving, or piers, floating docks or buildings, patios covered or uncovered, or any other structure, modular or mobile home attached or connected to the licensed establishment by electrical, water, sewer or heating/air conditioning systems.

"Wet Bar" means as defined in 4 DE Admin. Code 704, Section 2.0.

3.0 Expansion of Outdoor Seating Permit

Approval of an expansion of outdoor seating for serving food and alcoholic beverages may be issued, and valid during the term of the basic license, providing the following procedures are followed and the expansion of outdoor seating is approved by the political subdivision before the request for an expansion of outdoor seating is submitted for review and approval by the Commissioner. Expansion of outdoor seating approval is separate from and does not include an extension of premises patio permit ("patio permit") governed by 4 DE Admin. Code 704.

4.0 Procedures

- 4.1 For an expansion of outdoor seating, the licensee shall submit to the Commissioner a letter of request, with the following attachments:
 - 4.1.1 A letter of approval from the appropriate political subdivision approving the request for expansion of outdoor seating explaining how the expansion will comply with 4 Del.C. §524(f)(2), including compliance with traffic patterns and the State's right of way, compliance with the Americans with Disabilities Act and adherence to noise ordinances. The letter shall also include the expiration date of the approval for expansion of outdoor seating, if applicable.
 - 4.1.2 A detailed floor or construction plan showing dimensions, point of contact with the licensed premises, elevation (if any) and identification of access and egress, seating and table arrangements, and appropriate fencing or enclosures for the expansion of outdoor seating that will permit the proper control over the distribution of alcoholic beverages.
 - 4.1.3 Intended construction start and finish dates, if applicable.
 - 4.1.4 Filing Fee (non-refundable).
- 4.2 If construction or modification is required, when completed, the Commissioner shall be notified for final inspection of the site.
- 4.5 Upon final inspection, approval, and upon payment of the non-refundable inspection fee, the Commissioner shall authorize use as an expansion of outdoor seating.

5.0 Fees

5.1 Filing Fee: \$25.00

5.2 Inspection fee: \$25.00

6.0 No Additions Permitted to An Expansion of Outdoor Seating

6.1 No live entertainment is permitted on an expansion of outdoor seating.

6.2 No external speakers, sound system or amplifiers are permitted on an expansion of outdoor seating.

6.3 No audible paging system is permitted on an expansion of outdoor seating.

6.4 No wet bar is permitted on an expansion of outdoor seating.

25 DE Reg. 940 (04/01/22) (Prop.)