

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 910

PROPOSED

PUBLIC NOTICE

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

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 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.
- 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.

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 ingredients alcoholic in nature, whether brewed, fermented, or distilled, with ingredients non-alcoholic in nature, which is made in the restaurant, brewpub, tavern or taproom or other entity with a valid on-premise license.
- 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 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

25 DE Reg. 943 (04/01/22) (Prop.)