

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 1202

PROPOSED

PUBLIC NOTICE

Rule 1202 (Formerly Rule 7.1) Employment of Persons Who Have Reached the Age of 18 Years in Package Stores

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 1202 (Formerly Rule 7.1) Employment of Persons Who Have Reached the Age of 18 Years in Package Stores

1.0 Definitions

"Retailer" means the person permitted to sell alcoholic liquors in a store in the State, not for consumption on the premises. 4 Del.C. §101. A natural person who is a sole proprietor, general partner, or owner of 25 percent or more of the issued and outstanding stock of a package store shall be considered as a "person" within the meaning of §101, for purposes of this Rule.

"Sell or serve alcoholic liquors" means acting in any manner toward a consumer which encourages, induces, or fosters the sale of any goods, whether or not they contain alcoholic liquor. The term includes, but is not limited to, advising consumers on the selection of goods, delivery of goods to consumers before payment, and ringing up sales. The term does not include stocking shelves, affixing price labels, and other acts not requiring direct contact with consumers, nor does it include assisting consumers in carrying parcels from the store when an in-store purchase has been completed. A minor shall not at any time be permitted unaccompanied access to the premises. In addition, a minor shall not participate in a curbside delivery transaction pursuant to 4 Del.C. §516 and 4 DE Admin. Code 910 either by completing a sales transaction or carrying a purchase from inside the store to a purchaser outside the store.

"Store" means an establishment licensed by the Commissioner only for the sale of alcoholic liquors for consumption off of the premises where sold.

2.0 Permits Required; Standards

- 2.1 No retailer shall employ a person between the ages of 18 and 21 in their store unless the person between the ages of 18 and 21 shall first have been approved by the Commissioner and received a permit to work in the store.
- 2.2 The permit required by subsection 2.1 shall be issued upon application showing that:
 - 2.2.1 The applicant is 18 years of age or older;
 - 2.2.2 The applicant is a mature and responsible person; and
 - 2.2.3 The applicant has not been the subject of any judicial or administrative proceedings by any federal, state or local governmental agency involving:
 - 2.2.3.1 Violations of laws or regulations respecting controlled substances;
 - 2.2.3.2 Violations of laws or regulations respecting alcoholic liquors; or
 - 2.2.3.3 Violations of criminal statutes carrying a penalty of incarceration of more than 1 year, whether or not a sentence of imprisonment was actually imposed.
- 2.3 Permits shall continue in full force and effect until the holder attains the age of 21 years, unless sooner revoked.

3.0 Application for Permit; Contents; Procedure

- 3.1 Any person who has reached the age of 18 years may apply to the Commissioner for a permit to work in a store.
- 3.2 The application shall state:
 - 3.2.1 The name, address and date of birth of the applicant;
 - 3.2.2 The name and address of the store where the applicant will be employed;
 - 3.2.3 The name and address of the high school most recently attended by the applicant;

- 3.2.4 Any and all arrest and criminal or juvenile charges against the applicant, and their disposition, and all school disciplinary actions involving the applicant;
- 3.2.5 The names, addresses and telephone numbers of 3 character references, who shall not be related to the applicant.
- 3.3 The application shall be signed by the applicant, at least one parent, and an approved owner of the store.

4.0 Approval of Application

The Deputy Commissioner may approve or disapprove applications. An applicant may appeal disapproval to the Commissioner.

5.0 Violations

A violation of this rule shall, in addition to any other penalty provided by the Liquor Control Act or these Rules, be punished by revocation of the applicant's permit, and such permit holder shall not be permitted to be employed thereafter under the provisions of this Rule or Rule 1201.

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

25 DE Reg. 949 (04/01/22) (Prop.)