

**DEPARTMENT OF STATE**  
**OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER**  
Statutory Authority: 4 Delaware Code, Sections 304 and 721 (4 **Del.C.** §§304 and 721)

**PROPOSED**

**PUBLIC NOTICE**

**911 A Rule Permitting Limited Self-Delivery of Beer**

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 establish a new rule related to permitting limited self-delivery of beer in the State.

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:

Doug Denison  
Deputy Commissioner  
Office of the Delaware Alcoholic Beverage Control Commissioner  
820 N. French St., 10th Floor  
Wilmington, DE 19801

Comments may also be directed via electronic mail to [OABCCrulescomments@delaware.gov](mailto: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, 2024.

The action concerning determination of whether to adopt the proposed regulations 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 ("Commissioner" or "Office") 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, known as the Delaware Liquor Control Act ("DLCA") 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.

**Summary of Proposal**

4 **DE Admin. Code** 911 is a new proposed regulation that sets forth criteria and requirements to permit limited self-delivery of beer that may be authorized by the Commissioner in accordance with the Delaware Liquor Control Act. 4 **Del.C.** §721.

**Statutory Authority** 4 **Del.C.** §304, 4 **Del.C.** §721

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.

4 **Del.C.** §721 enables the Delaware Alcoholic Beverage Control Commissioner to authorize any brewery to sell and to deliver beer to any person in this State who holds a license to receive and resell beer, if a duplicate bill of each sale is filed with or mailed to the Commissioner, provided that the Commissioner shall not authorize the resale and delivery of beer to

licenses within this State by any brewery whose total domestic sales, including all affiliated licenses whether in or out of this State, exceeds 6 million barrels of beer in a single calendar year.

## **911 A Rule Permitting Limited Self-Delivery of Beer**

### **1.0 Preamble**

Section 721 of Title 4 of the Delaware Code permits the Delaware Alcoholic Beverage Control Commissioner ("Commissioner" or "Office") to authorize "any brewery to sell and to deliver beer to any person in this State who holds a license to receive and resell beer" provided certain requirements are met. This regulation is promulgated to implement self-delivery of beer by those licensed as brewers. This regulation is consistent with the Commissioner's authority to regulate time, place, and manner in which beer is sold or dispensed, and provide guidance and regulations for self-delivery of beer.

### **2.0 Purpose and Scope**

- 2.1 Liquor licenses issued pursuant to Title 4 of the Delaware Code, the Delaware Liquor Control Act, are approved based upon the documents submitted as part of the initial application. Authorization to conduct business beyond the premises so licensed must be presented to and approved by the Commissioner.
- 2.2 This regulation provides procedures, standards, and fees for self-delivery of beer by a licensed brewery, as defined herein.

### **3.0 Definitions**

The following words and terms, when used in this regulation, have the following meaning unless the context clearly indicates otherwise:

"Brewery" as that term is used in 4 Del.C. §721 and as used in this regulation, means a brew pub or microbrewery licensed by the Commissioner pursuant to 4 Del.C. §§512B or 512C.

"Self-delivery" means:

- 1) Delivery by a brewery;
- 2) In a vehicle owned or leased by the brewery;
- 3) Of not more than 1,500 barrels annually of its own beer that it manufactures; and
- 4) To a premises licensed by the Commissioner as a retailer pursuant to 4 Del.C. §101(41) and on-premise licensees pursuant to 4 Del.C. §512.

### **4.0 Procedures**

- 4.1 A Delaware licensed brewery, producing no more than 5,000 barrels of beer a year across all suppliers or manufacturers that share common ownership and control as defined in 4 Del.C. §512G(b), may apply, upon forms provided by the Commissioner, for authorization to self-deliver its own beer produced at the licensee's approved premises as follows:
  - 4.1.1 The brewery must submit an application for a warehouse, and provide such documentation as required by the Commissioner, including a lease, landlord approval, and a floor plan.
  - 4.1.2 No more than 1,500 barrels of beer, or its equivalent, may be self-delivered annually by the brewery.
  - 4.1.3 Only the brewery and its employees may deliver its manufactured beer and only in vehicles owned or leased by the brewery.
  - 4.1.4 On a quarterly basis, a report documenting each sale shall be filed electronically with the Commissioner that includes the following:
    - 4.1.4.1 The date and address of each licensee to whom a delivery was made during the prior quarter;
    - 4.1.4.2 The quantity of products delivered and whether the product was provided by the bottle, can, half bottle, keg, half keg, quarter keg, or sixtel; and
    - 4.1.4.3 The total gallons delivered during the quarter. The brewery shall track total gallons delivered through self-delivery so as not to exceed 1,500 barrels of beer delivered through self-delivery, per year.
  - 4.1.5 Self-delivery over 1,500 barrels a year will result in forfeiture of the authorization to self-deliver.
- 4.2 If approved by the Commissioner, a brewery may use an additional facility to warehouse beer.
  - 4.2.1 The brewery must submit an application for a warehouse, and provide such documentation as required by the Commissioner, including a lease, landlord approval, and a floor plan.
  - 4.2.2 The filing fee for an application for a warehouse is \$25, and the inspection fee is \$100.

## **5.0 Additional Requirements**

- 5.1 Breweries authorized to self-deliver must do all of the following:
  - 5.1.1 Report to the Division of Revenue, pursuant to 4 Del.C. §581(b), all sales of beer that were self-delivered to retailers.
  - 5.1.2 Comply with 4 DE Admin. Code 904 by publishing a monthly price list for beer that will be available for sale through self-delivery. Publication may also occur on the Commissioner's webpage if *The Delaware Beverage Guide* is unable to accommodate price lists for self-delivery.
  - 5.1.3 Comply with all state credit and transportation regulations and other business licensure requirements.
  - 5.1.4 Comply with the 18-hour product at-rest requirement pursuant to 4 DE Admin. Code 903, Section 6.0. A written request for variance to that at-rest requirement may be granted for good cause shown.
  - 5.1.5 Place a placard on the vehicle transporting the beer, that includes the words "Delaware Alcoholic Beverage Control Commissioner - License Number ....." (Insert the brewery's license number) in letters at least two inches high, uncovered, and clearly visible.
- 5.2 No brewery shall make a delivery except to a Delaware licensed package store or a Delaware licensed on-premise retail licensee during the hours and dates the package store or on-premise licensee is open to receive such delivery.
- 5.3 No brewery shall contract with a third-party entity to deliver beer. No brewery shall permit anyone other than an employee of the brewery to deliver beer pursuant to this regulation.
- 5.4 Peddling beer is not permitted. Orders for all beer shall be received, in writing, from customers before the loaded vehicles leave the brewery's premises and a copy must be on the vehicle at all times during delivery. No beer in excess of that ordered shall be carried on the vehicles.
- 5.5 A brewery authorized to self-deliver shall not discriminate among retailers when filling orders. Quantity discounts and post-offs do not apply to self-delivery.
- 5.6 A requirement that a retailer purchase 1 product in order to purchase another is prohibited. This prohibition includes combination sales if 1 or more products may be purchased only in combination with other products and not individually.
- 5.7 No brewery shall engage in any trade practice which can reasonably be expected to injure any retailer through discriminatory practices, nor engage in any trade practices which can reasonably be expected to cause, encourage, or induce a consumer to purchase, receive, or consume beer in excessive amounts or an at any unduly rapid rate.
- 5.8 Failure to comply with this regulation and any other provision of the Delaware Liquor Control Act or Commissioner's regulations may result in suspension or revocation of authorization for self-delivery.

## **6.0 Inventory and Recording Sales**

- 6.1 Pursuant to 4 Del.C. §304(a)(2) and (5) and 4 Del.C. §581(c), the Division of Alcohol and Tobacco Enforcement ("DATE") and the Division of Revenue may inspect the establishment of any licensed Delaware brewery and inventory any or all beer in the brewery's possession, as well as sale invoices or bills of sale for beer delivered, 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.
- 6.2 Every sale of beer through self-delivery shall be recorded by the brewery on a written invoice or bill of sale containing, at a minimum, the following:
  - 6.2.1 Name of the brewery;
  - 6.2.2 Name of the retailer;
  - 6.2.3 Date of sale;
  - 6.2.4 Quantity of beer sold;
  - 6.2.5 Price of beer sold;
  - 6.2.6 Brand/name of product sold;
  - 6.2.7 Size of container; and
  - 6.2.8 Date of delivery.
- 6.3 Upon the driver's return to the brewery's premises, the driver shall sign the copy of the invoice/bill of sale to indicate the beer was delivered to the destination listed.
- 6.4 This signed copy of the invoice/bill of sale shall be available for inspection by the Commissioner at all times.

## **7.0 Fees**

- 7.1 The filing fee to request limited self-delivery is \$25.

7.2 When required by the Commissioner, the inspection fee is \$25.

7.3 The biennial fee for limited self-delivery is \$100.

7.4 The biennial fee for a warehouse is \$100.

**27 DE Reg. 759 (04/01/24) (Prop.)**