

**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

**FINAL**

**ORDER**

**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. Title 4, Section 304 of the Delaware Code authorizes the Alcoholic Beverage Control Commissioner to establish regulations in relation to all powers, duties and functions vested pursuant to the regulation of alcoholic beverages in Delaware.

2. Pursuant to 4 Del. C. § 304, the Alcoholic Beverage Control Commissioner intends to amend 4 DE Admin. C. 910. The regulations are being amended to provide guidelines for curbside service by package stores to provide assistance to its customers and for take-out, curbside or drive through service by an on-premise licensee.

3. Notice of the proposed regulation change was published in the April 1, 2022 edition of the *Delaware Register of Regulations*.

4. The Commissioner invited a period of thirty (30) days, until May 2, 2022, for written comment from the public.

5. No public comments were received for this proposed regulation.

6. On further review of the published proposed regulation, it was noticed that minor non-substantive oversights occurred in the proposed rule to Subsections 2.1.1 and 2.2.2. The minor changes from the proposed rule are in bold bracketed text:

2.1.1 **"Mixed cocktail"** means a beverage created by combining ~~[ingredients alcoholic in nature spirits, as that term is defined in Title 4], [whether brewed, fermented, or distilled, with other]~~ ingredients ~~[non-alcoholic in nature]~~, which is made in the restaurant, brewpub, ~~[tavern]~~ or taproom or other entity with a valid on-premise license ~~[that includes serving spirits]~~.

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.

7. A copy of the published rule with the above minor, non-substantive changes is attached hereto.

8. Having solicited and requested public comment on the proposed regulations in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101, et. seq., this is the Commissioner's Order adopting the proposed regulation with the proposed non-substantive edits set forth herein and with the rest of the proposed rule as published remaining unchanged.

**FINDINGS OF FACT**

1. The Commissioner finds that it is necessary to adopt the proposed amended regulations in order for the regulations to be consistent with the Delaware Liquor Control Act, that the amendments are non-substantive, and to provide guidelines that clarify the manner in which a restaurant, tavern, or other licensees with valid on-premises licenses, may provide takeout orders of alcoholic beverages.

**DECISION AND ORDER TO AMEND THE REGULATION**

For the foregoing reasons, the Commissioner concludes that it is appropriate to amend 4 DE Admin. Code 910 and therefore the regulation shall be adopted in accordance with this Order. The regulation changes will be effective on July 11, 2022 following publication of this Order in the Delaware Register of Regulations on July 1, 2022.

**IT IS SO ORDERED** this 15th day of June, 2022 by the Office of the Delaware Alcoholic Beverage Control Commissioner.

The Honorable Jacqueline Paradee Mette, Esq.  
Commissioner

**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~~ spirits, as that term is defined in Title 4], [~~whether brewed, fermented, or distilled, with~~ with other] ingredients [~~non-alcoholic in nature~~], which is made in the restaurant, brewpub, [~~tavern~~] 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) (Final)**