

DEPARTMENT OF STATE
OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER
Statutory Authority: 4 Delaware Code, Section 304 (4 Del.C. §304)
4 DE Admin. Code 701, 702

FINAL

ORDER

Rule 701 (Formerly Rule 51) A Rule Requiring the Biennial Renewal of Wholesale, Retail, and Annual Gathering Licenses

Rule 702 (formerly Rule 51.1) A Rule Requiring the Biennial Renewal of Supplier's Licenses

SUMMARY OF THE EVIDENCE

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. 701 and 702 to shorten the license renewal notice timeline, however, the effective dates for renewed licenses will not change. Due to increased administrative costs for tracking late renewals of licenses, the updates also include a late penalty that may be applied to those licensees that do not timely renew.
3. Notice of the proposed regulation change was published in the January 1, 2024 edition of the *Delaware Register of Regulations*, and the public was given thirty (30) days to provide written comment.
4. Because the published notice included an outdated email address for submitting public comments, a general notice was published February 1, 2024 to afford the public an additional thirty (30) days to submit written comment to a current email address, until March 4, 2024.
5. No public comments were received for the proposed updates to the regulation.
6. Having provided the opportunity for public comment on the proposed regulation in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101, et. seq., the Commissioner determines the proposed regulation as published will be adopted.
7. A copy of the Final Regulation at 4 DE Admin. Code 701 and 702 as published is attached hereto.

FINDINGS OF FACT

The Commissioner finds that it is necessary to adopt the proposed regulation as previously published.

NARRATIVE ASSESSEMENT OR STATEMENT

Pursuant to 29 Del.C. § 10118(b)(3), the Commissioner reviewed the proposed changes and states that an assessment is not practical for this regulation, or that an impact, if any, would be de minimis on the achievement of the State's greenhouse gas emissions reduction targets and the State's resiliency to climate change.

DECISION AND ORDER TO AMEND THE REGULATION

For the foregoing reasons, the Commissioner concludes that it is appropriate to amend 4 DE Admin. Code 701 and 702 in which the text of the final regulation shall be as published previously and is adopted in accordance with this Order. The amendments to the regulation shall become effective ten days after publication of this Order in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 12th day of September 2024 by the Office of the Delaware Alcoholic Beverage Control Commissioner.

The Honorable Jacqueline Paradee Mette, Esq.
Commissioner

700 Renewal and Alterations of Licenses

701 (Formerly Rule 51) A Rule Requiring the Biennial Renewal of Wholesale, Retail, and Annual Gathering Licenses

1.0 Wholesaler Licenses (Even-Numbered Years)

All wholesalers ~~must apply for the renewal of their license in the form approved by the Commissioner on or before January 4~~ The Commissioner shall provide notice of license renewal to all wholesalers by February 15 of each even-numbered year, and payment of the renewal fee from the licensee is due within 30 days. All licenses issued by the Commissioner to wholesalers shall be for a ~~two-year~~ 2-year period beginning April 1 of each even-numbered year and ending March 31 of the following even-numbered year.

2.0 Biennial Gathering Licenses (Even-Numbered Years)

All applications for the ~~The Commissioner shall provide notice of license renewal of to all biennial gathering licenses must by October 1 of each even-numbered year. All renewal applications and payments must include a current Form 990 of the applicant and~~ The Commissioner shall provide notice of license renewal to all biennial gathering licenses must by October 1 of each even-numbered year. All renewal applications and payments must include a current Form 990 of the applicant and be submitted in the form required by the Commissioner on or before ~~October~~ November 1 of each even-numbered year. All biennial gathering licenses issued by the Commissioner shall be for a ~~two-year~~ 2-year period beginning January 1 of each ~~odd-numbered~~ even-numbered year and ending December 31 of the following even-numbered year.

3.0 Retail Licenses - Sussex County (Even-Numbered Years)

All ~~The Commissioner shall provide notice of license renewal to all~~ retail licensees in Sussex County ~~must apply for the renewal of their license in the form required by the Commissioner on or before July 4~~ by August 15 of each even-numbered year, and payment of the renewal fee from the licensee is due within 30 days. All licenses issued by the Commissioner to locations in Sussex County shall be for a period of ~~two~~ 2 years beginning October 1 of each even-numbered year and ending September 30 of the following even-numbered year.

4.0 Retail Licenses - City of Wilmington (Even-Numbered Years)

All ~~The Commissioner shall provide notice of license renewal to all~~ retail licensees in the City of Wilmington ~~must apply for the renewal of their license in the form required by the Commissioner on or before April 4~~ by May 15 of each even-numbered year, and payment of the renewal fee from the licensee is due within 30 days. All licenses issued by the Commissioner to locations in the City of Wilmington shall be for a period of ~~two~~ 2 years beginning July 1 of each even-numbered year and ending June 30 of the following even-numbered year.

5.0 Retail Licenses - Kent County (Odd-Numbered Years)

All ~~The Commissioner shall provide notice of license renewal to all~~ retail licensees in Kent County ~~must apply for the renewal of their license in the form required by the Commissioner on or before July 4~~ by August 15 of each odd-numbered year, and payment of the renewal fee from the licensee is due within 30 days. All licenses issued by the Commissioner to locations in Kent County shall be for a period of ~~two~~ 2 years beginning October 1 of each odd-numbered year and ending September 30 of the following odd-numbered year.

6.0 Retail Licenses - New Castle County (Odd-Numbered Years, A to K)

~~Retail~~ The Commissioner shall provide notice of license renewal to all retail licensees in New Castle County outside of the City of Wilmington whose name (corporate, partnership, or proprietary name, and not trade name) starts with an alphabetical letter of "A" to "K" must apply for the renewal of their license in the form required by the Commissioner on or before January 4 by February 15 of each odd-numbered year, and payment of the renewal fee from the licensee is due within 30 days. All licenses issued by the Commissioner to locations in New Castle County (A to K) shall be for a period of ~~two~~ 2 years beginning April 1 of each odd-numbered year and ending March 31 of the following odd-numbered year.

7.0 Retail Licenses - New Castle County (Odd-Numbered Years, L to Z)

~~Retail~~ The Commissioner shall provide notice of license renewal to all retail licensees in New Castle County outside of the City of Wilmington whose name (corporate, partnership, or proprietary name, and not trade name) starts with an alphabetical letter of "L" to "Z" must apply for the renewal of their license in the form required by the Commissioner on or before April 4 by May 15 of each odd-numbered year, and payment of the renewal fee from the licensee is due within 30 days. All licenses issued by the Commissioner to locations in New Castle County (L to Z) shall be for a period of ~~two~~ 2 years beginning July 1 of each odd-numbered year and ending June 30 of the following odd-numbered year.

8.0 Late Renewal Penalties for Failure to File Applications as Required

- 8.1 Any application and payment for license renewal received by the Commissioner 1 to 5 business days past the deadline noted in this regulation may result in a \$25 late penalty fee; 6 to 10 business days past the deadline may result in a \$50 late penalty fee.
- 8.2 Any late penalty fees will be assessed with the renewal fee and must be paid before the renewal license shall issue.

8.0 9.0 Penalty Fines for Failure to File Applications as Required

8.1 9.1 Fine Fines.

8.1.1 Any licensee who ~~does not timely~~ fails to file the application for renewal as required by this Rule, ~~or does not file the application for renewal in the form (including the fee) required by the Commissioner, or both,~~ regulation (including the fee) for more than 10 business days after the deadlines noted in this regulation, shall pay a fine as outlined in Rule 4 DE Admin. Code 804 implementing the voluntary fine assessment plan:

8.1.1.1 9.1.1 First violation, \$250 fine and administrative costs.

8.1.1.2 9.1.2 Second violation, \$500 fine and administrative costs.

8.1.1.3 9.1.3 Any application for renewal received after ~~three (3)~~ 3 calendar months from the time required in this rule, or any licensee who has committed a third or subsequent offense under this rule, shall be cited for a violation of this ~~rule~~ regulation and the matter shall be heard by the Commissioner.

8.2 9.2 Collection of Fine and Right to Hearing

8.2.1 9.2.1 The fine shall be collected as outlined in Rule 4 DE Admin. Code 804, Section 3.0 Procedure.

9.2.2 If a licensee chooses a hearing before the Commissioner, then Rule 4 DE Admin. Code 804, Section 4.0 Penalties and Administrative Costs, will be implemented.

8.3 9.3 Non-Renewal of License until Fine is Paid Paid.

8.3.1 When a fine is validly imposed under this Rule regulation, the license shall not be renewed until the fine is paid in full.

8.4 9.4 Meaning of "Timely Filing" Filing".

8.4.1 In order for any application to be timely filed under this rule, it must be received by the Commissioner or clearly marked with a post office cancellation on or before the deadline required by this Rule regulation.

9.0 10.0 This Rule Regulation Does Not Affect Revocations, Cancellations, Suspensions or Fines

10.1 Nothing in this Rule regulation shall affect or limit the authority of the Commissioner to revoke, cancel or suspend a license, to impose a fine or to issue a license for a period of time less than ~~two~~ 2 years.

10.2 ~~Further, nothing~~ Nothing in this Rule regulation shall prohibit a licensee from surrendering the license or allowing it to expire.

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

702 (Formerly Rule 51.1) A Rule Requiring the Biennial Renewal of Supplier's Licenses

1.0 Background

All suppliers are required by the Delaware Liquor Control Act to be licensed by the Delaware Alcoholic Beverage Control Commissioner. All new licensees, including those who have allowed their license to lapse, are required to pay an application processing fee pursuant to 4 **Del.C.** §554(x); however, any supplier applicant seeking a license to import ~~two hundred (200)~~ 200 cases or less per year shall not require a hearing and not be required to pay the application processing fee. Should the holder of a license to import ~~two hundred (200)~~ 200 cases or less per year apply for a license to import over ~~two hundred (200)~~ 200 cases, ~~he/she~~ the license holder will be required to pay the full ~~\$1,000.00~~ \$1,000 application processing fee.

2.0 Purpose

2.1 The purpose of this rule regulation is to establish a procedure for the renewal of suppliers that are licensed under Chapter 5, §501(a), which states: 4 **Del.C.** §501(a).

2.1.1 ~~Before any person sells any alcoholic liquor intended for importation into this state, the person shall procure from the Commissioner a supplier's license in the form prescribed by the Commissioner and shall pay a biennial fee in the amount of \$100.00 to be permitted to sell not more than two hundred (200) cases of alcoholic liquor for importation into the state during the calendar year or a biennial fee in the amount of~~

\$1,000.00 to be permitted to sell more than two hundred (200) cases of alcoholic liquor for importation into this state during the calendar year.

3.0 Procedure

- 3.1 All ~~The Commissioner shall provide notice of license renewal to all~~ suppliers whose name (corporate, partnership, or proprietary name, and not trade name) starts with an alphabetical letter of "A" to "K" ~~must apply for the renewal of their license in the form required by the Commissioner on or before October 4 by November 15~~ of each odd numbered year, ~~and payment of the renewal fee from the licensee is due within 30 days~~. All licenses issued by the Commissioner to Suppliers (A to K) shall be for a period of ~~two~~ 2 years beginning January 1 of each even-numbered year and ending December 31 of the following odd-numbered year.
- 3.2 All ~~The Commissioner shall provide notice of license renewal to all~~ suppliers whose name (corporate, partnership, or proprietary name, and not trade name) starts with an alphabetical letter of "L" to "Z" ~~must apply for the renewal of their license in the form required by the Commissioner on or before October 4 by November 15~~ of each even numbered year, ~~and payment of the renewal fee from the licensee is due within 30 days~~. All licenses issued by the Commissioner to Suppliers (L to Z) shall be for a period of ~~two~~ 2 years beginning January 1 of each odd-numbered year and ending December 31 of the following even-numbered year.
- 3.3 If the supplier fails to comply with subsection 3.2 ~~above of this regulation~~, but renews its license prior to December 31, it will be subject to a \$100 late renewal ~~penalties as outlined in Section 4.0 of this rule~~ penalty.
- 3.4 If a supplier whose name begins with the letter A to K fails to submit a renewal application, along with the fee, by December 31 of odd numbered years, the license will expire, and the supplier will be prohibited by law from shipping alcoholic liquor into the state as of January 1.
- 3.5 If a supplier whose name begins with the letter L to Z fails to submit a renewal application, along with the fee, by December 31 of even numbered years, the license will expire, and the supplier will be prohibited by law from shipping alcoholic liquor into the state as of January 1.
- 3.6 If alcoholic liquor is shipped into the state by an unlicensed supplier, all alcoholic liquor may be seized under the provisions of 4 **Del.C.** Ch. 11.
- 3.7 Suppliers who allow their license to expire shall be required to file a complete application, including the ~~\$1,000.00~~ \$1,000 processing fee, before being issued a new license unless they apply for a license to ship ~~two hundred (200)~~ 200 cases or less per year.

4.0 Penalty for Failure to File Applications as Required

- 4.1 ~~Fine:~~
 - 4.1.1 Any supplier who does not timely file an application by December 31 for renewal as required by subsections 3.1 or 3.2, or does not file the application for renewal in the form required by the Commissioner including the fee, or both, shall pay a fine as outlined in Rule 4 DE Admin. Code 804 implementing the voluntary fine assessment plan.
 - 4.1.1.1 ~~4.1.1~~First Violation: ~~\$250.00~~ \$250 fine and administrative costs.
 - 4.1.1.2 ~~4.1.2~~Second Violation: ~~\$500.00~~ \$500 fine and administrative costs.
 - 4.1.1.3 ~~4.1.3~~Any application for renewal of a licensee who has committed a third or subsequent offense under this rule shall be cited for a violation of this rule and the matter shall be heard by the Commissioner.
- 4.2 ~~Collection of Fine and Right to Hearing:~~ Hearing:
 - 4.2.1 The fine shall be collected as outlined in Rule 4 DE Admin. Code 804, Section 3.0, Procedure. If a licensee chooses a hearing before the Commissioner, then Rule 4 DE Admin. Code 804, Section 4.0, Penalties and Administrative Costs, will be implemented.
- 4.3 ~~Non-Renewal of License Until Fine is Paid:~~ Paid:
 - 4.3.1 When a fine is validly imposed under this rule, the license shall not be renewed until the fine is paid in full.
- 4.4 ~~Meaning of "Timely Filing"~~ Filing:
 - 4.4.1 In order for an application to be timely filed under this rule, it must be received by the Commissioner, or clearly marked with a post office cancellation, on or before the deadline required by this rule.
- 4.5 Nothing in this rule shall affect or limit the authority of the Commissioner to revoke, cancel, or suspend a license, to impose a fine, or to issue a license for a period of time less than ~~one~~ 1 year. Further, nothing in this rule shall prohibit a licensee from surrendering the license or allowing it to expire.

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

28 DE Reg. 320 (10/01/24) (Final)