



STATE OF DELAWARE
OFFICE of the ALCOHOLIC BEVERAGE CONTROL COMMISSIONER
Carvel State Office Building
820 North French Street, Suite 325
Wilmington, Delaware 19801

Telephone: (302) 577-5222
Fax: (302) 577-3204

Dear Applicant:

Enclosed please find the supplier application form to be licensed to import alcoholic liquor into the State of Delaware.

The cost of the license is \$100.00 to ship 200 cases or less in a calendar year (OSL- 'limited') or \$1000.00 (to be prorated upon approval) to ship 200 cases or more (OSS- 'Unlimited'). A \$1000.00 non-refundable application processing fee must accompany your application if you choose to obtain an unlimited license. This fee does not include the cost of your license and the fee is not prorated. The term of a license is biennial (2 years) and runs from January 1 to December 31. The license must be renewed three (3) months prior to the expiration of the license. The renewal period runs from August 15 and renewal applications must be received in our office by October 1 of the renewal year.

All sales representatives working in this state are required to be licensed. This fee is \$50.00 per person and is valid for the length of the supplier's license. The fee is not prorated. You will find an application form enclosed. This is only required if you have sales representatives that will be working in the State of Delaware.

Our rules and laws are available on our website at date.delaware.gov.

In addition to submitting your completed license application, upon entering into a written contractual relationship with a Delaware wholesaler, a copy of the contract, and a list of alcoholic products intended to be shipped into this state must be submitted.

Monthly shipping reports must be submitted pursuant to Rule 8, Sect. III(D)(1). Instructions on submission can be obtained by contacting William Kirby, Delaware Division of Revenue at Holly.Reynolds@delaware.gov or (302)752-3757.

Finally, enclosed are copies of 4 Del. C., Section 501, Commission Rules 401 and 901 to aid you in submitting the proper documentation to the Commissioner.

If you have any questions, please contact Julie Gray at (302) 577-5204 or Julie.gray@delaware.gov.

Very truly yours,

John H. Cordrey
Commissioner

Enclosure



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Out of State Supplier Application

LICENSE FEES

- () OSL LIMITED – TO SHIP 200 CASES OR LESS IN A CALENDER YEAR **\$ 100.00**
 () OSS UNLIMITED - TO SHIP 201 CASES OR MORE **\$ 1000.00 Processing Fee**
 (OSS license fee to be calculated upon approval)

Federal Employee I.D. Number _____
 Business Phone Number _____

- Business Type ()
 Corporation ()
 Individual ()
 Partnership ()
 LLC ()

_____ trading as, aka, dba, _____

(Please attach a list of all trade names) hereby makes application for a license to sell alcoholic liquors, defined in an Act entitled "The Liquor Control Act", for importation into the State of Delaware, authorized by the Act.

1. Mailing Address _____

2. Date and State of Incorporation _____
3. Principal office address of said corporation (if different from above) _____

If a corporation, please attach a certificate of incorporation. If a Partnership please attach a partnership agreement or proof of partnership and complete the enclosed partnership authorization from corporate officers, individuals or partners (for partnerships, LLC, please list percentage of business owned and under number of shares owned below. Complete applicable information).

4. E-mail Address _____ (the license will be emailed to you upon approval)

5. Individual, Partners, Officers, Directors & Stockholders or Members	Office Held	# of shares owned or % of business	Date of Birth
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

6. Have any of said officers or directors been convicted of violating any of the liquor laws of the State of Delaware, or been convicted and imprisoned for a crime? () Yes () No

If so, give name, state and applicable law _____

7. Have any of the applicant directors, officers, members, or any of the applicant's shareholders who hold more than 10% of the outstanding issued shares been convicted of violating any of the prohibited acts defined in Chapter 47 of Title 16, the Uniform Controlled Substances Act, or its functional equivalent under the laws of the United States, any state or territory or any other country, including but not limited to, the illegal manufacture, delivery, trafficking, possession or consumption of any controlled or non-controlled substance, or the delivery or possession of illegal drug paraphernalia or illegal hypodermic syringes or needles, or the conspiracy, solicitation or other attempt to engage in such illegal activities?

If so, give name, state and applicable law _____

8. License Application Contact _____ Phone Number _____

Shipment Report Contact _____ Phone Number _____

9. Delaware wholesaler to which licensee intends to supply alcoholic liquors:
a. Wholesaler Name _____
Duration from _____ Duration to _____

Agreement () Written () Oral Exclusive rights? () Yes () No

10. If written, please attach a copy of the distribution agreement
Attach a list of all products by brand to be distributed by wholesaler listed above.

11. Said corporation, partners, members, or individuals agrees to sell alcoholic liquors in accordance with the Liquor Control Act and the Alcoholic Beverage Commissioner's Rules of the State of Delaware.

12. Said corporation or any of its officers, directors or stockholders, or limited liability corporation or any of its members, partners, or individual is not interested, either directly or indirectly, as owner or as partner, or as stockholder of a corporation, or in any other manner, in the wholesale importation or retail selling of any alcoholic liquor.

SALES REPRESENTATIVE LICENSE
TO SELL ALCOHOLIC LIQUOR INTENDED FOR IMPORTATION
INTO THE STATE OF DELAWARE
(NEW APPLICANTS ONLY)

EXPIRATION DATE DECEMBER 31, 20__

Return to:

Office of the Alcoholic Beverage Control Commissioner
Carvel State Office Building, Third Floor
820 North French Street
Wilmington, Delaware 19801

I _____, employed or sponsored by _____

Licensee/Business Name & Address

_____, hereby make application for a
Sales representative license to sell alcoholic liquor for importation into the State of Delaware.

In making this application, I understand that no person shall solicit orders for the sale of alcoholic liquor or transport samples within the State of Delaware unless such person has been issued a sales representative license by the Office of the Alcoholic Beverage Control Commissioner. I further understand the requirements for licensure contained in 4 Del. Code, Section 501(b).

Each license issued by the Commissioner shall be signed by the person to whom it has been issued. The license shall remain valid until it expires as indicated on the license or is cancelled by the Commissioner for just cause.

A license may be cancelled for just cause by the Commissioner at any time after notice has been given to the licensee and a hearing has been held in conformity with all applicable laws.

1. I desire to secure a license from the Office of the Alcoholic Beverage Control Commissioner under the provisions of 4 Del. Code, Section 501(b), and make this affidavit for that purpose.

2. I reside at: _____

3. My Date of Birth is _____

4. I am familiar with the Laws and Commissioner's Rules governing the sale and distribution of alcoholic Liquor in the State of Delaware, particularly those pertaining to the method of handling samples, prohibiting the offering of inducements in any form, prohibiting tie-in-sales, and those concerning credit regulations.

5. I will not violate any Laws or Commissioner's Rules.

6. I have/have not been convicted of a violation of any liquor laws or been arrested or imprisoned for a crime.

7. I submit herewith the sum of Fifty Dollars (\$50.00) for payment of the OABCC licensure fee pursuant to 4 Del. Code, Section 501(b).

SUPPLIER CHECKLIST

PLEASE CHECK THE FOLLOWING BEFORE SUBMITTING YOUR RENEWAL

HAVE YOU:

- Provided original signatures of President and Corporate Secretary, or Managing Member on Application? **(A Power of Attorney, Corporate Resolution, LLC Authorization, or Partnership authorization must be attached when signed by anyone other than the requested signatory)?**
- Notarized application?
- Attached a current Certificate of Incorporation or Formation or Articles of Incorporation, Limited Liability Corporation, or Partnership documents showing date recorded with state authority?
- Supplied names and telephone numbers of licensee contact person(s) for licensing and shipping matters?
- Provided the name of Delaware wholesaler with whom you have contracted? If written, attach a copy of the executed contract?
- Attached a list of products to be sold under this license?
- Attached a list of trade names shipping under this license complete with contact names, addresses and telephone numbers?
- Submitted a complete and current listing of officers, directors, stockholders, members and partners including all requested information?
- Submitted two-year fee of \$100.00 for (OSL) Limited license (200-cases or less each calendar year), OR \$1000.00 processing fee (OSS) Unlimited license) **(OSS license fee to be determined upon approval)**
- Submitted Sales Representative Application form with \$50.00 for each sales representative license application? **(If Applicable)**
- Copy of your Federal Basic Permit **(Required)**

NOTE: All fees can be made in one check payable to: OABCC

Title 4, Section 501

§ 501. Supplier and representative licenses; delivery and storage at in-state warehouse.

(a) Before any person sells any alcoholic liquor intended for importation into this State, such person shall procure from the Commission a supplier's license in the form to be prescribed by the Commissioner and shall pay therefore a biennial fee in the amount of \$100 to be permitted to sell not more than 200 cases of alcoholic liquors for importation into the State during the calendar year or a biennial fee in the amount of \$1000 to be permitted to sell more than 200 cases of alcoholic liquors for importation into this State during the calendar year. This subsection shall not apply to any person licensed under subsection (b) of this section or to any person who either is licensed by the Commissioner and has a place of business in this State for the manufacture or sale of alcoholic liquors or is an officer, director, or employee of a person, licensed by the Commissioner, having a place of business in this State for the manufacture or sale of alcoholic liquors.

(b) Before any person shall do any businesses in this State in any manner whatsoever as a sales representative of a person who sells any alcoholic liquors intended for importation into this State, such person shall first obtain from the Commissioner a sales representative license in the form to be prescribed by the Commissioner and shall pay a biennial fee therefore in the amount of \$50. Unless employed in any way by a person required to be licensed under subsection (a) of this section above, this subsection shall not apply to any person, who either is licensed by the Commissioner and shall not apply to any person, who either is licensed by the Commissioner and has a place of business in this State for the manufacture or sale of alcoholic liquors or is an officer, director or employee of a person, licensed by the Commissioner, having a place of business in this State for the manufacture or sale of alcoholic liquors.

(c) This section shall not apply to a daily importation into the State of a quantity of alcoholic liquor which does not exceed that amount which the United states government permits to be imported into the United States without payment of any duty thereon, provided such alcoholic liquor is imported by a person permitted by the laws of this State to purchase and consume alcoholic liquor and that such alcoholic liquor is imported solely for consumption by the person importing it or the person's family or guests. If such importation is by motor vehicle, the alcoholic liquor shall be transported in an area of the motor vehicle not immediately accessible to the driver or to any passenger therein.

(d) Persons licensed by the Commissioner as suppliers pursuant to this section shall be authorized only to sell, ship or deliver alcoholic liquors to licensed Delaware importers or manufacturers, and persons licensed by the Commissioner as sales representatives pursuant to this section shall be authorized only to solicit orders, on behalf of licensed Delaware importers or manufacturers, from persons licensed by the Commissioner to sell alcoholic liquors.

(e) The Commissioner may promulgate such rules and regulations as it deems necessary for the enforcement or furtherance of the objectives of this section and it may provide by such rules or regulations that the applicant for a supplier's license may pay a fee for each calendar year or pay the increased fee during any calendar year without the filing of an additional application.

(f) No person may import into this State any alcoholic liquor unless it is delivered directly to a licensed warehouse or warehouses in Delaware owned, leased or operated by a licensed Delaware importer and is unloaded and physically stored in said warehouse or warehouses. (38 Del. Laws, c. 18, § 15; Code 1935, § 6144(1); 4 Del. C. 1953, § 501; 58 Del. Laws, c. 25; 59 Del. Laws, c. 107, § 13; 67 Del. Laws, c. 48, § 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 408, §§ 1, 2; 72 Del. Laws, c. 486, § 9.)

401 (Formerly Rule 8) A Rule Governing Taxes Paid on Wine, Cider, Spirits, and Beer Entering the State of Delaware

1.0 Definitions

"Commissioner" means the Delaware Alcoholic Beverage Control Commissioner or Designee, the Division of Revenue.

"Importer" means wholesaler.

"Port of Entry" means the initial place, airport, common carrier terminal, or supply point for final distribution and delivery to the individual's home within Delaware.

"Purchases" means when the merchandise has been unloaded on the premises of the licensee and receipt acknowledged by signing the way bill.

"Wine, Cider, Spirits, Beer" means all alcoholic liquor to include bond alcohol as well as non-bond alcohol.

2.0 Reporting Procedures for the Shipment of Wine, Cider, Spirits, and Beer into the State of Delaware

2.1 Licensed Importers:

2.1.1 Each licensed importer, when placing an order with a supplier, shall mail or electronically transmit directly to the supplier a true copy of the numbered purchase order showing the quantity, variety and size of container for each alcoholic liquor ordered. These purchase orders are to be provided on demand when requested by the Commissioner.

2.1.2 Each licensed importer, shall record for the Commissioner by the close of business on the last calendar day of the month all purchases of wines, cider, spirits, and beer. This report shall show the importer purchase order number, supplier invoice number, amount of cases, exact gallonage for wine, cider, and spirits, and exact barrelage for beer. Each page shall be sub-totaled, except the last page, which shall show a grand total. This report shall be submitted to the Commissioner by the last business day following the last calendar day of the reporting month, except for the month of May. The May report will be due by the 15th of June.

2.1.3 If there is a variance between the supplier sales report in 2.2.1 below and the importer purchases report in 2.1.2 above, a full explanation will be required from both the supplier and the importer and a fine can be imposed on that supplier and/or importer.

2.2 Licensed out-of-state suppliers:

2.2.1 Each licensed supplier shall record for the Commissioner by the close of business on the last calendar day of each month all shipments of wine, cider, spirits, and beer into Delaware. This report shall be submitted to the Commissioner by the fifteenth day following the last calendar day of the reporting month. This report shall show the supplier invoice number, the importer purchase order number, date shipment was made or sent, number of cases and/or barrels and total amount in gallons or in barrelage, or both. This report shall have attached any credit invoices and/or memos issued for returns or transfers relating to the Delaware importer for that month. This information must be in the same form as stated above in this paragraph. A fine can be imposed on that supplier for failure to send any credit invoices and/or memos. If there were not any shipments made to Delaware, then the report must state "NO SHIPMENTS FOR THE MONTH OF". If the supplier does not send the monthly report, a fine can be imposed by the Commissioner on that supplier. If the purchase order number does not appear on the report or correspond with the importer purchase order number, then a fine can be imposed on that supplier and/or the importer.

2.2.2 Although it is not required that sales invoices be sent with the supplier's monthly report, sales invoices are to be provided on demand when requested by the Commissioner.

3.0 Procedures for Tax Payments and Tax Credits

3.1 Tax Payments Due From Importers:

3.1.1 Tax due the state of Delaware on the purchases reported in subsection 2.1.2 above, shall be verified, computed, and paid by cash, money order, or check by the last business day of the calendar month in which it is required to be reported except for the month of May. The May tax payment must be paid by the fifteenth day of June, and if the date falls on a Saturday or Sunday, the next business day of the calendar month.

3.1.2 Any beer, spirits, wines or cider on which the Delaware tax has not been paid in accordance with this rule shall be seized by DATE.

3.2 Tax Credits:

3.2.1 Tax credits for transfers, returns, breakage, and sales to federal instrumentalities must be taken in the month that they occur. Claims for tax credits must be presented to the Commissioner on "DELAWARE IMPORTERS TAX CREDIT REPORT", and must include copies of invoices or other documentation verifying each claimed credit. These reports must be filed with the "CERTIFIED STATEMENT OF WINES, CIDER, SPIRITS, AND BEER PURCHASES REPORT" due on the last business day following the last calendar day of the reporting month. No pre-approval is required in order to take a credit against taxes due, provided that the importer fully complies with the above reporting requirements and stipulations set forth below:

3.2.1.1 Transfers and Returns: The Delaware importer will list each transfer/return on the monthly Tax Credit Report and attach an invoice showing the brand, size, type and the amount of alcoholic liquor shipped in gallons or barrelage.

3.2.1.2 Breakage: Tax credit on breakage requires a verification memorandum from the importer to the common carrier, which must be submitted with the monthly Tax Credit Report. No credit will be allowed on less than full case lots; and, should continuous breakage occur, a penalty equal to 150 percent of the importers cost shall be levied against the supplier. No tax credit shall be allowed for post delivery breakage.

3.2.1.3 Sales of Beer to Federal Instrumentalities: The Delaware importer will list all sales of beer to an instrumentality of the Armed Forces of the United States on the monthly Tax Credit Report. Copies of invoices must be attached showing the brand, size, type and the amount in gallons or barrelage of beer shipped.

3.2.2 All tax credits are subject to verification by the Commissioner, and will be disallowed if the proper documentation is not submitted with the monthly "DELAWARE IMPORTERS TAX CREDIT REPORT".

4.0 A Guideline for Metric Gallonage Conversion Tables

4.1 To ensure that all liquor excise taxes are determined in a uniform manner, the use of a standard conversion table for commonly used container sizes of spirits and wines based upon the conversion factors used by the U.S. Department of Treasury is to be used.

4.2 The official factor for spirits is one liter = .26417 gallons.

4.3 The Delaware tax in 4 **Del.C.** §581, for beer provides a per barrel (31 U.S. gallons) tax computation.

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

900 Trade Practices for Suppliers, Wholesales, and Retailers

Rule 901 (Formerly Rule 46) A Rule Governing the Contractual Relationships Between Suppliers and Wholesalers for the Distribution of Alcoholic Beverages

1.0 Preamble

Historically, in Delaware the distribution of particular brands of alcoholic beverages has been accomplished through dealings between an out-of-state supplier (i.e., distiller, vintner, brewer, manufacturer, rectifier or other business entity) licensed to supply alcoholic beverages into Delaware and one Delaware wholesaler (also sometimes referred to as an importer or distributor) licensed to sell and distribute alcoholic beverages to Delaware retailers. These exclusive relationships between suppliers and wholesalers have, through the years, proven to be an efficient and economical means of distribution in Delaware. Until recently such exclusive relationships had been utilized to the virtual exclusion of other methods of distribution. Today, exclusivity still remains the preferred method of distribution for the vast majority of brands being sold in Delaware.

Over the years, in reliance on the suppliers' custom and practice of establishing and maintaining exclusive distribution relationships, Delaware wholesalers have made substantial investments of time and money in efforts to promote and sell the suppliers' brands. As early as 1959, the Commissioner realized that some safeguards were necessary to protect wholesalers from arbitrary, discriminatory or otherwise unfair termination of the supplier/wholesaler relationship by national or international suppliers wielding far greater economic power than the local wholesalers. The Commissioner realized then, as the Commissioner does today, that should such abusive practices be permitted to occur, the adverse impact could be felt well beyond the affected wholesaler. As a result of the Commissioner's concerns, the Commissioner promulgated the original version of Rule 46 in

1959. The Rule was substantially revised in 1981 in an effort to provide more detailed criteria to govern the supplier/wholesaler relationship.

It is the Commissioner's view that the Rule has effectively regulated the relationships between out-of-state suppliers and Delaware wholesalers during much of this decade. Nevertheless, because of changes which have been occurring within the industry itself, and because the Commissioner has had several recent opportunities to review the Rule in intricate detail in differing contexts, the Commissioner has become convinced that certain issues must be addressed by means of the promulgation of a new Rule 46.

Specifically, over the last several years the supplier tier of the beverage alcohol industry has experienced widespread consolidation on a national and international scale. In several instances, this phenomenon has had a significant effect on supplier/wholesaler relationships in Delaware. Therefore, Rule 46 is being revised to recognize and address equitably the interests of both parties in such situations.

Another recent change affecting supplier/wholesaler relationships in Delaware has been the interest expressed by several suppliers in implementing systems of "dual distribution" (i.e., distribution of a particular brand or brands of alcoholic beverages by more than one wholesaler in the same geographic area). As a result, Rule 46 is being revised specifically to address issues related to this method of distribution.

Experience has also convinced the Commissioner that Rule 46 should provide suppliers with the ability to terminate an unwanted distribution relationship even in circumstances where the "good cause" requirements of the Rule cannot, be satisfied. Providing this flexibility is necessary in order to allow suppliers to adapt their systems of distribution to changing market conditions or otherwise to respond to legitimate business considerations. Therefore, the Rule is also being revised to allow for the termination or transfer of distribution rights even in those instances where "good cause" does not exist provided that the terminated wholesaler receives reasonable compensation from the supplier in recognition of its efforts to promote and sell the supplier's brands.

Finally, this new Rule attempts to define more clearly the "good cause" criteria which must be satisfied in order to permit the uncompensated termination or transfer of distribution rights from one wholesaler to another.

For the reasons stated and pursuant to the Commissioner's statutory authority, the Commissioner promulgates new Rule 46 in an effort to strike an equitable balance between the sometimes conflicting interests of out-of-state suppliers and Delaware wholesalers, as well as to allow, to the extent practicable, business parties to determine the nature and the extent of their contractual relationships free from governmental intervention. In so doing, the Commissioner intends to further the interests of the State and its people in maintaining a healthy, efficient and competitive alcoholic beverage

industry - one in which consumers are assured a wide range of products at reasonable prices.

2.0 Requirements for Importing Alcoholic Beverages Into Delaware

2.1 No out-of-state supplier of alcoholic beverages shall ship or caused to be shipped into Delaware any alcoholic beverages unless all of the following requirements have been satisfied:

2.1.1 It shall have obtained from the Commissioner an Out-of-State Supplier's license as required by 4 **Del.C.** §501;

2.1.2 It shall submit the following information to the Commissioner and to each affected wholesaler in writing:

2.1.2.1 the name and address of each licensed wholesaler in Delaware with which it has contracted;

2.1.2.2 the brand or brands of alcoholic beverages which it intends to distribute in Delaware;

2.1.2.3 a statement as to whether the distribution rights being conferred on each wholesaler are exclusive; and

2.1.2.4 if in writing, a copy of the distribution contract, between it and the licensed wholesaler(s);

2.1.3 It shall ship such alcoholic beverages only to a wholesaler or wholesalers licensed by the Commissioner; and

2.1.4 It shall agree to comply with all applicable requirements of this Rule. (Noncompliance with the requirements of subsection 2.1 prior to shipping alcoholic beverages into the State shall subject the supplier to the imposition of such administrative sanctions as the Commissioner deems warranted.)

2.2 No wholesaler licensed by the Commissioner shall order or receive any alcoholic beverages from an out-of-state supplier which has not complied with the requirements contained in subsection 2.1 of this Rule.

3.0 General Principles

3.1 A licensed supplier having a contract (this term is also intended to include all agreements, understandings or other arrangements, whether written or oral) with a licensed wholesaler for the distribution in Delaware of a brand or brands of alcoholic beverages, which brand or brands have been recorded with the Commissioner as required by subsection 2.1.2 of this Rule,

may terminate the distribution rights and transfer such rights to another licensed wholesaler upon the voluntary agreement of both wholesalers (i.e., a voluntary termination and transfer). In the event of such a voluntary termination and transfer, the supplier shall provide written notice of that fact to the Commissioner indicating that the affected wholesalers have both agreed to the termination and transfer. A copy of the supplier's notification letter to the Commissioner shall be provided to both wholesalers.

3.2 In the event that a licensed wholesaler does not agree to the termination or transfer of its distribution rights (i.e., an involuntary termination or transfer), the supplier may terminate or transfer said rights only in accordance with the applicable provisions of this Rule.

3.3 A licensed supplier already supplying a brand or brands of alcoholic beverages in Delaware by means of a single wholesaler may commence the "dual distribution" of such product(s) only after compliance with the applicable provisions of this Rule.

3.4 A licensed supplier which seeks to introduce a new brand or brands of alcoholic beverages into Delaware may distribute such products through more than one licensed wholesaler provided that by so doing it does not violate any provision of an applicable distribution contract between it and any licensed wholesaler, and that it satisfies the requirements contained in subsection 2.1 of this Rule.

4.0 Contracts

4.1 Contracts involving the distribution of alcoholic beverages in Delaware between a licensed out-of-state supplier and a licensed wholesaler may be written or oral.

4.2 No contract for the distribution of alcoholic beverages shall be supported by the exchange of \$100 or more.

4.3 All contracts subject to this Rule shall continue in effect until voluntarily terminated or until any involuntary termination, transfer or substantial modification of the distribution rights granted by such contracts has been approved by the Commissioner.

4.4 Every contract for the distribution of alcoholic beverages in Delaware between a licensed out-of-state supplier and a licensed wholesaler shall contain, or be deemed to contain, all of the provisions of this Rule.

5.0 Procedure for Involuntary Termination or Transfer

5.1 Any licensed supplier which desires to terminate involuntarily the distribution rights of a licensed wholesaler or to transfer such rights from

one licensed wholesaler to another shall submit a written request to the Commissioner at least sixty days prior to the proposed termination or transfer date.

5.1.1 Upon written request, a copy of which shall be provided to the affected wholesaler, the sixty-day notice provision may be waived by the Commissioner if the reason for the requested termination or transfer is the insolvency of the wholesaler, the occurrence of an assignment for the benefit of the wholesaler's creditors, the bankruptcy of the wholesaler, the dissolution or liquidation of the wholesaler, the cancellation, revocation, nonrenewal or suspension for more than thirty consecutive days of the wholesaler's license, or, if the supplier can otherwise establish to the satisfaction of the Commissioner that compliance with the sixty day notice requirement would cause it to suffer irreparable harm.

5.1.2 The requirement of this section that the supplier provide the Commissioner with a written request to terminate or transfer distribution rights is applicable to, and includes, those circumstances whereby the supplier has obtained the rights to supply such alcoholic beverages in Delaware by means of a merger, purchase of stock, purchase of assets, or other acquisition, or by otherwise becoming a new regional or national supplier of such products. Any supplier obtaining such rights to supply alcoholic beverages in Delaware does so subject to the existing distribution arrangement and rights existing in Delaware with respect to such beverages.

5.2 The written request to terminate or transfer distribution rights required by subsection 5.1 shall include all of the following information:

5.2.1 The name and address of the existing wholesaler from which the supplier seeks to withdraw the distribution rights, and the name(s) and address(es) of the wholesaler(s) upon which the distribution rights are sought to be conferred;

5.2.2 The reason and basis for the request; and,

5.2.2.1 In the event that good cause is relied upon for such termination or transfer, a summary of the facts giving rise to the assertion of good cause; or

5.2.2.2 In the event that good cause is not the basis for the request, the agreement to pay compensation and to abide by arbitration, if necessary, as provided by this Rule, together with a representation that the request does not violate any of the terms of the distribution agreement with the existing wholesaler.

5.3 If good cause is the basis for the request to terminate or transfer distribution rights, the supplier shall provide a copy of the notice required by subsection 5.2 by certified mail, return receipt requested, to any wholesaler affected by its request. Any adversely affected wholesaler may oppose the request by sending written notice of its opposition to the Commissioner by certified mail, return receipt requested, within twenty days

after receipt of its copy of the supplier's request. A copy of the notice of opposition shall also be sent to the supplier and any other affected wholesaler(s). The failure to file a timely notice of opposition with the Commissioner shall waive the wholesaler's right to oppose the request to terminate or transfer distribution rights. If the Commissioner receives timely notice of opposition to a request to terminate or transfer distribution rights for good cause, the Commissioner shall hold a hearing to consider the request and the opposition thereto.

5.4 If good cause is not the basis for the request to terminate or transfer distribution rights, the supplier shall provide a copy of the notice required by subsection 5.2 by certified mail, return receipt requested, to any wholesaler affected by its request. Following the issuance and receipt of such notice, the parties shall comply with the provisions contained in Section 6.0 of this Rule.

6.0 Reasonable Compensation

6.1 Procedure for determining compensation

6.1.1 A supplier may terminate or transfer distribution rights from an existing wholesaler without good cause upon the payment to the existing wholesaler of reasonable compensation for the value of the wholesaler's business related to the terminated or transferred brand or brands. For purposes of determining reasonable compensation under this Rule, the value of the wholesaler's business shall be deemed to be the inventory at laid-in cost of the terminated or transferred brand or brands and its associated good will. "Associated good will" is defined as 1.0 times the wholesaler's average annual gross profits on the terminated or transferred brand or brands for the last three fiscal years or such lesser period during which the brand or brands have been distributed by the terminated wholesaler. For purposes of this Rule "gross profits" shall mean selling price less F.O.B., taxes and freight.

6.1.2 If the contract between a supplier and the existing wholesaler from which the supplier seeks to withdraw the distribution rights provides for an amount of compensation greater than that provided for by this Rule, the supplier shall be required to compensate the existing wholesaler in that greater amount prior to terminating or transferring such rights.

6.2 Neutral arbitrator

6.2.1 In the event that a supplier and its existing wholesaler are unable to agree on the amount of reasonable compensation to be paid by the supplier in accordance with subsection 6.1 within twenty days after the wholesaler receives a copy of the supplier's request to terminate or transfer distribution rights, as required by subsection 5.4, the dispute shall be submitted to a neutral arbitrator selected by the parties. If they cannot

agree on an arbitrator within an additional twenty days, upon the request of either party, the arbitrator shall be appointed by the Commissioner.

6.2.2 By becoming a party to any distribution contract governed by this Rule, such party agrees in advance to proceed to arbitration in accordance with the provisions of this Rule and to recognize the arbitrator as a subordinate designated by the Commissioner to conduct a hearing on the issue of reasonable compensation in accordance with the applicable provisions of the Administrative Procedures Act, 29 **Del.C.** Ch. 101.

6.2.2.1 Upon agreement of the parties, the arbitrator may conduct an informal conference in lieu of a formal hearing in accordance with 29 **Del.C.** §10123.

6.2.2.2 In the case of an informal hearing, as in the case of a formal hearing, a record from which a verbatim transcript can be prepared shall be made.

6.2.3 The written decision of the arbitrator shall be submitted to the Commissioner which shall issue a final order in accordance with the applicable provisions of the Administrative Procedures Act.

6.2.4 The costs of arbitration shall be borne equally by the parties.

6.3 Effective date of termination or transfer

6.3.1 Any termination or transfer of distribution rights for which compensation is required under this Rule shall not be effective and shall not be permitted until the supplier has paid the required compensation to the wholesaler which is having its rights terminated or transferred, unless the supplier posts a bond in the amount of the required compensation, as determined by the final order of the Commissioner.

6.3.2 A supplier may post a bond in the amount of the required compensation during the pendency of an appeal taken by any party affected by the compensation decision. Upon posting of the bond, the termination or transfer of distribution rights may take place.

7.0 Good Cause for Involuntary Termination or Transfer

7.1 Notwithstanding the provisions of the distribution contract between the parties, when, for good cause, a licensed supplier seeks to withdraw involuntarily distribution rights for alcoholic beverages already being sold in this State from a licensed wholesaler by termination of the relationship, transfer of brands or otherwise, and to confer those distribution rights on another licensed wholesaler, the Commissioner shall not approve the request unless the supplier establishes that "good cause", as defined in this Rule, exists to permit such termination or transfer as a result of the acts or omissions of the existing wholesaler.

7.2 Because good cause can only be established based upon the acts or omissions of the existing wholesaler, it is not a sufficient basis that a supplier has obtained the rights to supply such alcoholic beverages in Delaware by means of a merger, purchase of stock, purchase of assets, or other acquisition, or by otherwise becoming the new regional or national supplier of such products. Any supplier obtaining such rights does so subject to the existing distribution relationship in Delaware for such alcoholic beverages.

7.3 The term "good cause" as used in this Rule shall include:

7.3.1 The failure or refusal of the wholesaler to comply substantially with a material provision of the distribution contract (including any provision establishing standards of performance), which provision is essential, fair and reasonable, after having received written notice of such failure from the supplier and having failed within sixty days thereafter to correct substantially such deficiency; provided, however, that such notice and opportunity to correct the deficiency is not required when the deficiency results from a licensed wholesaler's (i) felony conviction, (ii) fraudulent conduct, (iii) sales of the supplier's brands outside of its agreed upon sales territory, or (iv) failure to pay and continued failure to make payment to the supplier after receipt of written notice of the delinquency and demand for payment within the period of time agreed upon by the parties or ten business days, whichever is greater.

7.3.2 In the absence of any express provision in the distribution contract establishing standards of performance, the failure of the wholesaler to meet reasonable and fair standards of performance based upon the custom and practice of the industry, after having received written notice of such failure from the supplier and having failed within sixty days thereafter to correct substantially such deficiency; provided, however, that such notice and opportunity to correct the deficiency is not required when the deficiency results from a licensed wholesaler's (i) felony conviction, (ii) fraudulent conduct, (iii) sales of the supplier's brands outside of its agreed upon sales territory, or (iv) failure to pay and continued failure to make payment to the supplier after receipt of written notice of the delinquency and demand for payment within the period of time agreed upon by the parties or ten business days, whichever is greater.

7.3.3 The insolvency or bankruptcy of the wholesaler;

7.3.4 The dissolution or liquidation of the wholesaler's business;

7.3.5 The loss for more than thirty consecutive days by the wholesaler of any federal or state license necessary to carry out the provisions of the distribution contract between the parties whether by revocation, cancellation, failure to renew, suspension, or otherwise;

7.3.6 The assignment, transfer or sale of the ownership or substantial assets of the wholesale licensee's business whenever the wholesaler to be substituted is financially unable to assume the obligations under the

distribution contract, or lacks the business experience or qualifications necessary to protect the legitimate interests of the supplier. The burden of establishing such inability shall be upon the supplier.

8.0 Dual Distribution

8.1 The terms "dual" and "dualing" as used in this Rule mean the distribution of the same brand or brands of alcoholic beverages in Delaware by more than one wholesaler. The term "dualized wholesalers" identifies those wholesalers handling the brand or brands being dualized.

8.2 A supplier may supply a new brand or brands of alcoholic beverages in Delaware by dualing such brand or brands provided that no provision of any applicable distribution contract prohibits dualing the product(s), and further provided that the supplier complies with the requirements of subsection 2.1 of this Rule.

8.3 A supplier which is already supplying a brand or brands of alcoholic beverages in Delaware as a result of a distribution relationship with one wholesaler may confer dual distribution rights to the product(s) upon one or more additional wholesalers provided that no provision of the original distribution contract prohibits dualing, and further provided that the supplier complies with the requirements contained in subsection 8.4 of this Rule.

8.4 If any supplier which is already supplying a brand or brands of alcoholic beverages in Delaware as a result of a distribution relationship with one wholesaler desires to dual such product(s), such supplier shall provide written notice to the Commissioner and all affected wholesalers at least sixty days prior to the proposed start of the dualing. Such written notice shall contain all of the following:

8.4.1 The name of the brand or brands which it seeks to dual and the name and address of the wholesaler selling the product(s) at the time of the request;

8.4.2 The names and addresses of those wholesalers through which it seeks to dual the brand or brands;

8.4.3 A representation that the request to dual is based upon a valid bona fide business reason or reasons of the supplier, and a description of the business reason or reasons giving rise to the request;

8.4.3.1 Reasons that do not constitute "valid bona fide business reasons" include, but are not limited to, the desire to avoid the requirement of establishing good cause for a termination or transfer of distribution rights; the desire to avoid paying compensation for a termination or transfer

of distribution rights; any other circumstances that cause it to appear to the Commissioner that the request to dual is merely an attempt to circumvent any of the provisions of this Rule.

8.4.4 A representation that the distribution contract with the existing wholesaler of the brand or brands sought to be dualized permits it to dual such products; and

8.4.5 A representation that it will offer the dualized product(s) upon the same terms and conditions to every dualized wholesaler. No special terms, discounts or conditions shall be afforded to one wholesaler which are not afforded to all dualized wholesalers.

8.5 Any existing wholesaler which is affected by a supplier's request to begin dual distribution of a brand or brands may oppose the request by sending written notice of its opposition to the Commissioner by certified mail, return receipt requested, within twenty days after its receipt of a copy of the supplier's request. A copy of the notice of opposition shall also be sent to the supplier and every other affected wholesaler. The failure to file a timely notice of opposition with the Commissioner shall waive the wholesaler's right to oppose the supplier's request to dual its product(s).

8.6 If the Commissioner receives a timely notice of opposition to a supplier's request to begin the dual distribution of a brand or brands, the Commissioner shall hold a hearing to consider the request and the opposition thereto. The supplier shall not be permitted to begin the dual distribution of its product(s) until such time, following the hearing, as the Commissioner determines that it has complied with the requirements of this Rule and approves the request.

Rule 902 (Formerly Rule 13) Labeling, and Standards of Identity and Standards of Fill of Alcoholic Liquors

1.0 Purpose and Scope.

This rule is intended to reduce obstacles to commerce in alcoholic liquors by adopting, to the extent possible under the Liquor Control Act, 4 Del. Code, federal laws and regulations relating to labeling, standards of identity, and standards of fill of alcoholic liquors. This rule applies to all alcoholic liquors manufactured, bottled, packaged, sold, imported, received, and stored for resale in the State of Delaware.

2.0 Labeling.

It shall be unlawful for any person to manufacture, bottle, package, sell, import, receive, or store for resale in this State alcoholic liquors, unless such liquors are labeled in conformity with federal laws and regulations applicable to such alcoholic liquors. It shall not be necessary for a manufacturer or supplier to file with the Commissioner evidence of label approval by an agency of the United States, except upon written request by the Commissioner.

3.0 Standards of Identity.

It shall be unlawful for any person to manufacture, bottle, package, sell, import, receive, or store for resale in this State alcoholic liquors, unless such liquors conform to the standards of identity provided by federal laws and regulations applicable to such alcoholic liquors.

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Rule 903 (Formerly Rule 8.1) A Rule Governing the Shipment and Storage of Alcoholic Liquors by Suppliers and Wholesalers

1.0 Purpose

1.1 This amended rule is promulgated, in part, pursuant to the Commissioner's authority to regulate time, place, and manner in which alcoholic liquor is sold or dispensed, and provides regulations for the marking of vehicles used by licensed importers for the transportation of alcoholic liquor. It also establishes standards for the distribution of alcoholic liquor by importers to establishments licensed by the Commissioner for the sale of alcoholic liquor.

1.2 In addition, the Commissioner has found, pursuant to the Commissioner's authority, to promulgate rules and regulations necessary for the enforcement and furtherance of the objectives of 4 **Del.C.** §501, that all alcoholic liquor imported into this state must be unloaded and physically stored for a reasonable period of time to allow for enforcement of the regulatory provisions of the Liquor Control Act and Commissioner Rules. This rule, therefore, implements and clarifies 4 **Del.C.** §501(f) as to what period of time alcoholic liquors must be physically stored after it is unloaded in order to comply with 4 **Del.C.** §501(f) and all other provisions of Title 4, the Liquor Control Act, and the Commissioner Rules and Regulations promulgated thereto.

1.3 Specifically, the Commissioner has found that seventy-two (72) hours is a reasonable "at-rest" period of time to enable the DATE to carry out its statutory duties to inspect and inventory licensed Delaware warehouses.

2.0 Definitions: As Used in this Rule

"Establishment" means any place located physically in this state where alcoholic liquor of one or more varieties is stored, sold, or used by authority of any law of this state, or where alcoholic liquor of one or more varieties is manufactured by virtue of any law of this state.

"Importer" shall mean wholesaler and shall be located within the State of Delaware."

"Supplier" may be a brewery, winery, distiller, alcoholic beverage importer, or alcoholic beverage broker that sells alcoholic beverages to Importers of the State of Delaware. A supplier's organization may be located within or without the State of Delaware.

3.0 Procedures

3.1 Importer's vehicles, in which alcoholic beverages are shipped into and throughout Delaware, shall have painted on both of their sides the name of the importer and the words "Delaware Alcoholic Beverage Control Commissioner - License Number" (Insert the importer's license number) in letters at least two inches high, uncovered, and clearly visible.

3.2 Vehicles owned by suppliers in which alcoholic beverages are shipped into Delaware, need not have the name of the Commissioner or the Delaware licensed importer's license number affixed to the side of the vehicle.

3.3 Vehicles owned by suppliers shall not be used for delivery of alcoholic beverages to retailers in the State of Delaware.

3.4 No peddling shall be allowed. Definite orders for all alcoholic beverages shipped from an Importer's warehouse shall have been received from customers before the loaded vehicles leave the warehouse.

3.5 No alcoholic beverages in excess of that ordered shall be carried on the vehicles.

3.6 A statement showing the destination of each package of alcoholic beverages shall be furnished the driver and carried by over the route.

3.7 Upon the driver's return to the warehouse, the driver shall sign the statement showing the alcoholic beverages have been delivered to the

destination listed. This statement shall be available for inspection by the Commissioner at all times.

4.0 Importers' Warehouses

4.1 Importers may have one or more warehouses in different locations within the State of Delaware provided proper application for such extra warehouse(s) is filed and approved by the Commissioner.

4.2 The person in charge of an Importer's warehouse must be approved by the Commissioner.

4.3 All Importers' warehouses used for the storage of alcoholic liquor, except public cold storage establishments, must be either owned or rented directly by the Importer or a business entity in which the Importer maintains complete ownership. The person in charge of the importer's warehouse is to be upon the regular salary list or payroll of such Importer.

4.4 The Importer is responsible for ensuring compliance with the Liquor Control Act and Commissioner Rules at all premises licensed in its name by the Commissioner.

5.0 Hours of Delivery

5.1 Delivery trucks and other vehicles of an Importer, licensed by the Commissioner for the delivery of alcoholic liquor to licensed retail establishments, may leave the warehouse after five o'clock in the morning on any day when deliveries of alcoholic liquors are permitted; provided, however, that no actual delivery of beer, spirits, or wine to any licensed establishment is permitted before seven o'clock in the morning and no Importer may require a Retailer to accept deliveries prior to nine o'clock in the morning.

5.2 Delivery trucks or other vehicles may operate as late as necessary to properly deliver orders; provided the trucks or other vehicles leave the warehouse prior to five-thirty o'clock in the afternoon, other than during the period from December 10 to December 31 when the trucks or other vehicles shall be permitted to leave the warehouse prior to eight o'clock in the evening.

5.3 There shall be no delivery of beer, spirits, or wine on any holiday specified in 4 **Del.C.** §709 (d).

5.4 Deliveries of alcoholic liquor by Importers, or their authorized representatives, to retail establishments, at any time not permitted by this rule is prohibited.

6.0 The "At-Rest Requirement" [4 Del.C. Section 501(f)]

6.1 A licensed Delaware Importer shall not import alcoholic liquor into the State of Delaware unless said alcoholic liquor is delivered directly from a Delaware licensed supplier by either the supplier, the Importer, or common carrier to a licensed Delaware warehouse or warehouses.

6.2 Said licensed Delaware warehouse or warehouses must be owned, leased, or operated in accordance with subsection 4.3 of this rule.

6.3 All alcoholic liquor delivered to said warehouse or warehouses must be unloaded and physically stored for a period of at least eighteen (18) hours.

6.4 The minimum period of eighteen (18) hours "at rest" is required to enable the Commissioner, or DATE, to inspect and inventory wholesale warehouses for the purpose of verifying taxes that are required to be paid on alcoholic liquor purchased by Importers, pursuant to 4 **Del.C.** §581(a) and Delaware Alcoholic Beverage Control Commissioner Rule 601.

6.5 Variances of the eighteen (18) hour storage requirement may be granted for good cause if formally made in writing and submitted to the Commissioner.

7.0 Inspections and Inventories

Pursuant to 4 **Del.C.** §304 (A) (2) and (5) and 4 **Del.C.** §581(c), DATE and the Division of Revenue may inspect the establishment of any licensed Delaware Importer and inventory any or all alcoholic liquor in the Importer's possession 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.

8.0 Interstate Shipments

8.1 Every person in charge of transportation by motor vehicle, by railroad, by water vessel, by common carrier, or by any other vehicle that transports alcoholic beverages in or through the State of Delaware in an interstate shipment shall have a way bill. The carrier must have in his possession the way bill and be prepared to present it when asked.

8.2 The way-bill shall embody these written or printed terms:

8.2.1 The date of its issue.

8.2.2 The name and address of the consignor.

8.2.3 The name and address of the consignee.

8.2.4 A statement as to whether the goods will be delivered to a specified person or to the order of a specified person.

8.2.5 A description of the package, stating the number and contents.

8.2.6 The signature of the carrier or his duly authorized agent.

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