
TITLE 4 ALCOHOLIC BEVERAGES AND MARIJUANA

DELAWARE ADMINISTRATIVE CODE

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DEPARTMENT OF STATE

OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER

Office of the Alcoholic Beverage Control Commissioner

1000 General Establishments and Clubs

Rule 1003 (Formerly Rule 75) A Rule Pertaining to the Closing of Package Stores, Taverns and Taprooms or Any Off-Premises Licensee

1.0 Purpose

The purpose of this rule is to standardize procedures for closings of package stores, taverns and taprooms and any off-premises licensee while ensuring that residents of the neighborhoods in which the licensees operate are still able to make a lawful purchase of alcoholic beverages with reasonable convenience.

2.0 Applicability

This rule shall apply to all package stores, taverns and taprooms as well as other off-premises licensees licensed by the Commissioner.

3.0 Closings for Fourteen Days or Less

Licensees shall not be required to notify the Commissioner in order to close their establishments for a cumulative period of fourteen days or less in any calendar year or in order to change their hours of operation during such a limited period of time; provided, however, that any licensee which closes for fourteen days or less or temporarily changes its hours of operation shall conspicuously post notice of that fact at all public entrances to the licensed premises.

4.0 Closings for More Than Fourteen Days

4.1 Procedures

4.1.1 Whenever a licensed package store, tavern or taproom or other off-premises licensee intends to close for a period of more than fourteen days in any calendar year, or intends to close on specific days which when considered cumulatively amount to a period of more than fourteen days in any calendar year, the following procedure shall be followed:

4.1.1.1 The licensee shall submit a letter of intent to the Commissioner which must include the specific dates during which the licensee intends to be closed and the reasons for which the licensee intends to close. The letter of intent must be filed at least twenty days but not more than sixty days before the first day on which the licensee intends to close.

4.1.1.2 The letter of intent filed with the Commissioner shall be accompanied by certificates of the publishers of two newspapers circulated in the county in which the license operates. From the certificates it shall appear that the licensee has caused to be circulated in such newspapers at least three times within the period of twenty days immediately preceding the filing of the letter of intent with the Commissioner, a notice setting forth the intention of the licensee to close for a period of more than fourteen days in any calendar year, including the specific dates on which the licensee intends to be closed and advising the public of the right to object to the closure by filing a protest with the Commissioner. One of the notices shall appear in a newspaper circulated at the place in the county nearest to the location of the licensed premises.

4.1.1.3 On the same date that the letter of intent is submitted to the Commissioner, the licensee shall send notice by certified mail, return receipt requested, of its intent to close for a period of more than fourteen days in the calendar year, including the specific dates on which the licensee intends to be closed, to all licensed package stores, taverns and taprooms located within one mile of the licensed premises.

4.1.1.4 On the same date that the letter of intent is submitted to the Commissioner, the licensee shall conspicuously post a Public Notice sign at all public entrances to the licensed premises stating the intent to close and specifying the dates during which the licensed premises will be closed. The Public Notice sign shall be a minimum of 18 x 24" in size and shall remain posted at all public entrances to the premises throughout the entire time the establishment is closed.

4.2 Protests

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- 4.2.1 Within ten days of the filing of the letter of intent with the Commissioner, a protest against the intended closing, signed by at least ten residents of the neighborhood wherein the license operates, may be filed with the Commissioner.
- 4.2.2 In the event such a protest is filed the Commissioner or the Commissioner believes that the closing would deprive the residents of the neighborhood the opportunity to make a lawful purchase of alcoholic beverages with reasonable convenience, the Commissioner shall hold a hearing to consider the sole issue of whether the intended closing of the licensed establishment would deprive residents of the neighborhood of the opportunity to make a lawful purchase of alcoholic beverages with reasonable convenience.
- 4.2.3 Such a hearing shall be conducted by the Commissioner.
- 4.2.4 Notice of the hearing, including its time and date and a recital of the protest shall be sent to the licensee and to each of the persons who signed the protest; provided, however, that it shall be sufficient to send notice to the attorney of any party represented by legal counsel.
- 4.2.5 A record from which a verbatim transcript can be prepared shall be made of any protested hearing.
- 4.2.6 After hearing all the evidence, if the Commissioner determines that the closing of the package store, tavern or taproom or other off-premises licensee will deprive the protesting neighborhood residents of the opportunity to make a reasonably convenient lawful purchase of alcoholic beverages, the closing shall not be permitted or the requested dates of closing shall be modified as determined by the Commissioner.
- 4.2.7 If the Commissioner determines, after hearing all of the evidence, that the closing will not deprive the protesting neighborhood residents of the opportunity to make a reasonably convenient lawful purchase of alcoholic beverages, then the closing shall be permitted.
- 4.3 Restrictions
 - 4.3.1 Pursuant to the provisions of this rule, no licensee shall close its establishment for a period of more than 150 days cumulatively in any calendar year.
 - 4.3.2 Any licensee which closes its establishment in accordance with the provisions of this rule shall still be required to comply with, and adhere to, all applicable provisions of the Liquor Control Act and the Commissioner Rules.

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