

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
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Name of Department Department of Finance and Administration

Agency or Division Name Alcoholic Beverage Control

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person Doralee Chandler

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Contact Phone 501-682-1105

Name of Rule To Go and Delivery Rules 3.20-3.28

Newspaper Name Arkansas Democrat Gazette

Date of Publishing October 17, 2021 thru October 19, 2021

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Location and Time of Public Meeting 1515 West 7th Street, 5th Floor, 9:00 am

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Section 3.20 To go and delivery by a restaurant. A restaurant holding a valid alcoholic beverage permit may sell alcoholic beverages in a sealed container during legal operating hours directly to a consumer twenty-one (21) years of age or older along with the purchase of a meal. The sale of alcoholic beverages under this rule may occur:

- 1) At the point of sale to be consumed off-premises;
- 2) At the drive-through to be consumed off-premises;
- 3) At the curbside to be consumed off-premises, or
- 4) Delivered to a consumer at a location off-premises.

Restaurant as used in this rule means a public or private place that:

- 1) Is kept, used, maintained, advertised, and held out to the public or to a private or restricted membership as a place where complete meals are actually and regularly served;
- 2) Provides adequate and sanitary kitchen and dining equipment;
- 3) Has a seating capacity of at least twenty-five (25) persons;
- 4) Employs a sufficient number and variety of employees to prepare, cook, and serve suitable food for its guest or members;
- 5) Serves at least one (1) meal per day; and
- 6) Is open a minimum of five (5) days per week, with the exception of holidays, vacations, and periods of redecorating.

A meal is defined as the usual assortment of food commonly ordered at various hours of the day.

Sealed container means a container with a secure cap or lid that completely covers the opening for the container and a seal designed to make it evident when the seal has been removed or broken. The seal is affixed to the container by the licensee after the container is filled pursuant to a consumer order for the drink. This may include the use of tape or other adhesive.

The restaurant to go and delivery rules do not apply to private clubs or restaurants located in a dry area.

Section 3.21 Limits on alcohol and quantities for to go or delivery by restaurant. A permit holder authorized to sell alcoholic beverages with the purchase of a meal under Rule 3.20 is limited to the following quantities per sale:

- 1) Seventy-Two ounces (72 oz.) of beer, malt beverage, or hard cider, or the equivalent of one (1) standard six-pack;

- 2) Seven hundred fifty milliliters (750 ml) of wine, or the equivalent of one (1) standard bottle; and
- 3) Thirty-two ounces (32 oz.) of spirituous liquors or the equivalent of four (4) eight-ounce drinks. "Spirituous liquors" includes mixed drinks or specialty drinks that are made by the permit holder at the premises and does not include unmixed spirits or spirits in the manufacturer's original container.

Unless authorized by local election under Ark. Code Ann. Section 3-3-210, a permit holder shall not sell alcoholic beverages under these rules on a Sunday.

Section 3.22 Delivery by retail liquor, microbrewery restaurant, small brewery, or hard cider manufacturer permit holders. Holders of a retail liquor, microbrewery-restaurant, small brewery, or hard cider manufacturer permit shall be authorized to deliver alcoholic beverages directly to the private residence of a consumer twenty-one (21) years of age or older in a wet county or territorial subdivision during legal operating hours. Alcoholic beverages for the purpose of this rule shall mean any intoxicating liquors that the permit holder is allowed to sale.

Section 3.23 Delivery by employee only. The permit holder authorized to deliver alcoholic beverages under Rule 3.20 or Rule 3.22 shall be delivered by an employee of the permit holder and not through a third-party delivery system. The employee responsible for delivery of the alcoholic beverage must be twenty-one (21) years of age and possess a valid driver's license.

Section 3.24 Delivery in wet counties only. A permit holder authorized to deliver alcoholic beverages under Rule 3.20 or Rule 3.22 may deliver alcoholic beverages directly to a consumer only in a wet county or wet area. The delivery must be to the person that placed the order. The delivery must occur within the time of legal operating hours.

Section 3.25 Required information for placing order for alcoholic beverages. The employee or permit holder of the permitted establishment must collect the following information when taking a customer's order under Rule 3.20 or Rule 3.22:

- 1) Name of person making order;
- 2) Address where delivery is to occur;
- 3) Phone number of the person making the order;
- 4) Date of birth for the person making order; and
- 5) Payment information;

Section 3.26 Required information for delivery: The employee or permit holder of the permitted establishment must confirm and collect the following information when completing the delivery:

- 1) Name of person receiving the order;
- 2) Address where delivery occurred;

- 3) Phone number of the person receiving the order;
- 4) Date of birth for the person receiving the order;
- 5) Payment information;
- 6) The recipient of the delivery must present valid state issued identification to the employee of the permitted establishment to confirm date of birth; and
- 7) The recipient must sign for the delivery.

Section 3.27 Record retention. The permitted establishment shall keep and retain a record of all deliveries of alcoholic beverages for a period three (3) years from the date of delivery and shall make such records available to Alcoholic Beverage Control Administration and Alcoholic Beverage Control Enforcement upon request. The records shall contain:

- 1) The name of the person who placed the order and the date, time, and method of order;
- 2) The name of the employee making the delivery and the date, time, and address of the delivery;
- 3) The type, brand, and quantity of each alcoholic beverage delivered; and
- 4) The name, date of birth, and signature of the person that received the delivery.

Section 3.28 Delivery not allowed. Employees delivering alcoholic beverages under this subtitle shall refuse delivery and return alcoholic beverages to the permitted establishment if:

- 1) The delivery is to an address on a campus of any educational building including, but not limited to, any elementary school, secondary school, university, college, technical college or institute;
- 2) The delivery is to any public playground or building used primarily as a church, synagogue, mosque or public library;
- 3) The delivery is outside of the hours that the retailer's physical premise is open to the public;
- 4) The recipient does not produce a valid and current form of state identification;
- 5) There is reason to doubt the authenticity or correctness of the recipient's identification;
- 6) The recipient refused to sign for the receipt of the delivery;
- 7) The recipient is intoxicated; or

8) The recipient is in a dry county or located outside the county of the permitted establishment.

SUMMARY OF SUBSTANTIVE CHANGES

Act 703 of 2021 authorized certain permit holders that have a restaurant to sell alcoholic beverages to consumers for off-premise consumption via delivery and to-go food orders.

Act 158 and 1060 of 2021 authorized certain permit holders to deliver alcoholic beverages directly to consumers.

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- 12) Payment information;
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- 14) The recipient must sign for the delivery.

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- 3) The delivery is outside of the hours that the retailer's physical premise is open to the public;
- 4) The recipient does not produce a valid and current form of state identification;
- 5) There is reason to doubt the authenticity or correctness of the recipient's identification;
- 6) The recipient refused to sign for the receipt of the delivery;
- 7) The recipient is intoxicated; or
- 8) The recipient is in a dry county or located outside the county of the permitted establishment.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT DFA

DIVISION Alcoholic Beverage Control

PERSON COMPLETING THIS STATEMENT Doralee Chandler

TELEPHONE 501-682-1105 FAX 501-682-2221 EMAIL: Doralee.Chandler@dfa.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE To Go and Delivery (Title 3, Subtitle F, Rules 3.20-3.28)

1. Does this proposed, amended, or repealed rule have a financial impact? Yes No ☒
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes x No ☐
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes x No ☐

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;

- (b) The reason for adoption of the more costly rule;

- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following: N/A

- (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue	
Federal Funds	
Cash Funds	
Special Revenue	
Other (Identify)	
Total	<u>0</u>

Next Fiscal Year

General Revenue	
Federal Funds	
Cash Funds	
Special Revenue	
Other (Identify)	
Total	<u>0</u>

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue	_____
Federal Funds	_____
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	0

Next Fiscal Year

General Revenue	_____
Federal Funds	_____
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	0

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ 0

Next Fiscal Year

\$ 0

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ 0

Next Fiscal Year

\$ 0

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No x

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.