

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS  
WITH THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT/AGENCY Department of Finance and Administration  
DIVISION Alcoholic Beverage Control Administration  
DIVISION DIRECTOR Mary Robin Casteel  
CONTACT PERSON Mary Robin Casteel  
ADDRESS 1515 W. 7<sup>th</sup> Street, Suite503 Little Rock 72201  
PHONE NO. 501-682-1105 FAX NO. 501-682-2221 E-MAIL Mary.Casteel@dfa.arkansas.gov  
NAME OF PRESENTER AT COMMITTEE MEETING Mary Robin Casteel  
PRESENTER E-MAIL Mary Robin Casteel

**INSTRUCTIONS**

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis  
Administrative Rules Review Section  
Arkansas Legislative Council  
Bureau of Legislative Research  
One Capitol Mall, 5<sup>th</sup> Floor  
Little Rock, AR 72201

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1. What is the short title of this rule? Section 5.15 Local Ordinance Required, Presumption That The Application is Qualified to be Received by Agency; Information, Statements and Documents to be Furnished by Applicant.
2. What is the subject of the proposed rule? Amends existing rule to implement the requirements of Act 1112 of 2017 regarding private clubs.
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes  No   
If yes, please provide the federal rule, regulation, and/or statute citation. \_\_\_\_\_
4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes  No   
If yes, what is the effective date of the emergency rule? October 1, 2017  
When does the emergency rule expire? December 30, 2017

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?

Yes

No

5. Is this a new rule? Yes  No   
If yes, please provide a brief summary explaining the regulation. \_\_\_\_\_

Does this repeal an existing rule? Yes  No   
If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. \_\_\_\_\_

Is this an amendment to an existing rule? Yes  No   
If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Act 1112 of 2017 / ACA 3-9-222

7. What is the purpose of this proposed rule? Why is it necessary? Amend existing rules to comply with Arkansas law.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). <http://www.dfa.arkansas.gov/offices/abc/Pages/default.aspx>

9. Will a public hearing be held on this proposed rule? Yes  No   
If yes, please complete the following:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

September 18, 2017

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

November 1, 2017

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. See attached.

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e). See Attached.

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please

provide their position (for or against) if known. Unknown

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Department of Finance and Administration

**DIVISION** Alcoholic Beverage Control Administration

**PERSON COMPLETING THIS STATEMENT** Mary Robin Casteel

**TELEPHONE** 501-682-1105 **FAX** 501-682-2221 **EMAIL:** Mary.Casteel@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** **Section 5.15 Local Ordinance Required, Presumption That The Application is Qualified to be Received by Agency; Information, Statements and Documents to be Furnished by Applicant.**

- 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  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  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:

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

**Current Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_

Federal Funds \_\_\_\_\_  
 Cash Funds \_\_\_\_\_  
 Special Revenue \_\_\_\_\_  
 Other (Identify) \_\_\_\_\_  
 Total \_\_\_\_\_

Federal Funds \_\_\_\_\_  
 Cash Funds \_\_\_\_\_  
 Special Revenue \_\_\_\_\_  
 Other (Identify) \_\_\_\_\_  
 Total \_\_\_\_\_

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

**Current Fiscal Year**

**Next Fiscal Year**

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

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

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**

**Next Fiscal Year**

\$ 0 \_\_\_\_\_

\$ 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**

**Next Fiscal Year**

\$ 0 \_\_\_\_\_

\$ 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

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.

### Proposed New Rule

#### ***Amendment to Section 5.15 Local Ordinance Required, Presumption That The Application is Qualified to be Received by Agency; Information, Statements and Documents to be Furnished by Applicant.***

- A. A private club application may only be submitted to the Alcoholic Beverage Control after the governing body of the county or municipality in which the private club seeks to be located has issued an ordinance approving the private club to operate in that county or municipality. A private club application filed with and accepted by the ABC Division meeting the requirements of Section 5.14 of the Alcoholic Beverage Control Regulations and approved by local ordinance will be presumed to be a “qualified application” under the terms of ACA § 3-9-222(f). This presumption shall be met if the application is accompanied by the required documents listed in Subsection B. of this Regulation.
  
- B. In addition to such information as the Director may determine shall be furnished, the following information, statements and documents shall be given or made by an applicant for a private club permit and such application shall be verified under oath by the chairman of the board of directors or other governing body, the president and the secretary of said private club or the named managing agent of the non-profit corporation:
  - (1) The name, and residence of each consenting charter member of the club on the date of application and who is in good standing on the date of the application;
  - (2) The name, and address of each member of the board of directors or other governing body and each officer of the club;
  - (3) The premises to be permitted stating the street and number or such description of the premises and the character of the area surrounding the premises as will reasonably indicate the locality of the premises and will specifically designate and describe all areas on the premises of the club where controlled beverages will be dispensed and the consumption of such controlled beverages will be allowed;
  - (4) The applicant shall submit the description called for in Subsection (3) of this Regulation and a plot plan of the premises which shall clearly show the construction of the premises, including the dimensions thereof and the relation of the premises to surrounding structures;
  - (5) A detailed description of the non-profit purpose or objective of the club and a complete description of entertainment and/or other services offered by the club;

- (6) The amount assessed a member as dues, if any, at the time of said application for permit;
- (7) A copy of the minutes of the meeting of the governing board of the non-profit corporation which shows that the application for the private club permit is authorized by the organization's governing body;
- (8) A statement that the applicant is the owner of the premises for which the permit is sought or is the holder of an existing lease thereon. If the applicant is not the owner of the premises for which the permit is sought, the applicant must state the name of the owner of the premises and the names of any other persons holding a leasehold interest in the premises;
- (9) A statement that no member of the board of directors or other governing body nor any of the officers of the club has been under the sentence, whether suspended or otherwise, of any court for the conviction of a felony within two (2) years preceding the date of the application, that no member of the board of directors or other governing body nor any of the officers of the club has had a permit, license or registration issued to them under any alcoholic beverage control law or Regulation of the State of Arkansas revoked within five (5) years preceding the date of application and that all members of the board of directors or other governing body and all officers of the club are of good moral character;
- (10) A copy of the articles of incorporation, as filed-marked by the Arkansas Secretary of State's Office, and the by-laws of the private club shall be attached to the application;
- (11) If the premises are not owned by the applicant, a copy of the lease or other agreement for use of the premises shall be attached to the application; and
- (12) The applicant, in the application, must elect to operate under either the "locker system" or the "pool or revolving fund system" of operation.
- (13) ***Permit Not to be Issued to Unqualified Corporation;  
Repealed 8-17-05***

**MARK UP COPY**

**Amendment to Section 5.15 Local Ordinance Required, Presumption That The Application is Qualified to be Received by Agency; Information, Statements and Documents to be Furnished by Applicant.**

- A. A private club application may only be submitted to the Alcoholic Beverage Control after the governing body of the county or municipality in which the private club seeks to be located has issued an ordinance approving the private club to operate in that county or municipality. A private club application filed with and accepted by the ABC Division meeting the requirements of Section 5.14 of the Alcoholic Beverage Control Regulations and approved by local ordinance will be presumed to be a “qualified application” under the terms of ACA § 3-9-222(f). This presumption shall be met if the application is accompanied by the required documents listed in Subsection B. of this Regulation.
- B. In addition to such information as the Director may determine shall be furnished, the following information, statements and documents shall be given or made by an applicant for a private club permit and such application shall be verified under oath by the chairman of the board of directors or other governing body, the president and the secretary of said private club or the named managing agent of the non-profit corporation:
- (1) The name, and residence of each consenting charter member of the club on the date of application and who is in good standing on the date of the application;
  - (2) The name, and address of each member of the board of directors or other governing body and each officer of the club;
  - (3) The premises to be permitted stating the street and number or such description of the premises and the character of the area surrounding the premises as will reasonably indicate the locality of the premises and will specifically designate and describe all areas on the premises of the club where controlled beverages will be dispensed and the consumption of such controlled beverages will be allowed;
  - (4) The applicant shall submit the description called for in Subsection (3) of this Regulation and a plot plan of the premises which shall clearly show the construction of the premises, including the dimensions thereof and the relation of the premises to surrounding structures;
  - (5) A detailed description of the non-profit purpose or objective of the club and a complete description of entertainment and/or other services offered by the club;



- (6) The amount assessed a member as dues, if any, at the time of said application for permit;
- (7) A copy of the minutes of the meeting of the governing board of the non-profit corporation which shows that the application for the private club permit is authorized by the organization's governing body;
- (8) A statement that the applicant is the owner of the premises for which the permit is sought or is the holder of an existing lease thereon. If the applicant is not the owner of the premises for which the permit is sought, the applicant must state the name of the owner of the premises and the names of any other persons holding a leasehold interest in the premises;
- (9) A statement that no member of the board of directors or other governing body nor any of the officers of the club has been under the sentence, whether suspended or otherwise, of any court for the conviction of a felony within two (2) years preceding the date of the application, that no member of the board of directors or other governing body nor any of the officers of the club has had a permit, license or registration issued to them under any alcoholic beverage control law or Regulation of the State of Arkansas revoked within five (5) years preceding the date of application and that all members of the board of directors or other governing body and all officers of the club are of good moral character;
- (10) A copy of the articles of incorporation, as filed-marked by the Arkansas Secretary of State's Office, and the by-laws of the private club shall be attached to the application;
- (11) If the premises are not owned by the applicant, a copy of the lease or other agreement for use of the premises shall be attached to the application; and
- (12) The applicant, in the application, must elect to operate under either the "locker system" or the "pool or revolving fund system" of operation.
- (13) ***Permit Not to be Issued to Unqualified Corporation; Repealed 8-17-05***

**SUMMARY**

Act 1112 of 2017 requires applicants for private club permits to obtain an ordinance from the municipality or county in which the club seeks to operate prior to filing an application with the ABC.

**LEGAL NOTICE**

In compliance with the Administrative Procedure Act of the State of Arkansas (Act 434 of 1967), notice is hereby given that the Alcoholic Beverage Control Board proposes to promulgate regulations concerning the alcoholic beverage industry in Arkansas.

The Board will consider regulations in the following areas: grocery store wine permit application procedures, retailer loyalty programs, non-alcoholic merchandise sold by retail liquor stores, prohibited gifts and services to retailers by wholesalers and manufacturers, small brewery off-site tap rooms, small brewery off-site brewing facilities, microbrewery restaurant off-site brewing facilities, local ordinance required for private club applications and other private club-related permit transactions.

The regulation hearing will be held on September 20, 2017 at the hour of 8:30 a.m., in the fifth floor conference room, 1515 West Seventh Street, Little Rock, Arkansas.

All public comment concerning the regulation hearing should be mailed to ABC Division, 1515 West Seventh Street, Suite 503, Little Rock, Arkansas, 72201.

## **Mary Robin Casteel**

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**From:** Legal Ads <legalads@arkansasonline.com>  
**Sent:** Thursday, August 17, 2017 3:35 PM  
**To:** Mary Robin Casteel  
**Subject:** Re: Legal Notice for ABC Rules

Thanks, Mary Robin. Will run Sun 8/20, Mon 8/21, and Tues 8/22.

Gregg

On 8/17/2017 3:30 PM, Mary Robin Casteel wrote:

Dear Gregg:

I need to publish the attached document as a legal notice on Sunday August 20 through Tuesday August 22 for a total of three consecutive days.

Please submit a bill to the following address:  
Alcoholic Beverage Control Administration  
1515 W. 7<sup>th</sup> Street, Suite 503  
Little Rock, AR 72201

Please give me a call if you need additional information or if you have any questions.

Thanks,  
Mary Robin

Mary Robin Casteel  
ABC Administration  
501-682-1105  
[Mary.Casteel@dfa.arkansas.gov](mailto:Mary.Casteel@dfa.arkansas.gov)

## Mary Robin Casteel

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**From:** Mary Robin Casteel  
**Sent:** Thursday, August 17, 2017 4:23 PM  
**To:** 'register@sos.arkansas.gov'  
**Subject:** Notice of Rules and Proposed Rules for Alcoholic Beverage Control  
**Attachments:** Newspaper Notice\_ABC Rules1.pdf; ABC Proposed Rules1\_Rules Only\_SOS.pdf

Dear Ms. Walters:

I've attached administrative rules proposed by the Alcoholic Beverage Control Board. I've also attached the public notice for these rules. The notice is set to run for three consecutive days in the Arkansas Democrat Gazette beginning on Sunday August 20, 2017.

If you have any questions, or if there are any issues with these documents, please contact me at 501-682-1105.

Thank you,  
Mary Robin

Mary Robin Casteel  
ABC Administration  
501-682-1105  
[Mary.Casteel@dfa.arkansas.gov](mailto:Mary.Casteel@dfa.arkansas.gov)



**State of Arkansas**  
**Bureau of**  
**Legislative Research**

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Tim Carlock, Assistant Director  
for Information Technology  
Matthew Miller, Assistant Director  
for Legal Services  
Richard Wilson, Assistant Director  
for Research Services

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## Memorandum

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**TO: Members, ALC – Executive Subcommittee**

**FROM: Rebecca Miller-Rice, Legislative Attorney, Administrative Rules Review Section, Legal Services Division**

**CC: Marty Garrity, Director, Bureau of Legislative Research; Jessica Sutton, Administrator, Administrative Rules Review Section, Legal Services Division**

**DATE: September 5, 2017**

**SUBJECT: Legal Authorization for Emergency Promulgation of Section 5.15: Local Ordinance Required, Presumption that the Application is Qualified to be Received by Agency; Information, Statements and Documents to be Furnished by Applicant by the Department of Finance and Administration, Alcoholic Beverage Control Administration**

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The instant proposed rule implements Act 1112 of 2017, which amended Arkansas Code Annotated § 3-9-222, concerning permits to operate as a private club. Section 3-9-222(a)(1), as amended by Act 1112, § 1, allows an application to operate as a private club to be made first to the governing body of the county or municipality in which the private club seeks to be located. If the governing body of the county or municipality approves by ordinance the application for permit made under subsection (a)(1) of the statute, the Alcoholic Beverage Control Division (“Division”) may then issue a permit to operate as a private club to the applicant for the proposed location. *See* Ark. Code Ann. § 3-9-222(a)(2), as amended by Act 1112, § 1. The Alcoholic Beverage Control Board is authorized and directed to establish rules and regulations with respect to permits issued under the provisions of Ark. Code Ann. § 3-9-222 to assure compliance with the provisions and to prohibit any permittee from engaging in the unlawful sale of alcoholic beverages. The Director of the Division shall adopt and promulgate such rules and regulations as shall be necessary to carry out the intent and purposes of any alcohol control acts enforced in this state. *See* Ark. Code Ann. § 3-9-222(a)(2), as amended by Act 1112, § 1.

State Capitol, Room 315    Little Rock, AR 72201    (501) 682-1937    Fax (501) 682-1936    TDD (501) 682-1940

2-206(a). By the grant of this power to adopt rules and regulations, it is intended “that the director shall be clothed with broad discretionary power to govern the traffic in alcoholic liquor and to enforce strictly all the provisions of the alcohol control laws of this state.” Ark. Code Ann. § 3-2-206(d).