

**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. 7th Street, Suite503 Little Rock 72201
PHONE NO. 501-682-1105 FAX NO. 501-682-2221 E-MAIL Mary.Casteel@dfa.arkansas.gov
NAME OF PRESENER AT COMMITTEE MEETING Mary Robin Casteel
PRESENER 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, 5th Floor
Little Rock, AR 72201**

1. What is the short title of this rule? Section 1.33(2) Premises Operated in Conjunction with Certain Other Businesses.
2. What is the subject of the proposed rule? Amending existing rule to authorize certain edible and consumable products to be sold by retail liquor stores.
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If yes, a copy of the repealed rule is to be included with your completed questionnaire.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 508 of 2017
7. What is the purpose of this proposed rule? Why is it necessary? To comply with Act 508 and identify the edibles and consumables that may be sold by retail liquor stores.
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. For the rule: Arkansas Grocers and Convenience Store

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 1.33(2) Premises Operated in Conjunction with Certain Other Businesses.

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 _____
Cash Funds _____
Special Revenue _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____

Other (Identify) _____

 Total _____

Other (Identify) _____

 Total _____

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

Current Fiscal Year

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

Next Fiscal Year

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

\$ 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

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 1.33(2) Premises Operated in Conjunction with Certain Other Businesses. No off premises retail liquor permit shall be operated as part of the profit making business of any billiard hall, pool room, drug, grocery, sporting goods, dry goods, hardware, general mercantile store, or any other business unrelated to such permit; however, the retail liquor store permittee may have tobacco products, mixers, soft drinks, consumables and edible products that complement alcoholic beverages, and other items customarily associated with the retail package sale of the liquors. Edible products may include:

- a. Lemons, limes, cherries, olives and other food items used in the preparation or garnishment of alcoholic beverages or mixed alcoholic beverages;
- b. Peanuts, pretzels, chips, crackers, and other packaged snack foods and confectionaries; and
- c. Prepackaged food items, including, but not limited to, cheese, meat, and appetizers.
- d. Retail liquor stores shall not cook, prepare, or package food items on the premises of the retail liquor store for the purpose of resale.

Consumable products may include:

- a. Party supplies, party decorations, gift bags, gift baskets, greeting cards and other items for parties and special events; and
- b. Ice in any form.

Items customarily associated with the retail package sale of liquors may include:

- a. Beverage coolers, beverage insulators, and ice chests;
- b. Items used in the preparation of mixed drinks, including, without limitation, beverage strainers, pourers, jiggers, stirrers, ice crushers, and ice molds;
- c. Decanters, carafes, glassware, and drinkware;
- d. Bottle openers and can openers; and
- e. Corkscrews, wine aerators, bottle stoppers, and devices designed to preserve wine.

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Amendment to Section 1.33(2) Premises Operated in Conjunction with Certain Other Businesses. No off premises retail liquor permit shall be operated as part of the profit making business of any billiard hall, pool room, drug, grocery, sporting goods, dry goods, hardware, general mercantile store, or any other business unrelated to such permit; however, the retail liquor store permittee may have tobacco products, mixers, soft drinks, consumables and edible products that complement alcoholic beverages, and other items customarily associated with the retail package sale of the liquors; . Edible products may include:

- a. Lemons, limes, cherries, olives and other food items used in the preparation or garnishment of alcoholic beverages or mixed alcoholic beverages;
- b. Peanuts, pretzels, chips, crackers, and other packaged snack foods and confectionaries; and
- c. Prepackaged food items, including, but not limited to, cheese, meat, and appetizers.
- d. Retail liquor stores shall not cook, prepare, or package food items on the premises of the retail liquor store for the purpose of resale.

Consumable products may include:

- a. Party supplies, party decorations, gift bags, gift baskets, greeting cards and other items for parties and special events; and
- b. Ice in any form.

Items customarily associated with the retail package sale of liquors may include:

- a. Beverage coolers, beverage insulators, and ice chests;
- b. Items used in the preparation of mixed drinks, including, without limitation, beverage strainers, pourers, jiggers, stirrers, ice crushers, and ice molds;
- c. Decanters, carafes, glassware, and drinkware;
- d. Bottle openers and can openers; and
- e. Corkscrews, wine aerators, bottle stoppers, and devices designed to preserve wine.

SUMMARY

Act 508 of 2017 authorizes retail liquor stores to begin selling consumables and edible products that complement alcoholic beverages. Act 508 instructs the ABC to promulgate rules to facilitate the sale of these items.

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

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. 7th 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

Mary Robin Casteel

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



State of Arkansas
Bureau of
Legislative Research

Marty Garrity, Director
Kevin Anderson, Assistant Director
for Fiscal Services
Tim Carlock, Assistant Director
for Information Technology
Matthew Miller, Assistant Director
for Legal Services
Richard Wilson, Assistant Director
for Research Services

Memorandum

TO: Members, ALC – Executive Subcommittee

FROM: Jessica Sutton, Administrator, Administrative Rules Review Section, Legal Services Division

CC: Marty Garrity, Director, Bureau of Legislative Research

DATE: September 2, 2017

SUBJECT: Legal Authorization for the Emergency Rule of the Alcoholic Beverage Control Division – Section 1.33(2) Premises Operated in Conjunction with Certain Other Businesses

The Director of the Alcoholic Beverage Control Division shall adopt and promulgate such rules and regulations as shall be necessary to carry out the intent and purposes of the alcohol control acts enforced in this state. Ark. Code Ann. § 3-2-206(a). The Director is “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).

This rule implements Act 508 of 2017, which authorizes retail liquor stores to sell consumables and edible products that complement alcoholic beverages. Arkansas Code Annotated § 3-4-218(a)(3), as amended by Act 508, requires the Alcoholic Beverage Control Division to promulgate rules to facilitate the sale of complementary products under this act.