

**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, Suite 503 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, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule? Section 2.53 *Microbrewery-Restaurant and Separate Brewing Facility Application and Operations.*

2. What is the subject of the proposed rule? Amending existing rule to allow include provisions of Act 308 of 2017: separate brewing facilities, increased production limits, and transport between commonly owned facilities

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If yes, a copy of the repealed rule is to be included with your completed questionnaire.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 308 of 2017 / ACA 3-5-1204; ACA 3-5-1205

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. For the rule: Arkansas Microbrewery Restaurant Permittees Opponents: 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 2.53 Microbrewery-Restaurant and Separate Brewing Facility Application and Operations.**

- 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 _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____

Special Revenue _____
 Other (Identify) _____
 Total _____

Special Revenue _____
 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.

MARK UP COPY

Amendment to Section 2.53 Microbrewery-Restaurant and Separate Brewing Facility Application and Operations. Allowed.

- (A) Pursuant to Act 611 of 1991, as amended, a A microbrewery-restaurant operation is allowed to shall brew manufacture beer, containing not in excess of five percent (5%) alcohol by weight and to brew malt beverage products, or hard cider, and to may sell the same, or products produced at the permittee's separate brewing facility, at a restaurant as defined in the Act, for consumption on or off the premises. The microbrewery portion of the microbrewery-restaurant permitted operation (hereinafter "permitted business") shall be separated from the restaurant portion of the permitted business by a solid wall. The wall may be made of glass or other materials, but shall prevent direct access by the public patronizing the restaurant. If the operator of the permitted business does desire to allow members of the public to take a tour of the brewery, such tour shall only be conducted under the direct supervision of brewery personnel. Microbrewery-Restaurant permittees may store the manufactured beer, malt beverage, or hard cider and any other beer, malt beverage, or hard cider which the permittee may purchase from wholesalers and small brewers licensed by this state on the microbrewery-restaurant premises and on the premises of the one (1) separate brewing facility of the microbrewery-restaurant. Two (2) or more microbrewery-restaurants sharing ownership or a brewery of any size sharing common ownership with a microbrewery-restaurant shall be considered one (1) entity for the purposes of calculating barrel production and transportation of beer, malt beverage, or hard cider produced by one (1) entity among no more than three (3) microbrewery restaurant facilities of the one (1) entity.
- (B) A microbrewery-restaurant permittee may maintain one (1) separate brewing facility for production or storage of beer, malt beverage, or hard cider as needed to meet demand, except that each facility used by the microbrewery-restaurant permittee shall not in the aggregate produce more than forty-five thousand (45,000) barrels of beer, malt beverage, and hard cider per year.
- (C) A microbrewery restaurant permittee shall notify the Alcoholic Beverage Control of its intent to operate a separate brewing facility by providing the following documentation:
- 1) A completed Separate Brewing Facility application form;
 - 2) A floor plan of the proposed premises;
 - 3) At least four (4) photographs of the proposed premises, depicting the front, back, and sides of the building;
 - 4) Copies of any permits required by the Alcohol and Tobacco Tax and Trade Bureau for production at the location, if applicable; and
 - 5) Certification that the proposed facility is in compliance with any local zoning requirements for the location.

Upon receipt of the required documentation, the Alcoholic Beverage Control shall issue an endorsement to the microbrewery restaurant permittee. The endorsement shall be posted on the premises in compliance with the specifications set forth in Section 1.37.

SUMMARY

Act 308 of 2017 increased the production limits for microbrewery restaurants. It also authorized microbrewery restaurant permittees to maintain a separate brewing facility. This rule incorporates the provisions of Act 308 of 2017 into existing ABC rules. It also provides a means by which the microbrewery restaurant shall notify the ABC of its intent to operate a separate brewing facility.

Proposed New Rule

Amendment to Section 2.53 *Microbrewery-Restaurant and Separate Brewing Facility Application and Operations.*

- (A) A microbrewery-restaurant shall manufacture beer, malt beverage products, or hard cider, and may sell the same, or products produced at the permittee's separate brewing facility, for consumption on or off the premises. The microbrewery portion of the microbrewery-restaurant permitted operation (hereinafter "permitted business") shall be separated from the restaurant portion of the permitted business by a solid wall. The wall may be made of glass or other materials, but shall prevent direct access by the public patronizing the restaurant. If the operator of the permitted business does desire to allow members of the public to take a tour of the brewery, such tour shall only be conducted under the direct supervision of brewery personnel. Microbrewery-Restaurant permittees may store the manufactured beer, malt beverage, or hard cider and any other beer, malt beverage, or hard cider which the permittee may purchase from wholesalers and small brewers licensed by this state on the microbrewery-restaurant premises and on the premises of the one (1) separate brewing facility of the microbrewery-restaurant. Two (2) or more microbrewery-restaurants sharing ownership or a brewery of any size sharing common ownership with a microbrewery-restaurant shall be considered one (1) entity for the purposes of calculating barrel production and transportation of beer, malt beverage, or hard cider produced by one (1) entity among no more than three (3) microbrewery restaurant facilities of the one (1) entity.
- (B) A microbrewery-restaurant permittee may maintain one (1) separate brewing facility for production or storage of beer, malt beverage, or hard cider as needed to meet demand, except that each facility used by the microbrewery-restaurant permittee shall not in the aggregate produce more than forty-five thousand (45,000) barrels of beer, malt beverage, and hard cider per year.
- (C) A microbrewery restaurant permittee shall notify the Alcoholic Beverage Control of its intent to operate a separate brewing facility by providing the following documentation:
- 1) A completed Separate Brewing Facility application form;
 - 2) A floor plan of the proposed premises;
 - 3) At least four (4) photographs of the proposed premises, depicting the front, back, and sides of the building;
 - 4) Copies of any permits required by the Alcohol and Tobacco Tax and Trade Bureau for production at the location, if applicable; and
 - 5) Certification that the proposed facility is in compliance with any local zoning requirements for the location.

Upon receipt of the required documentation, the Alcoholic Beverage Control shall issue an endorsement to the microbrewery restaurant permittee. The endorsement shall be posted on the premises in compliance with the specifications set forth in Section 1.37.

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 2.53 Microbrewery-Restaurant and Separate Brewing Facility Application and Operations

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 308 of 2017, which increases production limits for microbrewery restaurants and authorizes microbrewery restaurant permittees to maintain a separate brewing facility. Additionally, this rule provides a means by which the microbrewery restaurant shall notify the Alcoholic Beverage Control Division of its intent to operate a separate brewing facility.