

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 Division

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

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Name of Rule Suspension of permit - ABC Rule 1.81

Newspaper Name Arkansas Democrat Gazette

Date of Publishing December 22, 2019 thru December 24, 2019

Final Date for Public Comment January 22, 2020

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

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Section 1.81 Suspension of Permit When No Business Conducted for a Period of Thirty Days; Inactive Status of Permits. In the event a permittee does not conduct business under any permit issued for a period of thirty (30) days, the permit shall be surrendered to the Director and shall be placed on inactive status. Inactive status shall commence at the end of thirty (30) days after close of business, regardless of whether the permit is surrendered to the Director. In any event, for purposes of this RegulationRule, a business that has been closed for a period of thirty (30) days shall be deemed to be on inactive status. The permit may remain inactive for ~~six (6)~~three (3) months ~~or until the permittee notifies the Director that he is ready to resume business, whichever is shorter, subject to the permittee's petition to the Alcoholic Beverage Control Board for an extension of inactive status provided for in this Regulation.~~ "Ready to resume business" ~~includes the resumption of business at the permitted location or the filing of an acceptable application with the agency to transfer the location of the permitted business.~~ If said application to transfer the location of the permitted business is granted conditional, the conditions must be met within twelve (12) months from the final agency decision granting the transfer application ~~or the application will be cancelled.~~ In order to extend the twelve (12) month conditional period, written approval must be obtained from the Director or Board before the expiration of the twelve (12) month period.

~~Upon any such cancellation, the inactive status of the permit will be calculated from the time the final agency decision granting the transfer of location was rendered. To secure the return of the permit, the permittee shall file with the Director a written statement showing that all taxes and fees owing to the State have been paid, the reason for the suspension of business activities and the date business activity will resume. The date the business activity will resume must be before or on the following day after the expiration of the last day of the inactive status period and includes the resumption of business at the permitted location that means the outlet is open for business and prepared to sell or dispense alcoholic beverages or means the filing of an acceptable application with the agency to transfer the location of the permitted business or such permit shall expire. If said application to transfer the location of the permitted business is granted conditional, the conditions must be met within twelve (12) months from the final agency decision granting the transfer application or the application will be cancelled. In order to extend the twelve (12) month conditional period, written approval must be obtained from the Director or Board before the expiration of the twelve (12) month period or such permit shall expire. Upon any such expiration or cancellation, the inactive status of the permit will be calculated from the time the final agency decision granting the transfer of location was rendered.~~

The permittee may petition the Alcoholic Beverage Control Board for an extension of inactive status for an additional ~~six (6)~~three (3) month period. The Board may grant an initial extension upon a showing by the permittee and a finding by the Board that business circumstances exist to justify an extension, that the delay to return to business was not due to mere deferral or inattention on the part of the permittee, and that the inactive status should be extended. The permittee may appeal to the Alcoholic Beverage Control Board for a second extension of inactive status for an

additional six (6) month period, but only upon a showing by the permittee and a finding by the Board that emergency circumstances exist to justify a final extension. Emergency circumstances means ~~are those~~ delays in return to business ~~which~~ that are beyond the control, planning, or foresight of the permittee, including, but not limited to, delays due to a natural or man-made disaster, the pending adjudication of a lawsuit court actions, a building construction problem, and a contested or delayed insurance claim or settlement.

Any permit remaining on inactive status for a period of more than ~~eighteen (18)~~twelve (12) months or which has not been granted an extension under the provision of this ~~Regulation~~Rule shall expire pursuant to written notice given to permit holders by this agency or to the provisions of ACA § 3-4-201 as they apply. Any permitted outlet which has been on inactive status in excess of six (6) months shall be re-inspected by the Alcoholic Beverage Control Enforcement Division to determine if the outlet is in compliance with required health and safety ~~regulation~~rules and the outlet is open for business and prepared to sell or dispense alcoholic beverages before the permit(s) may be returned to active status. As part of the re-inspection process, the Alcoholic Beverage Control Enforcement Division shall give notice of the request to return to active status to the law enforcement officer who has primary jurisdiction over the site of the permitted outlet. The date the business activity will resume must be before or on the following day after the expiration of the last day of the inactive status period and includes the resumption of business at the permitted location that means the outlet is open for business and prepared to sell or dispense alcoholic beverages or such permit shall expire. (Amended 8-20-03)

SUMMARY OF SUBSTANTIVE CHANGES

Act 571 of 2019 shortens the time for inactive status. The initial inactive status is now 3 months, rather than six. The Act shortens the total time for inactive status from 18 months, with extensions, to 12 months, with extensions.

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To secure the return of the permit, the permittee shall file with the Director a written statement showing that all taxes and fees owing to the State have been paid, the reason for the suspension of business activities and the date business activity will resume. The date the business activity will resume must be before or on the following day after the expiration of the last day of the inactive status period and includes the resumption of business at the permitted location that means the outlet is open for business and prepared to sell or dispense alcoholic beverages or means the filing of an acceptable application with the agency to transfer the location of the permitted business or such permit shall expire. If said application to transfer the location of the permitted business is granted conditional, the conditions must be met within twelve (12) months from the final agency decision granting the transfer application or the application will be cancelled. In order to extend the twelve (12) month conditional period, written approval must be obtained from the Director or Board before the expiration of the twelve (12) month period or such permit shall expire. Upon any such expiration or cancellation, the inactive status of the permit will be calculated from the time the final agency decision granting the transfer of location was rendered.

The permittee may petition the Alcoholic Beverage Control Board for an extension of inactive status for an additional three (3) month period. The Board may grant an initial extension upon a showing by the permittee and a finding by the Board that business circumstances exist to justify an extension, that the delay to return to business was not due to mere deferral or inattention on the part of the permittee, and that the inactive status should be extended. The permittee may appeal to the Alcoholic Beverage Control Board for a second extension of inactive status for an additional six (6) month period, but only upon a showing by the permittee and a finding by the Board that emergency circumstances exist to justify a final extension. Emergency circumstances means delays in return to business that are beyond the control, planning, or foresight of the permittee, including, but not limited to, a delay due to a natural or man-made disaster, the pending adjudication of a lawsuit, a building construction problem, and a contested or delayed insurance claim or settlement.

Any permit remaining on inactive status for a period of more than twelve (12) months or which has not been granted an extension under the provision of this Rule shall expire pursuant to written notice given to permit holders by this agency or to the provisions of ACA § 3-4-201 as they apply. Any permitted outlet which has been on inactive status in excess of six (6) months shall be re-inspected by the Alcoholic Beverage Control Enforcement Division to determine if the outlet is in compliance with required health and safety rules and the outlet is open for business and prepared to sell or dispense alcoholic beverages before the permit(s) may be returned to active status. As part of the re-inspection process, the Alcoholic Beverage Control Enforcement Division shall give notice of the request to return to active status to the law enforcement officer who has primary jurisdiction over the site of the permitted outlet. The date the business activity will resume must be before or on the following day after the expiration of the last day of the inactive status period and includes the resumption of business at the permitted location that means the outlet is open for business and prepared to sell or dispense alcoholic beverages or such permit shall expire. (Amended 8-20-03)

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT DFA

DIVISION Alcoholic Beverage Control

PERSON COMPLETING THIS STATEMENT Doralee Chandler

TELEPHONE 501-682-2916 **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 _____

- | | | |
|---|---|--|
| 1. Does this proposed, amended, or repealed rule have a financial impact? | Yes | No <input checked="" type="checkbox"/> |
| 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 <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| 3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |

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

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.